

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

RP 21/04
OPEN COURT / PRE DELIVERY JUDGMENT IN GA

Hon'ble Vice Chairman / ~~Member (J)~~ / Member (A)

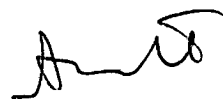
may kindly see the above Judgment for
approval / signature.


V.C. / Member (J) / ~~Member (A)~~ (K/S)

Hon'ble Vice Chairman

Hon'ble Member (J)

Hon'ble Member (A) (K/S)


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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

REVIEW PETITION NO. 21/04
IN
ORIGINAL APPLICATION NO.487/98

THIS THE 07TH MAY, 2004

CORAM: HON'BLE SHRI ANAND KUMAR BHATT. MEMBER (A)
HON'BLE SHRI MUZAFFAR HUSAIN MEMBER (J)

E.P.M. Nair. .. Petitioner

By Advocate Shri S.R. Atre

Vs.

Union of India & Others. .. Respondents

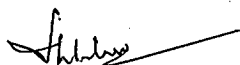
By Advocate Shri R.K. Shetty.

O R D E R
Hon'ble Shri Muzaffar Husain. Member (J)

The applicant has filed this review petition to review the judgment and order dated 04.02.2003 passed in OA 487/98.

2. Petitioner has made out the following grounds for review.


A. that there is an error apparent on the face of the record of this Tribunal to hold that since the petitioner's trade had not been included in the trades recommended for upgradation he could not have been considered for being promoted to the Skilled Grade II on his own merit (paragraph No.22 of the judgment) when it was clear that the petitioner and Shri Dayal, Respondent No.4, belonged to the same trade and whereas the Petitioner had been promoted on



regular basis to skilled Grade on 21.4.1982, the same was not the case of Shri Dayal who had been reverted to the Semi-skilled post and as such could have been granted jumping promotion to High Skilled Grade by-passing the Skilled Grade.

B. That it is an error apparent on the face of record of this Hon'ble Tribunal to hold and declare that Respondent No.r had been rightly promoted with effect from 15.02.1995 when it was clear that Shri Dayal passed the competency test for Grade-II promotion only in 1997 and any such promotion with a retrospective date without pointing out appropriate roster point could not have been said to be legal.

C. That it is an error apparent on the face of record of this Tribunal to hold and declare that the petitioner was not eligible for being considered for being promoted to the Skilled Grade II on his own merit since the petitioner's upgradation had been cancelled because his trade was not included in the trades for upgradation since such a rejection practically amounts to rejection of prayer clause 'A' and the part of prayer clause 'B' which in fact had been deleted by the



petitioner and as such it is just and proper that this Hon'ble Tribunal reviews the judgment and orders passed by this Tribunal.

3. We have heard learned counsel for the petitioner as well as respondents and carefully considered the rival contentions raised by learned counsel for the parties.

4. The perusal of judgment indicates that Tribunal has considered all the points raised by the applicant in his Original Application. Learned counsel for the petitioner has contended that Respondent No.4 was not eligible at the time of his notional promotion and therefore, applicant should have been promoted in the vacancy existed at that point of time. We find that this point has not been considered by the Tribunal, but there is no averment made by the applicant in his Original Application. Therefore, the Tribunal could not have specifically considered that point. The point which has not been urged in the OA cannot be entertained in the review. However, the point that the promotion of Shri Dayal was considered by the Tribunal in para 20 of the order which reads as under:

"The applicant has raised the point that Shri Dayal could not have been promoted to the post of Electrician Skilled Grade II and that too on the basis of carry forward vacancies. According to the applicant carrying forward of vacancies would have been bad in law and therefore the promotion of Shri Dayal is illegal."



...4.

5. So far as the promotion of Respondent No.4 on a vacancy as per roster point is concerned, the Tribunal in para 23 of the order observed as under:

"The applicant has shown no material to contradict that the vacancy against which Shri Dayal was promoted was not a reserved vacancy as per roster point. similarly stating that vacancies cannot be carried forward as there was a ban on filling up of vacancies will not rule out the actual vacancy which existed for reserved category in 1997. We do not find anything wrong in the action of the respondents in considering respondent no.4 for promotion to highly skilled grade II. We also do not find that there is any merit in the applicant's case as his trade was not included for upgradation."

Thus, it appears no error apparent on the face of record as required under Rule Order 47 of CPC. The alleged error of law as stated by the petitioner in his review petition are not at all errors of law or facts, but a simple prayer to take different view than the view taken by the Tribunal in its order dated 04.02.2003.

6. The scope of review under Section 22 (3)(f) of the Administrative Tribunals Act 1985 is very limited. It restricts only to the grounds mentioned under Order 47 Rule 1 CPC. It precludes the reassessment of fact and law for recalling earlier order passed on merit, unless there is a discovery of new and important matter or evidence which after exercise of due diligence was not within his knowledge or could not be brought by him at the time when the judgment was made, or on account of



...5.

some error apparent on the face of the record or for any sufficient reason. The Hon'ble Apex Court in *Ajit Kumar Rath Vs. State of Orissa & Ors* 1999 (9) Supreme 321 has held:

"Section 22(3)(f) indicate that the power of review available to the Tribunal is the same as has been given to a court under Section 114 read with Order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of a person on the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the fact of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it. It may be pointed out that the expression "any other sufficient reason" used in Order 47 Rule 1 means a reason sufficiently analogous to those specified in the rule. Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47 would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment."

The Hon'ble Supreme Court in *Subash Vs. State of Maharashtra* 2002 SC 2537 has observed in para 3 as under:

..... there is no justification for the Tribunal to have reviewed the matter once over again, particularly, when the scope of review is very much limited under Section 22 (3)(f) of the Administrative Tribunals Act, 1985 as is vested in a Civil Court under the Code of Civil Procedure. The Tribunal could have interfered

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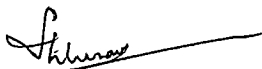


in the matter if the error pointed out, is plain and apparent. But the Tribunal proceeded to re-examine the matter as if it is an original application before it. This is not the scope of review."

7. The review petition is also not maintainable in law as the petitioner has not filed the affidavit in support of the review petition as required under Rule 17 (5) of the CAT (Procedure) Rules, 1987. The said rule is reproduced below:

"No application for review shall be entertained unless it is supported by a duly sworn affidavit indicating therein the source of knowledge, personal or otherwise, and also those which are sworn on the basis of the legal advice. The counter-affidavit in review application will also be a duly sworn affidavit wherever any averment of fact is disputed".

In our view there is no error apparent on the face of the record and there is no discovery of the new facts within the meaning of Order 47 Rule 1 CPC. The grounds stated in review petition do not come within the purview of Order 47 Rule 1 CPC. Therefore, we find that there is no merit in the review petition. In the result the review petition is dismissed with no order as to costs.



(MUZAFFAR HUSAIN)
MEMBER (J)



(ANAND KUMAR BHATT)
MEMBER (A)

Gajan