

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR**

**Review Application No. 5/2004
in**

OA No.120/2003.

Jaipur, this the 12th day of April 2005.

CORAM :

HON'BLE SHRI J.K. KAUSHIK, JUDICIAL MEMBER.

HON'BLE SHRI A.K. BHANDARI, ADMINISTRATIVE MEMBER

S.L. Rajani, S/o Late Trilok Chand Rajani, aged about 45 years, resident of 18, Indira Colony, Kundan Nagar, Ajmer and at present working as Upper Divisional Clerk in Military School, Ajmer.

.Applicant

By Advocate : Shri C.B. Sharma

Vs.

1. Union of India through its Secretary to the Government of India, Department of Defence, Ministry of Defence, New Delhi-110001.
2. Director General of Military Training (M.T.-15) General Staff Branch, Army Head Quarters D.H.O., Post Office New Delhi-110011.
3. Principal Military School, Ajmer (Rajasthan)-305001.

Respondents.

By Advocate : Shri Sanjay Pareek

:ORDER :

By J.K. Kaushik, Judicial Member.

The aforesaid review application has been filed under section 22 (3)(f) of Administrative Tribunal Act, 1985 against the order passed in Original Application No. 120/2003 on dated 6.1.2004 and the operative portion reads as under: -

"The upshot of the aforesaid discussion is that the Original

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Application is devoid of any merits or substance and the same fails and stands dismissed but without any order as to costs."

2. Notices of the aforesaid review application were sent to opposite parties. We have heard the learned counsel for both the parties and have carefully perused the records of this case.

3. As per the averments made in the review application, it has been indicated that in the past the condition of service rendered in UDC cadre in the cases of one Shri G. Chakarborty, Shri K. B. Bagtani, Shri V. S. Tak and Shri R. L. Baria were relaxed. Since these officials did not complete requisite service in UDC cadre at the time of their promotion. The case of the applicant was duly considered by the DPC which provides for consideration of officials beyond the original zone. Therefore, the applicant could not be reverted from the post. It has been also averred that the applicant cannot be reverted except after holding the Review DPC as per the rules incorporated in Swamy's Compilation of Seniority and Promotions but in the instant case without Review DPC and show cause notice, the reversion order came to be passed. The applicant nowhere misquoted anything regarding his service and respondents themselves considered his case and promoted him. Certain references of the judgements have been given.

4. Learned Counsel for the applicant has strived hard and has tried to demonstrate that the three persons whose name have been indicated above have granted the relaxation and has submitted that this fact has lost sight of the Hon'ble Tribunal while deciding the OA. He was confronted with a query as to whether

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such fact has been averred in the Original Application, but he has only shown that the same has taken in the rejoinder to the reply as Para B to the preliminary objection. He has next contended that there is a provision relating to holding review DPC in case of erroneous promotion. He contended that in this case specific averments have been made in the OA that the holding of review DPC was necessary but the same has been not taken notice of by this Bench of the Tribunal and, therefore, there is an error apparent on the fact of the record which entails recalling of the decision and to decide the case afresh. Per contra, Learned Counsel for the respondents has submitted that no illegality as such has been committed and the judgement is perfectly valid calling no indulgence in the matter.

5. Keeping in view the judicial scope of the review and provisions of Order 47 Rule 1 of CPC, we have examined the facts and grounds of this case. Firstly, we find that there is no averment to the effect that any relaxation was allowed to the individuals and it is only in a rejoinder the details of certain relaxation have been mentioned. We have no provision under the rules of pleadings for any pleadings after the rejoinder and the new facts which are brought in the rejoinder cannot be taken into account since no opportunity can be given to the respondents on those. In this view of the matter, this question was not considered. However, it is for the departmental authorities themselves to consider any relaxation and not for the Courts to direct for such relaxation. In this view of the matter, this ground cannot otherwise be sustained sustained.

6. As regards the other grounds relating to the Review DPC

is concerned, we have seen and it is the admitted position of the case that the applicant does not fulfill the eligibility condition of the service as five years regular service as UDC and we have clearly held that the very appointment of the applicant was de hors the rules. It would have been of no use to either hold review DPC or to give a show cause notice and this position was also supported by the judgment in Kendriya Vidyalaya Sangathan as cited in Para 12 of the decision in question. As regards the provisions relating to review DPC are concerned, these are all directory and we are dealing with a special case where the very appointment was a nullity. In this view of the matter, the second ground also fails and cannot be sustained.

7. In the result, the Review Application is devoid of any merit and substance and the same stands rejected but without any order as to costs.


(A.K. Bhandari)
Administrative Member


(J.K. Kaushik)
Judicial Member