

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Review Application No. 291/00019/2014
With
Misc Application No. 291/00371/2014
In
ORIGINAL APPLICATION No. 283/2011

Date of order: 22.09.2014

CORAM :

HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

P.K. Kulshrestha son of Late Shri Rajendra Prakash, aged about 59 years, at present working as Superintending Engineer (Planning), Office of the Chief Engineer, CPWD, Nirman Bhawan, Sector-10, Vidyadhar Nagar, Jaipur.

... Applicant

Versus

1. Union of India through the Secretary, Ministry of Urban Development, Nirman Bhawan, New Delhi.
2. Director General (CPWD), Nirman Bhawna, New Delhi.

... Respondents

ORDER BY CIRCULATION

The applicant has filed the present Review Application for reviewing the order of this Tribunal dated 08.01.2014 passed in OA No. 283/2011 (P.K. Kulshrestha vs. Union of India & Another). In the OA No. 283/2011, the applicant has prayed for upgrading the CRs of the periods from 01.04.1998 to 31.03.1999, 01.04.1999 to 31.03.2000, 07.11.2001 to 31.03.2002, 01.04.2002 to 25.02.2003, 01.09.2005 to 31.03.2006 and 01.04.2006 to 31.03.2007. It has been mentioned in the Review Application that so far as the ACRs for the period from 01.04.1998 to 31.03.1999, 01.04.1999 to 31.03.2000, 07.11.2001 to 31.03.2002 and 01.04.2002 to

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25.05.2003 are concerned, the counsel for the respondents submitted at the time of hearing of the OA that only below bench mark ACRs of the relevant period needs to be communicated and since the ACRs for the periods 01.04.1998 to 31.03.1999, 01.04.1999 to 31.03.2000, 07.11.2001 to 31.03.2002 and 01.04.2002 to 25.02.2003 were not to be considered for promotion of the applicant to the post of Chief Engineer, they were not communicated to the applicant. Since the respondents made a positive averment before this Hon'ble Tribunal at the time of hearing of the OA that the ACRs of above period were not to be considered for promotion of the applicant for the post of Chief Engineer, they were not communicated and, therefore, the applicant did not insist on the communication and upgradation of the ACRs of the above periods. The Hon'ble Tribunal, therefore, considered and gave finding and judgment only with regard to the ACRs for the period 01.09.2006 to 31.03.2006 and 01.04.2006 to 31.03.2007.

2. However, now the applicant is constrained to file this Review Application because of the ACRs of the period from 1997 to 31.03.2003 are required to be considered for grant of non functional grade of the rank of Joint Secretary with effect from 31.01.2006.

3. The applicant has further mentioned in the Review Application that consequent upon acceptance of the recommendations of 6th Central Pay Commission, the

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Department of Personnel and Training has issued an Office Memorandum dated 24.04.2009 (Annexure A/2) to the effect that whenever an Indian Administrative Service Officer of the State or Joint Cadre is posted at the Centre of a particular grade carrying a specific grade pay in Pay Band 3 or Pay Band 4, the officers belonging to batches of Organized Group-A Service that are senior by two years or more and have not so far been promoted to that particular Grade, would be granted the same grade on non-functional basis from the date of posting to the Indian Administrative Service Officers in that particular grade at the Centre. The applicant is a Member of Organized Group -A Service (Central Engineering Services). He was appointed as Assistant Executive Engineer in CPWD on 13.03.1981. By Memo dated 21.05.2009 (Annexure A/3) issued by DOPT IAS Officers of 1986 batch have been posted at the Centre in various grades of Pay Band 3 and Pay Band 4 with effect from 01.01.2006 onwards. In this Memo, the information regarding date of posting of the officers belonging to the batch is also mentioned in the Annexure and the Hon'ble Tribunal will find that 1984 batch officers of Organized Group A Services are entitled for grant of non functional upgradation in Grade Pay of Joint Secretary in Pay Band 4 as 1986 IAS Officers have been posted as Joint Secretary. The applicant is, therefore, entitled for the Grade Pay of Rs.10000/- in Pay Band 4 with effect from 1.1.2006. However since his ACRs for the periods from 01.04.1998 to 31.03.1999, 01.04.1999 to 31.03.2000, 07.11.2001 to 31.03.2002 and 01.04.2002 to 25.02.2003 are not "Outstanding"/"Very Good", he is likely to

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be adversely affected at the time of consideration for non functional upgradation. The applicant submitted the photocopies of the ACRs of the period from 01.04.1998 to 31.03.1999, 01.04.1999 to 31.03.2000, 07.11.2001 to 31.03.2002 and 01.04.2002 to 25.02.2003 (Annexure A/4 to A/7 respectively). Therefore, the applicant has submitted that it is necessary to review the order dated 08.01.2014 passed in OA No. 283/2011 (Annexure A/1).

4. The applicant has also filed a MA No. 291/00371/2014 for condonation of delay in filing the RA. I have carefully perused the Review Application and the grounds taken in the Review Application for reviewing the order dated 08.01.2014 passed in OA NO. 283/2011 (Annexure A/1). Para No. 19 of the order dated 08.01.2014 passed in OA NO. 283/2011 is quoted below:-

"19. It was agreed in principle by the learned counsel for the applicant that he is not insisting on the communication or upgradation of the applicant's below bench mark ACRs for the period from 01.04.2002 to 25.02.2003, 07.11.2002 to 31.03.2002, 01.04.1998 to 31.03.1999 and 01.04.1999 to 31.03.2000 if they are not being considered for promotion of the applicant to the post of Chief Engineer, as stated by the learned counsel for the respondents. Hence the prayer for upgradation of ACR for the period from 01.09.2005 to 31.03.2006 and from 01.04.2006 to 31.03.2007 are being considered."

5. The Review Application has been filed on 17.09.2014 for reviewing of the order dated 08.01.2014. Thus this Review Petition has been filed beyond the period of limitation. The applicant has also filed a Misc. Application for the condonation

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of delay. However, I am not convinced with the reasons given by the respondents for filing the Review Application beyond the period of limitation. Moreover, the Full Bench of the Andhra Pradesh High Court in the case of **G.Nara Simha Rao vs. Regional Joint Director of School Education** (W.P. 21738 of 1998) has already held that the Tribunal has no jurisdiction to condone the delay by taking aid and assistance of either subsection (3) of Section 21 of the Administrative Tribunals Act or Section 29(2) of the Limitation Act.

6. Further the Hon'ble Supreme Court in the case of **K. Ajit Babu & Others vs. Union of India & Others**, 1997 SCC (L&S), in Para No. 4 has held that:-

".....The right of review is not a right of appeal where all questions decided are open to challenge. The right of review is possible only on limited grounds, mentioned in Order 47 of the Code of Civil Procedure. Although strictly speaking Order 47 of the Code of Civil Procedure may not be applicable to the tribunals but the principles contained therein surely have to be extended. Otherwise there being no limitation on the power of review it would be an appeal and there would be no certainty of finality of a decision. Besides that, the right of review is available if such an application is filed within the period of limitation. The decision given by the Tribunal, unless reviewed or appealed against, attains finality. If such a power to review is permitted, no decision is final, as the decision would be subject to review at any time at the instance of the party feeling adversely affected by the said decision. A party in whose favour a decision has been given cannot monitor the case for all times to come. Public policy demands that there should be an end to law suits and if the view of the Tribunal is accepted the proceedings in a case will never come to an end. We, therefore, find that a right of review is available to the aggrieved persons on restricted ground mentioned in Order 47 of the Code of Civil Procedure if filed within the period of limitation."

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7. Therefore, this Review Application is not maintainable as it is filed beyond the period of limitation. Accordingly, the Misc. Application No.291/00371/2014 for condonation of delay stands dismissed.

8. Even on merit the present Review Application has no force. The respondents have stated that only below bench mark ACRs of the relevant period need to be communicated to the concerned employee. There is no need to communicate below bench mark of the other years. Therefore, the ACRs for the period 01.09.2005 to 31.03.2006 and 01.04.2006 to 31.03.2007 were communicated to the applicant to file representation. The ACRs for the period from 01.04.2002 to 25.02.2003, 07.11.2001 to 31.03.2002, 01.04.1998 to 31.03.1999 and 01.04.1999 to 31.03.2000 were not communicated to the applicant because they were not to be considered for promotion of the applicant for the post of Chief Engineer. On the basis of this statement, the learned counsel for the applicant did not insist on the communication or upgradation of the applicant's below bench mark ACRs for the period from 01.04.2002 to 25.02.2003, 07.11.2002 to 31.03.2002, 01.04.1998 to 31.03.1999 and 01.04.1999 to 31.03.2000 if they are not being considered for promotion of the applicant to the post of Chief Engineer, as stated by the learned counsel for the respondents.

9. The Office Memorandum of the DOPT dated 24.04.2009 (Annexure A/2) and Office Memorandum dated 21.05.2009

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(Annexure A/3) were issued much earlier than filing of the OA No. 283/2011. The OA was filed on 07.07.2011 and it was heard on 08.01.2014. Thus these office Memorandums were issued almost two years prior to the filing of the OA. The OA was heard on 08.01.2014 i.e. almost after four and a half years of the issue of these two office Memorandum dated 24.04.2009 (Annexure A/2) and 21.05.2009 (Annexure A/3). Therefore, it cannot be said that the issue of grant of non functional grade of the Joint Secretary to Government of India was not in the knowledge of the applicant either at the time of filing of the OA or even at the time of hearing of the OA on 08.01.2014. It cannot be said that a new fact has come to the knowledge of the applicant which was not in his knowledge either at the time of filing the OA or at the time of hearing/order. Moreover, I do not find any error of fact or law on the face of the order. This Review Application has been filed basically with the intention to re-open the matter again. The fact and the legal position have been discussed in the order in detail and I do not find any merit in the Review Application.

10. The Hon'ble Apex Court in the case of **Smt. Meera Bhanja vs. Nirmal Kumari**, AIR 1995 SC 455, observed that reappreciating facts/law amounts to overstepping the jurisdiction conferred upon the Courts/Tribunals while reviewing its own decision. In the present application also, the applicant is trying to claim reappreciation of the facts/law which is beyond the power of review conferred upon the Tribunal as held by Hon'ble Supreme Court.

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11. The Hon'ble Apex Court has categorically held that the matter cannot be heard on merit in the guise of power of review and further if the order or decision is wrong, the same cannot be corrected in the guise of power of review. What is the scope of Review Petition and under what circumstance such power can be exercised was considered by the Hon'ble Apex Court in the case of Ajit Kumar Rath Vs. State of Orissa, (1999) 9 SCC 596 wherein the Apex Court has held as under:

"The power of the Tribunal to review its judgment is the same as has been given to court under Section 114 or under Order 47 Rule 1 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47 Rule 1 CPC. 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 of fact or error apparent on the face of 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 fact without any elaborate argument being needed for establishing it. It may be pointed out that the expression 'any other sufficient reason' used in Order XL VII Rule 1 CPC means a reason sufficiently analogous to those specified in the rule".

12. As discussed in Para No. 9 of this order, the office Memorandum of the DOPT dated 24.04.2009 (Annexure A/2) and office Memorandum dated 21.05.2009 (Annexure A/3) of Review Application were issued much earlier to the filing of the present OA or even much earlier before hearing of the OA. Therefore, it cannot be said that the applicant has discovered a new and important matter after the exercise of due diligence,

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was not within his knowledge or could not be produced by him at the time when the order was made. I also do not find any patent error of law or facts in the order dated order dated 08.01.2014 passed in the OA No. 283/2011 (P.K. Kulshrestha vs. Union of India & Others). Therefore, in view of the law laid down by the Hon'ble Apex Court, I find no merit in this Review Application and the same is accordingly dismissed.

Anil Kumar
(Anil Kumar)
Member (A)

AHQ