

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

R.P. NO.: 30/97 IN O.A. NO.: 1109/93.

Dated this Tuesday, the 15th day of July 1997.

CORAM : HON'BLE SHRI B. S. HEGDE, MEMBER (J).

HON'BLE SHRI P. P. SRIVASTAVA, MEMBER (A).

Brahmadas Shrawanji Mandpe

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Applicant

Versus

1. Comptroller & Auditor General
of India,
10, Bahadurshah Jafar Marg,
Indraprastha Estate,
New Delhi - 110 002.
2. Principal Director of Audit,
Post & Telecommunications,
Shamnath Marg, Civil Lines,
Delhi - 110 054.
3. Director of Audit,
Post & Telecommunications,
Nagpur - 440 001.
4. Ramkrishna Bhaskarrao Gajbhiye,
Retired Senior Auditor,
Office of the Director of Audit,
P & T., Nagpur.
Resident of Modi Padao,
Maruti Niwas,
Kemptee - 441 002.

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Respondents.

TRIBUNAL'S ORDER BY CIRCULATION :

¶ PER.: Shri B.S. Hegde, Member (J) ¶

The applicant has filed this application seeking review of the judgement dated 06.02.1997, wherein the Tribunal after considering the rival contentions of the parties dismissed the O.A. as devoid of merits on the basis of judgement delivered by the Supreme Court in the case of Direct Recruit Class-II Engineer Officers Association V/s. State of Maharashtra ¶ (1990) 2 SCC 715 ¶ wherein it is

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observed that those who are confirmed earlier stands senior to the persons confirmed later. Since the applicant was on punishment at the relevant time, he could not be considered for promotion. After the expiry of the punishment, for want of vacancy he could not be considered till 1984. Both the applicant and the Respondent no. 4 were promoted as Senior Auditor w.e.f. 01.03.1984 on account of restructuring of cadres in I.A. & A.D. Therefore, the question of giving retrospective promotion right from 1980 does not arise.

2. The applicant initially filed a writ petition in the High Court in the year 1983 and the same was transferred to the Tribunal in the year 1987 and finally decided on 20.11.1991 with the following observations :

"When the appointment of Respondent No. 4 was made the appointment order was issued in the year 1981 and he was appointed during 1980 i.e. several months after the punishment period was over. The applicant could have also been considered for the same. After the said period was over, he could have been considered for confirmation. The respondents instead of waiting for 2 - 3 months for considering the applicant for confirmation as his period was going to be over hurriedly it appears confirmed the Respondent No. 4. Thus, obviously some injustice has been done to the applicant and accordingly we direct the respondents that the applicant shall be deemed to have been confirmed w.e.f. the date the punishment period was over and his case for promotion to the higher post shall also be considered and if necessary deemed promotion will be given to him w.e.f. the date his junior has been promoted."

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Subsequent to the judgement, the applicant has filed an M.P. No. 449/93 under Rule 24 of the Administrative Tribunals Act. Though it is conceded that the Respondent No. 4 was junior to the applicant and like him, also, a member of S.C. Community was promoted against the one post on which the applicant was claiming promotion w.e.f. 01.12.1980 with retrospective effect. It is true that the Tribunal has observed that promotion has evidently not been granted to the applicant but this controversy is the one which goes beyond the stage of the directions which can be given under Rule 24 of the Administrative Tribunals Act. The cause of action is a fresh one and it is not a matter which can be examined in the original case by giving a direction. As per the observations made by the Tribunal, the applicant has filed a fresh O.A. vide O.A. No. 1109/93, which has been disposed of by the Tribunal on 06.02.1997. The counsel for the applicant has relied upon the judgement of the Supreme Court in Shreedharan Kallat V/s. Union Of India 1(1995)4 SCC 207 wherein the Court has held that the order of the High Court regarding validity or interpretation of, having achieved finality, held, binding on the department and cannot be challenged by it in another case nor could the Central Administrative Tribunal pass an order affecting the finality of the High Court decisions particularly when the High Court's order has been upheld by the Supreme Court, etc. The ratio laid down in that case would not apply to the fact of the present case. In the present case, no decision has been rendered by the High Court. Though the applicant originally filed the

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Writ Petition in the High Court, later on it was transferred to the Central Administrative Tribunal. If the respondents had not adhered to the directions of the Tribunal as per the judgement of the Tribunal dated 20.11.1991, it was open to the applicant to file a Contempt Petition, which he did not do so. He filed an application under Rule 24 of the Administrative Tribunals Act, which has been disposed of by the Tribunal for the reasons stated above.

3. In this Review Petition, the applicant has not made out any fresh ground for our consideration to review the order passed by the Tribunal vide dated 06.02.1997. He only points out that the judgement of the Tribunal is inconsistent. If the applicant is aggrieved by the order of the Tribunal, it is open to him to challenge either in the High Court or in the Supreme Court. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of 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; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all manner of errors committed by the Subordinate Court or the Tribunal.

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4. In the light of the above, we find, no such error has been pointed out in this review petition except challenging the decision of the Tribunal, which is required to be challenged in an appropriate forum and not by filing a review petition.

5. In the result, we do not find any ground to interfere with the order passed by the Tribunal. Accordingly, the Review Petition is dismissed.



(P.P. SRIVASTAVA)
MEMBER (A).



(B.S. HEGDE)
MEMBER (J).

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22/12/97
Order/Judgment despatched
to Applicant/Respondent (s)
on 22/12/97

24/12/97