

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.
REVIEW PETITION NO.30/99
IN
ORIGINAL APPLICATION NO. 47/94.

Wednesday, this the 12th day of April, 2000.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri D.S.Baweja, Member (A).

G.B.Parmar.
(By Advocate Mr.V.S.Masurkar)

... Applicant.

Vs.

Union of India & Ors.
(By Advocate Mr.R.R.Shetty)

... Respondents.

ORDER ON REVIEW PETITION

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is a review petition filed by the applicant seeking review of the order of the Tribunal dt. 5.7.1999. The Respondents have filed reply. We have heard Mr.V.S.Masurkar, the learned counsel in support of the Review Petitioner and Mr.R.R.Shetty, the learned counsel on behalf of the official respondents.

2. The Review Petitioner had filed the OA 47/94 claiming the relief of regularisation of his services as an Assistant Examiner w.e.f. 1.5.1979 and for a further direction to respondents to promote him from 1.5.1984.

After hearing both sides, the bench comprising of Hon'ble Mr.Justice S.Venkataraman, Vice-Chairman and Hon'ble Mr.S.K.Ghosal, Member (A) by order dt. 5.7.1999 partly allowed the OA granting regularisation of applicant's services from

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1.5.1979, but restricting the monetary benefits only for a period of one year prior to the date of filing of the application. The applicant's claim for promotion was rejected.

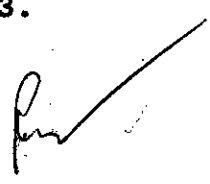
It is also brought to our notice that the official respondents being aggrieved by this Judgment have already approached the High Court in Writ Petition No.2703/99 which is still pending. On a motion made before the High Court, the Division Bench of the High Court has observed in its order dt. 16.2.2000 that the Tribunal may consider the Review Petition filed by the original applicant - respondent before the High Court expeditiously. That is how, we have heard the Review Petition to day.

3. In the Review Petition, applicant has made three grievances.

- (1) That the date of reversion shown as 11.12.1989 in the order of the Tribunal at para 3 requires to be modified and corrected as 11.12.1987.
- (2) That applicant should be granted monetary benefits as a result of the order, at least from one year prior to the filing of the previous OA No.12/88.
- (3) That the order should be reviewed and a direction be given to the concerned respondents to consider the promotion of the applicant as the department has considered the case of other private respondents No.4 to 6 in the OA.

4. As far as Point No.1 is concerned, there is no dispute at all. Apparently, there is a typographical error in mentioning the date of the reversion order in para 3 of the order as 11.12.1989. This, we also find in para 10, the Tribunal has clearly shown the order of reversion as 11.12.1987. Therefore, in our view, the date of reversion shown in para 3 of the order

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should be corrected from 11.12.1989 to 11.12.1987.

5. As far as the Point No.2 is concerned, the learned counsel for the applicant submitted that the applicant has been fighting this litigation right from 1988, therefore, restricting the arrears to one year prior to the filing of this OA is an error apparent on record and requires to be reviewed. The learned counsel for the respondents contended that when the Tribunal has specifically given a direction that arrears should be granted only from one year prior to the date of OA, it cannot be corrected by filing a Review Petition and it amounts to re-hearing the OA.

In our view, the Tribunal has restricted the arrears to one year, may be on the ground that the OA was filed in 1994, though in the earlier part of the Judgment the Tribunal has noticed the history of previous litigation. That means, while coming to the operative portion of the order by mistake or otherwise the Tribunal has observed that the arrears should be restricted to one year prior to the date of filing of the OA.

The Review Petition had been sent for consideration before the same Bench which gave the Judgment dt. 5.7.1999. The learned Members of that Bench considered the Review Petition and have passed the order dt. 14.9.1999 that the R.P. merits hearing. That is how, the R.P. has been placed before this Bench for hearing as per the direction of the Hon'ble Chairman.

The object of restricting the arrears one year prior to the filing of the OA is in view of the law of limitation of one year mentioned in section 21 of the Administrative Tribunals Act, 1985.

In the present case, admittedly applicant had filed previous OA 12/88 and that was disposed of on 26.9.1991 with a

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direction to the administration to consider the case of the applicant and passed an order. Accordingly, the Government passed a fresh order dt. 26.8.1992 which is being challenged in the present OA. After the disposal of the previous OA and before filing of the present OA, the applicant had gone in SLP before the Hon'ble Supreme Court challenging the previous order which came to be disposed of in 1993. Hence, in the facts and circumstances of the case and further the impugned order dt. 26.8.1992 was passed in pursuance of the previous order of the Tribunal, we can conclude that this litigation is in continuation of the earlier old litigation. Therefore, the one year period mentioned in section 21 of the limitation act should apply to the date of filing of the previous OA and not the date of filing of the present OA. Hence, in the circumstances, we have reached the conclusion that there is an apparent error on record in restricting the arrears from one year prior to the filing of the present OA, but it should be one year prior to the filing of previous OA 12/88. From the records we find that the previous OA No.12/88 was filed in this Tribunal on 22.12.1987. Therefore, the relief in the present OA restricting the arrears to one year prior to the filing of the OA should be changed as arrears restricted to one year prior to the filing of the previous OA i.e. 22.12.1987, which means from 22.12.1986, less whatever amount already paid to the applicant.

6. Then, the most controversial point argued before us whether the applicant is entitled for promotion as given to R-4 to R-6. There was a specific prayer for promotion in the OA. The Tribunal has specifically rejected that prayer. Therefore, now considering the question of promotion will amount to re-hearing of the OA. It is not a case of there being apparent

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error on record or other sufficient grounds as mentioned in Order 47 Rule 1 C.P.C. Review Petition does not mean re-hearing the application. One of the grounds made out in Order 47 Rule 1 should be established before seeking review of an order. There must be discovery of new material or there must be apparent error on record or justifiable reasons which must be analogous to other grounds given in Order 47 Rule 1 C.P.C.

In this case, the Tribunal has rejected the claim of the applicant for promotion on the ground that he does not hold Law degree and therefore not entitled to promotion in view of the amendment to the Recruitment Rules in 1982. What is more, this fact has been conceded by the learned counsel for the applicant who argued the matter before the Tribunal. At page 19 para 12 of the order of the Tribunal, there is a clear observation that the applicant's counsel submitted that he will not be entitled for further promotion since he does not have a Law degree and therefore, there will be no difficulty to the administration in giving retrospective fixation of seniority in the cadre of Assistant Examiner from 1.5.1979. In view of these submissions the Tribunal rejected the respondents contention that if seniority is now given from a retrospective date it will unsettle settled things. Therefore, the Tribunal has consciously rejected the claim of the applicant for promotion on the ground that he does not have a Law degree which is a requirement of 1981 Recruitment Rules.

7. But, the learned counsel for the applicant contended with sufficient force that R-4 to R-6 were similarly situated like the applicant and they also did not have any Law degree, but they have been further promoted though they were not having Law degree

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and therefore by invoking the principles of Article 14 and 16 of the Constitution of India the applicant should be made entitled to promotion even though he does not have a Law degree. The learned counsel for the respondents contended that applicant is not entitled to promotion in view of his not having a Law degree and he further submitted that even if some wrong order is passed in favour of R-4 to R-6, a wrong cannot be allowed to perpetuated and therefore such relief cannot be given.

In the first place, this is a contention which cannot be taken on in a Review Petition. The matter should been urged and a finding should have been recorded on the original side. Even granting for a moment that R-4 to R-6 were granted promotion though they did not have a Law degree, it will be in violation of the Recruitment Rules. There is no question of equality where some person is given a wrong benefit and other must also be given the same benefit. The Tribunal cannot give any direction to Administration to pass any order contrary to the Rules. We are not very much concerned with whether R-4 to R-6 were rightly promoted or wrongly promoted. If they have been wrongly promoted inspite of not having a Law degree, that will not give any legal right to applicant to say that he must also be given promotion notwithstanding Rules. Equality clause Article 14 and 16 will not apply to such a case and Tribunal cannot give a direction to the administration to issue one more wrong order by invoking Article 16 of the Constitution. Therefore, in the facts and circumstances of the case, we hold that the matter cannot be raised on the review side and even otherwise, the contention is not acceptable to us. Either way, the prayer for a direction for promotion cannot be granted.

8. In the result, the R.P. is allowed partly as follows:

- (1) The date of reversion shown as 11.12.1989 in para 3 of the Tribunal be corrected to 11.12.1987.
- (2) In the operative portion of the order of the Tribunal in para 13, the words "will be limited to the period starting from one year prior to the filing of this OA i.e. 5.1.1993" be corrected and be read now as "will be limited to 22.12.1986 period starting one year prior to the filing of the OA 22/88 i.e. 22.12.1986" and therefore the arrears will have to be given from 22.12.1986, less whatever amount applicant has already received.
- (3) In the circumstances of the case, the official respondents are granted three months time from the date of receipt of the above order to comply with the above directions.
- (4) In the circumstances of the case, there will be no order as to costs.

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

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

B.

del 12/4/2000
Order/Judgement despatched
Applicant/Respondent(s)
on *20/4/2000*

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