

8

# Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

R. P. No.49/90 in

O.A. No.192/ 90.

~~T.A.No.~~

Date of Decision : 26.11.1990

K. K. Dhawan

Petitioner.

Mr. M. A. Mahalle

Advocate for the  
petitioner (s)

Versus

Secretary, Dept. of Rev. New Delhi  
and another Respondent.

Mr. P. M. Pradhan

Advocate for the  
Respondent (s)

CORAM :

THE HON'BLE MR. D. SURYA RAO, MEMBER (J)

THE HON'BLE MR. P.M. PRIOLKAR, MEMBER (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? NO
2. To be referred to the Reporter or not? NO
3. Whether their Lordships wish to see the fair copy of the Judgmt? NO
4. Whether it needs to be circulated to other Benches of the Tribunal? NO
5. Remarks of Vice Chairman on columns 1, 2, 4  
(To be submitted to Hon'ble Vice Chairman where he is not on the Bench)

(HDSR)

(HMYP)

9

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: NEW BOMBAY  
BENCH AT : NEW BOMBAY

R.P. No.49/90 in  
O.A. No. 192/90.

Date of order: 26.11.1990

BETWEEN

K.K. Dhawan

.. Applicant

Vs.

1. Secretary, Department  
of Revenue, North Block, Central  
Secretariat, New Delhi.

2. Chairman,  
Central Board of Direct Taxes,  
Ministry of Finance, Dept. of  
Revenue, North Block, New Delhi.

CORAM:

THE HON'BLE MEMBER (J), SHRI D. SURYA RAO

THE HON'BLE MEMBER (A), SHRI M. Y. PRIOLKAR

APPEARANCES:

For the Applicant : Mr. M. A. Mahalle, Advocate

For the Respondents: Mr. P.M. Pradhan, Advocate for  
the Respondents.

(JUDGEMENT PASSED IN CIRCULATION)

10

This application is filed for review of our order dt.1.6.1990 passed in O.A. No.192/90. The application has been considered by us in circulation under Rule 17 (iii) of the Central Admn. Tribunal Procedure Rules, 1987.

2. The applicant is an Asst. Commissioner of Income Tax who had filed O.A. No.192/90 for removal of an adverse note recorded in his A.C.R. File. He had also sought a direction to the respondents to reconvene the Departmental Promotion Committee held in Dec.1986 to consider the applicant's case for promotion, afresh de hors the adverse note, since uncommunicated adverse remarks would be opposed to the rules of natural justice. We had by our order dt.1.6.1990 admitted the application only in so far as the first relief was concerned viz., for the relief that the adverse note for the year 1985-86 recorded in the applicant's A.C.R. file should be removed. In so far as the second relief viz., a direction to reconvene the D.P.C of 1986, we had held that the applicant had filed an earlier O.A No.85/89 wherein he had claimed a right to promotion on the basis of D.P.C meetings held on 15th, 16th Dec.'86 and on 25th March, '88. Since the Tribunal in O.A. No. 85/89 had by an order dt.4.7.89 upheld the said D.P.C. meetings, we had held that the said order had become final and that the relief No.2 is not maintainable, it being covered by the principles of resjudicata. The present review application has been <sup>filed</sup> ~~not~~ against the non-admission of the O.A. No.192/90 in so far as the second

2

(Contd..)

relief is concerned. It is contended in this application that the view of the Tribunal that the matter is covered by the decision in O.A. No.85/89 and that the principle of resjudicata would be a bar to the filing of the present application is not correct. He therefore seeks a review of the said order.

3. We have perused the review application and the grounds stated therein and are of the opinion that this review application does not come within the scope of review as provided for under the rules. Powers of this Tribunal to pass an order in review are analogous to the powers of a Civil Court under order 47 1 CPC. Such power of review may be exercised on the discovery of a new and important matter or evidence which after exercise due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found. None of these factors would in our opinion apply in the instant case. As already stated by us the applicant had earlier in O.A. No.85/89 questioned the D.P.C proceedings of Dec.1986 whereby he was superceded. It is the claim of the applicant that during the course of hearing of the said O.A., certain adverse remarks were read out in the open court, that on the basis thereof it was held that the D.P.C. ~~proceedings~~ had correctly assessed the applicant and that the Tribunal therefore declined to interfere

(Contd....)

with his non-promotion. If the applicant was aggrieved by that order in O.A. 85/89 viz., <sup>placing it</sup> reliance upon a note containing adverse C.Rs which had not been communicated, his remedy was to ask for review of that order or to go in appeal against order in O. A. No.85/89. He did not do so. Instead he has filed one more application i.e., O.A.No.192/90 once again assailing the D.P.C. proceedings of 1986 and seeking promotion on the ground that he had been illegally overlooked. It is in this context that we had held that the principle of resjudicata would apply and declined to admit the case in so far as the second relief was concerned. If the applicant is aggrieved by this order on the ground that it is a wrong order then his remedy is to prefer an appeal and not to file a review petition. In our opinion no valid reasons have been made out for reviewing the said order dt.1.6.1990. The review application is accordingly rejected. No order as to costs.



(M.Y. PRIOLKAR)  
MEMBER (A)



(D. SURYA RAO)  
MEMBER (J)

Dt.                      1990

mvs