

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

RP No: 35/04 in

OPEN COURT / PRE DELIVERY JUDGMENT IN OA 800, 98

Hon'ble Vice Chairman / Member (J) / Member (A) ✓
may kindly see the above Judgment for
approval / signature.

Shay
(Muazzaf Hussain)

~~Hon'ble Member (J) / Member (A) ✓~~

Hon'ble Vice Chairman

Hon'ble Member (J)

Hon'ble Member (A) ✓ *Shri Anand Kumar Bhatt*

Anand
6/6

Central Administrative Tribunal
Mumbai Bench

Review Petition No.35/04
in
Original Application No.800/98

Dated this Friday the 6th Day of August, 2004.

Coram : Hon'ble Shri Anand Kumar Bhatt, Member (A)
Hon'ble Shri Muzaffar Husain, Member (J).

Shri C.P. Chilwar .. Petitioner

Vs.

Secretary, Deptt. of Telecom & 2 ors. .. Respondents.

Order on Review Petition by Circulation
Hon'ble Shri Muzaffar Husain, Member (J).

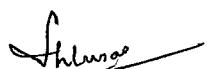
The applicant has filed this Review Petition to review the judgment and order dated 18.6.2004.

2. The petitioner has made out the following grounds.

(i) At the time of hearing on admission the plea of limitation was raised and O.A. was admitted. Now it is dismissed on the same ground of limitation and, therefore, this discrepancy.

(ii) In para 8 of the order page 8 "learned counsel for the respondents stated that at the time of passing 1/3 quota qualifying examination, official was working under DET Pune and was on circle gradation list of circle office, Mumbai". This statement is not correct. The applicant was working in DMT, Pune (PGMT Pune) at the time of passing 1/3 rd quota for qualifying examination. The applicant has clarified the matter in detail in Para 'C' of Rejoinder.

3. We have heard the learned conse1 for



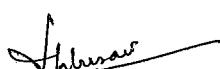
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the petitioner as well as the respondents and perused the record. As regards first contention of the learned counsel for applicant is concerned no doubt the case was admitted. The order sheet dated 7.5.1999 reads as under:-

"The OA is admitted subject to questions of limitation delay and latches and subject to orders on application for condonation of delay namely MP 712/98. Both OA and MP to be heard at the time of final hearing. When the pleadings are complete, OA be kept in the list of final hearing cases."

The perusal of the order goes to show that the OA was admitted subject to question of limitation, delay and latches and subject to the order on MP for condonation of delay. It cannot be said that the OA was admitted by condoning the delay. The point of limitation considered at length by the Tribunal and every point raised by the applicant in his MP No.712/98 was considered and the case was not found fit for condonation of delay, in view of the fact that cause of action firstly arose in the year 1991 when the junior to the applicant was promoted. The applicant in his review petition has tried to explain such delay again which is not permissible in review petition.

4. The second point raised by the petitioner is that in para 8 of the Tribunal's order, it is stated that "Learned Counsel for the respondents stated that at the time of passing 1/3rd quota qualifying examination official was working under DET Pune and was on Circle Gradation list of Circle Office Mumbai." According to



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applicant this statement is not correct. Applicant was working in DMT Pune (PGMT Pune) at the time of passing 1/3rd quota qualifying exam. Applicant has clarified the matter in detail in Para (C) of Rejoinder. No doubt the applicant in his rejoinder has stated that he was in District Manager Telephones, Pune (P.G.M.T., Pune) from which he was transferred to Goa on 28.11.1977 on promotion as LSG, Clerk. The applicant is transferred back to same unit on 31.3.1988 in the interest of service. During this period many officials including Shri B.M. Avchat were promoted as Section Supervisor in GMT Pune. But it has not been denied that the applicant was not in gradation list of Pune on 1.4.1987 on formation of SSA Pune. It has also not denied that the applicant was junior to Shri B.M. Avchat in the basic cadre. Therefore, the applicant cannot claim the parity with Shri B.M. Avchat. The averments of the respondents is that at the time of passing 1/3rd quota qualifying examination official was working under DET Pune and was on Circle Gradation List of Circle Office, Mumbai and further clarification of the applicant in para (C) of the rejoinder that he was working in DMT, Pune (PGMT, Pune) and from where he was transferred to Goa will not make any substantial change, as the applicant was junior to Shri B.M. Avchat in the basic cadre.

5. Thus it appears that there is no error apparent on the face of record as required under Order 47 Rule 1 CPC. The alleged errors stated by the petitioner in his review petition are not at all error of law or fact but a

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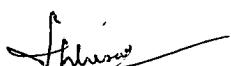
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simple prayer to take different view than the view taken by the Tribunal in its order dated 18.6.2004.

6. The scope of review under Section 22 (3)(f) of the Administrative Tribunals Act 1985 is very limited. It restrict 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 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 a sked 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 or 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."

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The Hon'ble Supreme Court in Subhash 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 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."

6. 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 taken in the Review Petition are beyond the scope 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 by circulation. No order as to costs.

Husain 6/8/04
(Muzaffar Husain)
Member (J)

Anand Kumar Bhatt
(Anand Kumar Bhatt)
Member (A).

H.

*Order Issued
on 12/8/04
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