

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

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Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : 24 MAY 1988

REVIEW APPLICATION NO
IN APPLICATION NO. 317/87(F)
W.P. NO.

10

/88

Applicant

Shri G. Mohan
To

1. Shri G. Mohan
K.T. Apartments-6
61/1, 11th Main Road
13th Cross, Malleswaram
Bengalore - 560 003

2. Shri S.K. Srinivasan
Advocate
35 (Above Hotel Swagath)
1st Main, Gandhinagar
Bengalore - 560 009

3. The Secretary
Ministry of Finance
(Department of Revenue)
New Delhi - 110 001

Respondent

The Secy, M/o Finance (Dept of Revenue),
New Delhi & 2 Ores

4. The Chairman
Central Board of Excise & Customs
Ministry of Finance
Department of Revenue
New Delhi

5. The Collector of Customs
Central Revenue Buildings
Queens Road
Bengalore - 560 001

6. Shri M.S. Padmarajaiah
Central Govt. Stng Counsel
High Court Building
Bengalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~ORDER~~ ^{Review} ~~ORDER~~
passed by this Tribunal in the above said application on 23-5-88.

Encl : As above

of

Raj Venkatesh
DEPUTY REGISTRAR
(JUDICIAL)

*Received
K. N. N. V.
23-5-88*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL : BANGALORE.

DATED THIS THE TWENTY THIRD DAY OF MAY, 1988.

Coram:

Hon'ble Shri L.H.A. Rego, Member (A).
and
Hon'ble Shri Ch. Ramakrishna Rao, Member (J).

REVIEW APPLICATION No. 10/88

in

A. No. 317/87.

G. MohanApplicant.

vs.

The Secretary to Govt. of India,
Ministry of Finance (Dept. of Revenue),
New Delhi, and two others.Respondents.

This review application having come up for hearing
on 20.5.1988, and having stood for consideration till this day,
Hon'ble Member (J) made the following:

O R D E R

The facts involved in A.No. 317/87 referred to as the
are briefly as follows:

The applicant was working as Assistant Collector of
Customs (Legal), Bangalore, since August, 1985. He was
promoted as Deputy Collector of Central Excise (Dy. Collector,

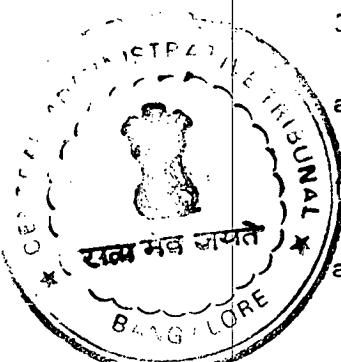
for short), and was posted to Kanpur, along with other officers,
in Order No. 64/86 dated 7.5.1986, issued by the Ministry of
Finance (Department of Revenue). However, the order of



promotion, in so far as it related to the applicant, was cancelled by order dated 8.5.1986 by the Ministry of Finance. Aggrieved by this Order, dated 8.5.1986, cancelling his promotion, the applicant filed the OA, which was dismissed by a Division Bench of this Tribunal in its Judgment dated 11.12.1987 (Judgment, for short). Aggrieved by the Judgment, the applicant has filed the present review application (RA).

2. The applicant has filed an interlocutory application for condoning the delay in filing the RA. After perusing the same and hearing the counsel on both sides, we condone the delay in filing the RA.

3. Shri S.K. Srinivasan, learned counsel for the applicant, contends that there are errors apparent on the face of the Judgment rendered earlier. He elaborated his argument as follows:


No reasons were given in the order dated 8.5.1986 for cancelling the order dated 7.5.1986, under which the applicant was promoted to the post of Dy. Collector. Reliance was placed at the time of arguments in the OA on the decision of the Full Bench of this Tribunal in K.CH. VENKATA REDDY & OTHERS v. UNION OF INDIA (ATR 1987(1) CAT 547 at page 561), and this was not referred to in the Judgment. In O.M. dated 14.7.1977,

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the Government had decided that the sealed cover procedure should be followed in cases where after investigation, the evidence collected indicates prima facie, guilt of the officer concerned, and not when the preliminary investigation is pending and no conclusion is reached about the prima facie guilt of the officer, since at that stage, there is no ground for treating the said officer as one whose conduct is under investigation. An officer can be said to be under investigation, only when a charge sheet is filed in a criminal court or charge memo under CC&A Rules is issued to the official. The procedure outlined in the OM was approved by the Full Bench of this Tribunal, and the ratio of its ruling not having been followed, there is an error apparent on the face of the Judgment, which calls for rectification.

4. Shri M.S. Padmarajaiah, Senior C.G.S.C., appearing for the respondents, strenuously opposes the admission of the RAM on the ground that though the Full Bench decision has not been cited in the Judgment, the ratio of the Full Bench ruling has been noticed in the Judgment; that the operation of the Full Bench ruling has since been stayed by the Supreme Court; that even ~~even~~ otherwise, the Full Bench ruling relied

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upon by the applicant is not applicable to the facts of this case, as held in paragraph 10 of the Judgment; that even assuming, without admitting, that there is any error of law in the Judgment, it will not amount to an error apparent on the face of the Judgment, and in view of these considerations, the RA has no substance.

5. We have considered the rival contentions. In para 8 of the Judgment, we have taken note of the contention of Dr. Nagaraja for the applicant, that it is not sufficient if vigilance proceedings were pending on the date when the DPC met for preparing the list of candidates fit for promotion, and on that date, a departmental proceeding should have been initiated or at least, the officer concerned should have been placed under suspension. From this, it is apparent, that we did take notice of the contention of the applicant based on the Full Bench ruling of this Tribunal cited supra, since the gist of that ruling, which formed the basis for the contention of Dr. Nagaraja was set out in para 8 of the Judgment. In para 10, we stated that we had considered the rival contentions and perused the file produced before us on behalf of the respondents relating to RC 37/84 registered with the CBI. This means and implies that the ratio of the Full Bench ruling was very much in our mind, but on the basis of the notings culled

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out from the relevant files, we took the view that the Full Bench ruling was not applicable to the facts of the OA.

6. We shall now touch briefly on the facts peculiar to the OA, which in our view, render the Full Bench ruling inapplicable, because of which, the ruling of the Full Bench was not applied to the facts of the OA. On 10.12.1985, when the DPC met, the Vigilance proceedings based on the S.P.'s report was already being processed. However, since the processing had not reached an advanced stage on that date, the name of the applicant was included in the list of candidates recommended for promotion, as Deputy Collector. However, when the file reached the CVO, he recorded a note on 15.4.1986, in which he stated that the evidence brought out ~~on account~~ ^{of} on account of the investigation ~~was~~ ^{of} through the SP, created a reasonable doubt, regarding the applicant's integrity or at least propriety of his conduct. The papers were thereafter put up to the Chairman, CVC, and on 23.9.1986, when the matter reached the Director, CVC, he recorded a note, in which he upheld the proposal of the CBI and the Department for the ~~the~~ ^{of} prosecution of the applicant.



7. We are, therefore, of the view, that on the date when the DPC met, there was no justification for not including the name of the applicant in the list of candidates selected for promotion and accordingly, the DPC included the applicant's name.

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But after a lapse of about 5 months, the investigation proceedings had reached a stage when a prima facie case was made out and within a few months thereafter, the CVC had advised launching of prosecution against the applicant, which was in fact launched, and the applicant placed under suspension. In other words, on 7.5.1986, when the list of officers promoted as Dy. Collectors was published, it escaped the notice of the department, that the investigation proceedings were on the verge of a charge sheet being framed against the applicant, and within 24 hours after the publication of the list, the same was cancelled.

8. In view of the facts stated above, the question which fell for consideration by the Division Bench of this Tribunal which heard the OA, was not whether the sealed cover procedure should have been followed by the DPC, but whether the respondents were justified in cancelling the order under which the applicant was granted promotion. We were inclined to the view that the order dated 7.5.1986 promoting the applicant, amongst others, was issued under a mistake and the respondents were, therefore, justified in cancelling the order, without assigning any reasons. On re-consideration, we find nothing objectionable in the view we have taken and the interests of the applicant are in no way jeopardised, since he would be entitled to the promotion granted

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to him under the order dated 7.5.1986, and all benefits flowing therefrom, if the applicant is ultimately exonerated in the proceedings initiated against him by the respondents.

9. In this connection, it will not be out of place to take note of the fact that the operation of the ruling of the Full Bench of this Tribunal has been stayed by the Supreme Court. Shri Srinivasan submits, that the Supreme Court had granted only an interim stay of the operation of the Full Bench ruling and the ruling will therefore be still applicable. Even if the operation of the Full Bench ruling has been stayed by the Supreme Court by granting an interim stay, its applicability as long as the interim stay continues, is highly doubtful. We do not however like to pursue this aspect further, since for reasons already stated, there is no cogent ground for reviewing the Judgment.

10. The legal position is now well settled and it will be pedantic to cite authorities in support of the proposition that any error of law will not amount to an error apparent on the fact of the Judgment, and a re-hearing cannot be allowed for the purpose of demonstrating that the judgment is erroneous. To do so, would be to convert the reviewing court into a court of appeal, and this is precisely what Shri Srinivasan wants us



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to do, and this is impermissible in law.

11. As already stated, the substance of the Full Bench ruling has been sufficiently noticed and considered in the Judgment, and we are not persuaded to take a different view in this RA.

12. In the circumstances, the application for review is rejected. Ad

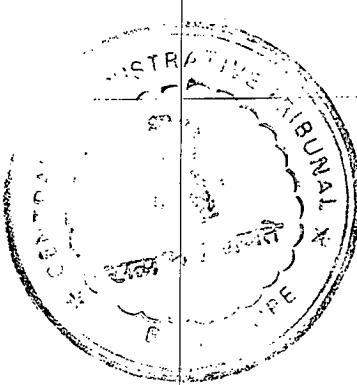
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MEMBER(A)

Sd/-

MEMBER(B)

TRUE COPY


DEPUTY REGISTRAR (JDL)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE