

Anwar R. (9)

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore-560 038.

Dated: 28 MAY 1993

APPLICATION NO(s). 619 of 1992.

Applicant(s) B.Raghotham Rao v/s.

Respondent(s) Secretary,
Govt. of India, DPAR, New Delhi &
Others.

To

1. Sri.B.Raghotham Rao, IFS.,
S/o.Late B.Seshagiri Rao Desai,
Deputy Conservator of Forests,
Koppa Division, Koppa,
Chikkamagalur District.

✓ 2. Dr.M.S.Nagareja,
Advocate, No.11,
II Floor Sujatha Complex,
Gandhinagar, Bangalore-9.

3. Secretary,
Ministry of Personnel, Public
Grievances and Pensions,
North Block, New Delhi.

4. Secretary,
Ministry of Environment and Forests,
Department of Forests,
Paryavaran Bhavan,
C.G.O. Complex, Lodhi Road,
New Delhi-110 003.

5. Chief Secretary,
Government of Karnataka,
Vidhana Soudha,
Bangalore-560 001.

6. Secretary,
Department of Forests,
Animal Husbandry and
Fisheries,
Govt. of Karnataka,
Vidhan Soudha,
Bangalore-560 001.

7. Sh.M.S.Padmarajaiah,
Central Govt. Stng. Counsel,
High Court Building,
Bangalore-560 001.

8. Sh.M.H.Motigi,
Govt. Advocate,
Advocate General's Office,
K.A.T. Unit,
Commercial Complex,
Indiranagar,
Bangalore-38

SUBJECT:- Forwarding of copies of the Order passed by
the Central Administrative Tribunal, Bangalore Bench
Bangalore.

Please find enclosed herewith a copy of the ORDER/
STAY/INTERIM ORDER passed by this Tribunal in the above said
application(s) on 26th May, 1993.

R/on 5/6/1993.


For DEPUTY REGISTRAR
JUDICIAL BRANCHES.

To be reported

(10)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: :BANGALORE

DATED THIS TWENTY SIXTH DAY OF MAY, 1993

Present: Hon'ble Shri S.Gurusankaran, Member (A)

Hon'ble Shri A.N.Vujjanaradhya, Member (J)

APPLICATION NO.619/1992

Shri B.Raghotham Rao, I.F.S.,
aged 57 years,
S/o Late Shri B.Seshagiri Rao Desai,
Deputy Conservator of Forests,
Koppa Division, Koppa.
Chikmagalur (District)

(Dr. M.S. Nagaraja - Advocate)

...Applicant

Versus

1. Union of India
represented by Secretary to Government,
Ministry of Personnel, Public Grievances
and Pension,
New Delhi.
 2. The Secretary to Government,
Ministry of Environment & Forests,
Department of Forests,
Paryavaran Bhavan,
CGO Complex, Lodi Road,
New Delhi-110 001.
 3. State of Karnataka
represented by Chief Secretary to Government,
Vidhana Soudha,
Bangalore.
 4. The Secretary to Government,
Department of Forests, Animal
Husbandary & Fisheries,
Government of Karnataka,
Vidhana Soudha,
Bangalore.
- (Shri M.S. Padmarajaiah for R1 and R2 & Shri M.H.
Motigi for R3 and R4)- Advocate) .. Respondents

This application having come up for orders

before this Tribunal today, Hon'ble Shri A.N.Vujjanaradhya
made the following:



In this application filed under section 19 of Administrative Tribunals Act, 1985 the applicant seeks the following reliefs:

1. To direct the respondents to correct the date of birth of the applicant, as 4.1.1936 and direct them to continue the applicant in service till he actually attains the age of 58 years in terms of such corrected date of birth till 31.1.1994.
2. To grant all consequential benefits.

2. Briefly stated, the case of the applicant is as below:

The applicant who joined service as Range Forest Officer, came to be promoted as Assistant Conservator of Forests in Karnataka and was subsequently inducted to I.F.S. on 27.11.1989 as per Annexure A1. Applicant was born in Mehaboob Nagar District in erstwhile Hyderabad State. In the High School records the date of birth (D.O.B. for short) of the applicant was recorded as 01.4.1345F (Fasli) as can be seen in bonafide certificate (Annexure A2) as also in the extract of admission register (Annexure A3) consequent on the appointment of the applicant, his DOB came to be recorded in Christian era as 15.1.1935 on the basis of DOB mentioned in High School Certificate. Applicant during the year 1990, came to know in the office of the Accountant General from the ready reckoner that the equivalent of 1.4.1345F is 4.1.1936 Christian era. Therefore to assert the right to continue in service till the applicant attained the age of 58 years, under Rule 16A of All Indian Services (Pension, Death cum Retirement Benefits) Rules 1958 (Benefit Rules for short) made a representation as in Annexure A4 to the Government of Karnataka, which in turn made a reference to Government of India by letter dated 10.3.1992 (Annexure A6).

...3/-

As

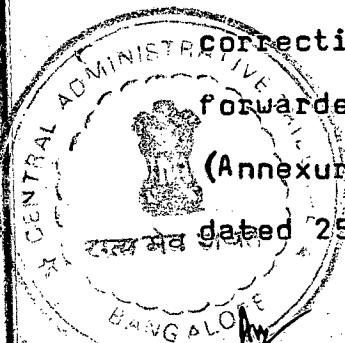
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3. The representation of the applicant came to be rejected and the applicant has since retired with effect from 31.1.1993 on attaining the age of superannuation.

4. Respondents 1 and 2 on the one hand and R3 and R4 on the other have filed separate replies raising similar grounds and denying the claim of the applicant. Some of the important contentions among others may be briefly stated thus: This is not a bonafide clerical mistake on the basis which alone alteration of DOB can be made under Rule 16A (4) of Benefit Rules. The claim is also barred under section 4 and 5(2) of Karnataka State Servants (Determination of Age) Act 1974, (Karnataka Act for short) besides delay and latches.

5. Dr. M.S.Nagaraja for the applicant, Shri M.S.Padmarajaiah for R1 and R2 and Shri M.H.Motigi for R3 and R4 were heard at length and perused the records.

6. According to the applicant, his DOB was recorded in Fasli era as 1.4.1345F when he was admitted to School and as seen in bonafied certificate (Annexure A2) and extract of admission register (Annexure A3), equivalent christian era being 4.1.1936 and not 15.1.1935 recorded by mistake in his Service Book (Annexure A4), which mistake, he ^{had noticed in} ~~noted~~ in the office of Accountant General during the year 1990 when he happened to come across a ready reckoner relating to Fasli era and Christian era. The representation made by the applicant for necessary correction of his DOB in Service Book, which came to be forwarded by State Government to Union of India on 10.3.1992 (Annexure A6) ultimately came to be rejected by letter dated 25.6.1992 which in turn was intimated to the applicant



13
by State Government by its letter dated 27.1.1993. In the meanwhile, the applicant had made this application.

7. It is the contention of the learned counsel for the applicant that mistake in DOB is a bonafide clerical mistake while converting the date from Fasli era to Christian era and that the same could be corrected at any time before retirement under sub rule 4 or Rule 16-A of Benefit Rules. The said rule 16-A is as below

"16-A. Acceptance of date of birth-(1) For the purpose of determination of the date of superannuation of a member of the service, such date shall be calculated with reference to the date of his birth as accepted by the Central Government under this rule.

16(A)(2) In relation to a person appointed, after the commencement of the All India Services (Death-cum-Retirement Benefits) Amendment Rules, 1971.

(a) Indian Administrative Service under Clause (a) or clause (aa) of sub-rule (1) of rule 4 of the Indian Administrative Service (Recruitment Rules, 1954 or

(b) the Indian Police Service under clause (a) or clause (aa) of sub-rule (1) rule 4 of the Indian Police Service (Recruitment) Rules, 1954 or

(c) the Indian Forest Service under clause (a) or clause (aa) or sub-rule (2) of rule 4 of the Indian Forest Service (Recruitment) Rules, 1956.

the date of birth as declared by such person in the application for recruitment to the service shall be accepted by the Central Government as the date of birth of such person.

16A(3) In relation to a person to whom sub-rule (2) does not apply, the date of birth as recorded in the service book or other similar official document maintained by the concerned government shall be accepted by the Central Government, as the date of birth of such person.

16A(4) The date of birth as accepted by the Central Government shall not be subject to any alternation except where it is established that a bonafide clerical mistake has been committed in accepting the date of birth under sub-rule (2) or (3)."

14

Under Rule 16A (3), which is the one applicable to the applicant, his DOB came to be recorded in his service book when he was promoted to IFS on the basis of the one recorded in his service book maintained by the State Government which in turn was recorded as declared by the applicant and that DOB is 15.1.1935. It is no doubt true that under Rule 16-A (4) of Benefit Rules, that any bonafide clerical mistake committed in accepting DOB may be altered. In this connection, the learned counsel for the applicant referred to several decisions of various Tribunals and Courts, to which we shall make a brief reference.

8. In Union of India Vs. V.K. Sharma (S.L.J. 1989 (1) CAT 592) CAT (Chandigarh Bench) came to reject the appeal of UOI holding that the decree for alteration of DOB of respondent was not open to question. In this case, respondent belonged IFS cadre of Himachal Pradesh.

9. In Naven Chander Chakraborty Vs. UOI ((1993) 23 ATC 554, Gauhati) applicant belonged to IFS cadre of State of Assam. Govt of Assam had accepted and corrected the DOB of the applicant as 31.12.1938, but not UOI. Tribunal, holding that the right to seek correction of DOB continues during service, had allowed the application observing that the claim was not ^{based on} ~~based~~ by delay.

10. Some of the other decisions referred to ^{by} ~~for~~ the applicant are

(a) Ram Vinay Sing Vs. UOI
(1991 (3) (CAT) SLJ 523 (Patna) (Railway Service)

(b) Rajinder Kumar Vs. UOI
(ATR 1989 (1) CAT 557 (Patna Bench) (Rail way Service)



- (c) S.P. Dhaul Vs. State of Himachal Pradesh
(1989 (2) SLJ (CAR) 154)
- (d) R. Renugadaban Vs. UOI
(ATR 1992 (1) CAT 475 Madras)
- (e) K.V. Jain Vs. UOI (ATR 1992 (1) CAT
162 Jabalpur) (Income Tax Service)
- (f) Taluk Prasad Tripathi Vs. State of Uttar
Pradesh (1992 Lab IC 1246 Allahabad
High Court) (Police Service)
- (g) Ramanujam Singh Vs. UOI (1992 (20) ATC
Calcutta Bench) (Bihar Police)
- (h) Md. Abdul Wahab Vs. Chairman, National
Airports Authority (1992 (21) ATC 181
Guwahati Bench) (Airport Service)
- (i) Madan Lal Vs. UOI Jodhpur Bench) (Railway
Service) [1992 (21) ATC 245 Am]

In most of these case alteration of DOB sought came to be allowed on the basis of the merit of each of such cases, except in the case of S.P. Dhaul and Madanlal. None of these decisions is an authority on any point of law and the decision in each of these cases is based on the facts peculiar to the same as also in the two matters referred to earlier ie. that of V.K.Sharma and Naven Chander Chakraborty who were in IFS cadre.

19. Applicant herein has not produced any birth register extract, but has produced only bonafide certificate (Annexure A2) and admission register extract (Annexure A3). But the fact remains that DOB of the applicant came to be recorded in his service register as 15.1.1935 as declared by him when he joined the service in the State Government and the same ^{was also accepted and recorded when he Am} was inducted on promotion to I.F.S. This being the case, unless the DOB of the applicant in service record of the applicant maintained by the State Government is altered, the same cannot be altered in the service record after he was promoted and inducted to I.F.S. Alteration of DOB in the

16

service register of applicant cannot be effected because of the provisions of section 4 and 5(2) of Karnataka Act of 1974. Section 4 of the said Act reads thus:

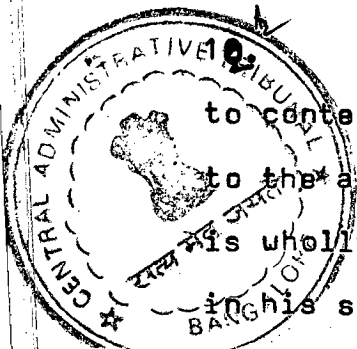
"4. Bar of alteration of age except under the Act -- Notwithstanding anything contained in any law or any judgement, decree or order of any court or other authority, no alteration of age or date of birth of a State servant as accepted and recorded or deemed to have been accepted and recorded in his service register or book or any other record of service under section 3 shall, in so far as it relates to his conditions of service as such state servant be made except under Section 5".

Section 5(2) of the Act is also necessary to be quoted, which reads:

"No such alteration to the advantage of a state servant shall be made unless he has made an application for the purpose within three years from the date on which his age and date of birth is accepted and recorded in the service register or book or any other record of service or within one year from the date of commencement of this Act, which ever is later."

Under Section 5(2) of the Karnataka Act, the applicant ought to have sought alteration of his DOB within one year from the commencement of Act, and as no such alteration was sought within one year, the present application is barred by ^{time} ~~him~~. Besides Section 4 of the said Act also specifically ^{bar} alteration of DOB except under Section 5 of the Act. As the applicant did not seek alteration of DOB within the time allowed by law, he is not entitled to seek the same at this distance of time.

The learned counsel for the applicant sought to contend that Karnataka Act of 1974 has no application to the applicant as he was in IAS cadre. This contention is wholly untenable in as much as the DOB of the applicant in his service record cannot be altered in his service



(17)
record maintained by the State Government of Karnataka as the DOB after the applicant's promotion to I+S came to be recorded on the basis of the DOB recorded in his service record maintained by the State Government. Supreme Court in UOI Vs. Harnam Singh, reported in 1993 (2) Speed Post Judgements 42, while interpreting Note 5 of F.R. 56 had observed thus:

"It would be appropriate and in tune with harmonious construction of the provision to hold that in the case of those government servants who were already in service before 1979, for a period of more than five years, and who intended to have their date of birth corrected after 1979, may seek the correction of date of birth within a reasonable time after 1979 but in any event not later than five years after the coming into force of the amendment in 1979. This view would be in consonance with the intention of the rule making authority."

It is the decision which holds the field. As the applicant has not sought relief within a reasonable time and has approached only at the rag end of his service his claim is barred by delay and laches.

13. The allegation that applicant came to know of the mistake in DOB only during the year 1990, even if true is of no avail, because it is too late in the ^{day} delay and want of knowledge is no excuse. Thus none of the decisions relied upon for the applicant comes to his rescue.

14. Statutory Rules on the lines of Karnataka Act of 1974 came to be framed by Andhra Pradesh called A.P. Public Employment (Recording and Alteration of Date of Birth) Rules 1984. In Government of Andhra Pradesh Vs. M. Hayagiri Sarma, reported in (1990) 2 SCC 682, Supreme Court had allowed the appeal and set aside the order of

18

the order of Andhra Pradesh Administrative Tribunal holding that Rule 5 is not ^{repugnant} ~~repugnant~~ to Constitution of India and prayer for alteration of DOB recorded finally cannot be altered even under Births, Deaths and Marriages Regulation 1886 in view of Rules 4 and 5 of 1984 Rules. To support their contention DOB recorded by the State Government has to be accepted by Central Government in case of I.A.S. or I.F.S. officer promoted from State Civil Service cannot be altered, the learned counsel for respondents have relied upon the decision in Jayatilal Khare Vs. UOI (Jabalpur Bench) reported in (1991) 17 ATC 918. The relevant observation summarised in the Head note reads:

"Under Rules 16-A(3) and 16-A(4) of the All India Services (Death-cum-Retirement Benefits) Rules, 1958 the date of birth as recorded in the service book and other official documents of the State Government has to be accepted by the Central Government and once accepted becomes absolute and irrevocable for the purposes of superannuation and cannot be altered."

We have already reached such a conclusion in para 10 supra.

15. In the conspectus and circumstances of the case, we find no merit in this application and we hereby dismiss the same but without any order as to costs.

SD-
MEMBER (J)

TRUE COPY

SD-
MEMBER (A)



SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE
28/5/93

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore-560 038.

Dated: 4 AUG 1993

REVIEW APPLICATION NO.27/93 in

APPLICATION NO(s). 619 of 92. /

Applicant(s) B.Raghotham Rao v/s

Respondent(s) Secretary, Ministry
of Personnel, Public Grievances
and Pensions, N Delhi & Others.

To

1. Sri.B.Raghotham Rao,
S/o.Late B.Seshagiri Rao Desai,
Formerly Deputy Conservator of Forests,
Koppa Division, Koppa, Chikkamagalur Dist.
2. Dr.M.S.Nagaraja, Advocate,
No.11, Second Floor, I Cross,
Sujatha Complex, Gandhinagar,
Bangalore-9.
3. Secretary, Ministry of Personnel,
Public Grievances and Pensions,
North Block, New Delhi.
4. Secretary, Ministry of
Environment of Forests,
Paryavaran Bhavan, Lodi Road, New Delhi-110 003.
5. Secretary, Government of Karnataka,
Department of Forests, Animal Husbandry
and Fisheries, Vidhana Soudha, Bangalore.
- 6.

SUBJECT:- Forwarding of copies of the Order passed by
the Central Administrative Tribunal, Bangalore Bench
Bangalore.

Please find enclosed herewith a copy of the ORDER/
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application(s) on 21-07-93.

Issued
by
[Signature]

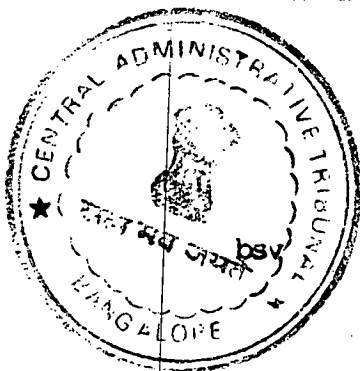
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[Signature]
for DEPUTY REGISTRAR
JUDICIAL BRANCHES.

- 2 -

1. The applicant has sought a review of the order dated 26.5.93 passed in O.A. No.619/92 on the ground that in para 9 of the order while referring to the decision in NAREN CHANDRA CHAKRAVORTY V. UNION OF INDIA [1993] 23 ATC 554 where it was held that the right to seek correction of date of birth continues till the service, has ultimately reached the conclusion that the application was barred by delay and laches and, therefore, it should be rectified by allowing the application.

2. The error alleged in this Review Application is not an error apparent on the face of the record but according to the applicant himself, is an erroneous application of the decision on which the applicant has relied upon. The power of review is restricted to the error apparent on the face of the record like any clerical or typographical error and not to any conclusion which according to the applicant is erroneous. If the applicant is aggrieved, it has to be made very clear by us, that his remedy is not by application of this nature but lies elsewhere. Thus we find no merit in this application and therefore it is liable for rejection. For this reason we find no merit in this review application and the same is dismissed by way of circulation in terms of Rule 17 of the Central Administrative Tribunal [Procedure] Rules 1987.



TRUE COPY

MEMBER [J]

MEMBER [A]

SECRETARY
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL CLERK
BANGALORE

21/8/93

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH : BANGALORE

DATED THIS THE TWENTY FIRST DAY OF JULY 1993

Present:

Hon'ble Shri S. Gurusankaran ... Member [A]

Hon'ble Shri A.N. Vujjanaradhya ... Member [J]

REVIEW APPLICATION NO.27/93

B. Raghothan Rao,
Aged 58 years,
S/o Late B. Seshagiri Rao Desai,
Formerly Deputy Conservator
of Forests, Koppa Division,
Koppa, Chikkanagalur District.

... Petitioner

[Dr. M.S. Nagaraja ... Advocate]

v.

1. Union of India
represented by its
Secretary to Government,
Ministry of Personnel, Public
Grievances and Pensions,
North Block, New Delhi.
2. The Secretary,
Government of India,
Ministry of Environment of Forests,
Paryavaran Bhavan,
Lodi Road, New Delhi-110 003.
3. State of Karnataka,
represented by the
Secretary to Government,
Deptt. of Forests,
Animal Husbandry and Fisheries,
Government of Karnataka,
Vidhana Soudha,
Bangalore.

... Respondents

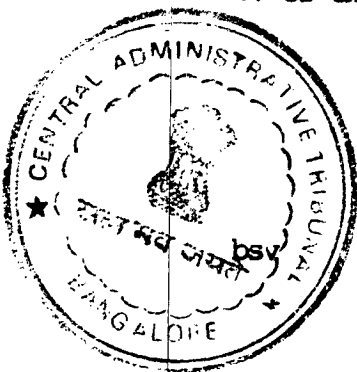
This Review application having come up for disposal by circulation before this Tribunal today, Hon'ble A.N. Vujjanaradhya, Member [J], made the following:

ORDER



1. The applicant has sought a review of the order dated 26.5.93 passed in O.A. No.619/92 on the ground that in para 9 of the order while referring to the decision in NAREN CHANDRA CHAKRAVORTY V. UNION OF INDIA [1993] 23 ATC 554 where it was held that the right to seek correction of date of birth continues till the service, has ultimately reached the conclusion that the application was barred by delay and laches and, therefore, it should be rectified by allowing the application.

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TRUE COPY

Sd —

MEMBER [J]

Sd —

MEMBER [A]

RECEIVED OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

4/8/93

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore-560 038.

Dated: 4 AUG 1993

REVIEW APPLICATION NO.27/93 in

APPLICATION NO(s). 619 of 92. /

Applicant(s) B.Raghotham Rao v/s

Respondent(s) Secretary, Ministry
of Personnel, Public Grievances
and Pensions, N Delhi & Others.

To


1. Sri.B.Raghotham Rao,
S/o.Late B.Seshagiri Rao Desai,
Formerly Deputy Conservator of Forests,
Koppa Division, Koppa, Chikkamagalur Dist.
2. Dr.M.S.Nageraja, Advocate,
No.11, Second Floor, I Cross,
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3. Secretary, Ministry of Personnel,
Public Grievances and Pensions,
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4. Secretary, Ministry of
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Paryavaran Bhavan, Lodi Road, New Delhi-110 003.
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Issued

a/c


for DEPUTY REGISTRAR
JUDICIAL BRANCHES.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH : BANGALORE

DATED THIS THE 19TH DAY OF OCTOBER, 1993

PRESENT

HON'BLE SHRI S. GURUSANKARAN .. MEMBER (A)

HON'BLE SHRI A.N.VUJJANARADHYA .. MEMBER (J)

REVIEW APPLICATION No.59/93. 8 27/93

B. Raghotham Rao,
Aged 58 years,
S/o. Late B. Seshagiri Rao Desai,
formerly Deputy Conservator
of Forests, Koppa and later Social
Forestry, Kolar, presently residing
at No.226, 45th Cross, 8th Block,
Jayanagar, Bangalore-560 082.

... Petitioner

(Dr. M.S. Nagaraja .. Advocate)

Vs.

1. Union of India,
represented by its
Secretary to Government,
Ministry of Personnel, Public
Grievances and Pensions,
North Block, New Delhi-110 001.

2. The Secretary,
Government of India,
Ministry of Environment and Forests,
Parya Bhavan, Lodi Road,
New Delhi-110 003.

3. The State of Karnataka,
represented by its
Secretary to Government,
Department of Forests & Ecology,
4th Floor, M.S. Building,
Bangalore-560 001.

... Respondents



This Review application having come up for disposal
by circulation before this Tribunal today, Hon'ble Shri A.N.
Vujjanaradhya, Member (J) made the following:

ORDER

This Review application has been filed by the applicant for review of the order passed in Review application No.27/93 on 1.7.1993 by this bench and also the orders passed in O.A.No.619/92 on 26.5.1993. It has been stated in the application that this Review application has been filed under Section 22(3) of the Administrative Tribunals Act, 1985, read with Rule 17 of the Central Administrative Tribunal (Procedure) Rules.

2. We are of the view that this Review application is not maintainable since the rules do not provide for a second review, i.e., the review of the orders passed by a bench on a Review application submitted by the applicant in reviewing the orders of the bench in the original application. Even otherwise, there are no sufficient grounds brought out by the applicant in the present review application for reviewing the orders dated 1.7.1993 in R.A.No.27/93, since we find that the applicant has only reagitated the very same submissions made by him in R.A.27/93.

3. Accordingly, we reject the review application at the admission stage by circulation under Rule 17 of the Central Administrative Tribunal (Procedure) Rules.



MEMBER (J)

TRUE COPY

MEMBER (A)

SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

28/10/93