

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

REVIEW PETITION NO.: 22/98 IN O.A. No. 276/92.

Dated this Monday the 5th day of October, 1998.

CORAM : Hon'ble Shri Justice R. G. Vaidyanatha,
Vice-Chairman.

Hon'ble Shri D. S. Baweja, Member (A).

G. G. Narayane Review Petitioner.
(By Advocate Shri D.V. Gangal)

VERSUS

Union Of India & Others .. Respondents.
(By Advocate Shri V.S. Masurkar)

: OPEN COURT ORDER :

¶ PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN ¶

This is a review petition filed by the applicant. Since there is some delay in filing the review petition, the applicant has also filed a M.P. No. 123/98 for condonation of delay. Respondents' Counsel has filed reply to both. We have heard the Learned Counsels on the question of admission of R.P.

2. The applicant filed the original application seeking a direction for promotion to the post of Assistant Director (Physiology) and then Deputy Director (Physiology) in the Office of the Director General, Factory Advisory Service and Labour Institute, Bombay.

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Respondents had filed reply opposing the admission. The matter was heard by a Division Bench of this Tribunal. One of the serious points of dispute between the parties was, whether the applicant has necessary qualifications of M.Sc. (Physiology) for being considered for promotion to the post of Assistant Director/Deputy Director. The applicant had Master's degree in Zoology. One of the serious disputes argued before the Division Bench was, whether Master's degree in Zoology is equivalent to Master's degree in physiology to enable the applicant for being considered eligible for the post in question. The Hon'ble Members of the Division Bench disagreed on this question. The Hon'ble Member (Judicial) took a view that M.Sc. (Zoology) is not equivalent to M.Sc. (Physiology) and, therefore, the applicant was not eligible for being considered for the promotion post. The Hon'ble Member (A) took a different view and held that M.Sc. (Zoology) and M.Sc. (Physiology) were equivalent qualifications. In view of the difference between the two Hon'ble Members, the matter was placed before the third Member. The Hon'ble Chairman of the Tribunal who constituted the Third Member heard both sides and agreed with the view expressed by the Hon'ble Member (J), namely that the applicant does not have the required qualification since he holds degree in Master of Zoology which is not equivalent to Master's degree in Physiology.

In view of the opinion of the majority, the O.A. came to be dismissed.

3. Being aggrieved by the order of the Tribunal rejecting the claim, the applicant filed a M.P. No. 509/97 requesting the Tribunal to take some additional documents and reconsider ^{his} view and allow the application. The same Bench which had earlier heard the matter, considered this matter again and rejected this application by an order dated 02.01.1998. ⁱⁿ It is observed ⁱⁿ that order that the applicant cannot be allowed to challenge the order of the Tribunal on the ground that it is erroneous and he cannot invoke appellate jurisdiction on the part of the Tribunal in respect of its own order.

4. Then subsequently, the applicant has filed the present review petition taking number of grounds challenging the correctness of the order of the opinion of the majority in dismissing the application.

5. After hearing both sides, we find that this is not a fit case for admitting the review petition since the ground urged in the review petition and now pressed before us by Mr. D. V. Gangal, the Learned Counsel for the applicant, pertains to questioning the correctness of the order on merits. It was argued by the Learned Counsel that the order of this Tribunal was based on no evidence and the order is contrary to the evidence on record and it suffers from illegality, erroneous observations and perverse findings. He also submitted that the order suffers from error apparent on record. He also argued that the Tribunal has treated the pleadings of the respondents as evidence without there being no

evidence in support of the allegations in the pleadings.

6. In our view, the arguments mentioned above do not come within the four corners of the Review Petition within the meaning of Order 47 Rule 1 C.P.C. It is not a case of their being apparent error on record but it is a case of requesting this Bench to sit in appeal over the decision of the previous Bench. A Co-ordinate Bench of the Tribunal in the guise of exercising review powers, cannot sit in judgement over the correctness of the findings recorded by another Co-ordinate Bench. The applicant's remedy, if he is aggrieved by the order of the Tribunal, is to challenge the order of the Tribunal before an appropriate forum like the High Court or Supreme Court. He cannot challenge the order of this Tribunal by way of a review petition taking number of grounds as if another Bench of the ~~same~~ Tribunal can sit in appeal over an earlier decision of the same Tribunal. The grounds urged in the application and the grounds which are pressed before us, are in the nature of challenging the order by way of an Appellate Jurisdiction, which cannot be permitted while exercising review jurisdiction under Order 47, Rule 1 C.P.C. Hence, we do not want to consider any of the submissions made by the Learned Counsel for the applicant on merits of the case. Whether master's degree in Zoology is equivalent to Master's degree in Physiology, is a question which cannot be re-agitated before this Tribunal once again. The remedy of the applicant is elsewhere and certainly not by way of a Review Petition. Hence, without

expressing any opinion on the merits of the controversy, we decline to exercise our jurisdiction for admitting the review petition for hearing on merits. Since we are not considering the review petition on merits, we observe that all contentions on merits are left open, which the applicant can agitate before an appropriate forum.

7. No doubt, there is few days delay in filing the review petition for which the applicant has offered some explanation. Since we are rejecting the review petition, we do not want to reject the M.P. for condonation of delay but reject the review petition on the ground that it is not maintainable since it does not come within the four corners of Order 47, Rule 1 C.P.C.

8. In the result, the review petition is rejected at the admission stage. M.P. No. 123/98 is allowed. No costs.

D. S. Baweja
(D. S. BAWEJA)
MEMBER (A).

R. G. Vaidyanatha
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

(6)

OS*

dt 5/10/98
order/Judgement despatched
to Applicant/Respondent(s)
on 26/10/98

29/10/98