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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

R.A.No.6/97

Date of order: 17.2.1997

Puran Chand Malik : Applicant

Vs.

1. Union of India through General Manager, Western Railway, Churchgate, Bombay.

2. Chief Works Manager, Wagon Repair Shop, Western Railway, Kota Junction, Kota.

..Respondents.

PER HON'BLE MR.O.P.SHARMA, ADMINISTRATIVE MEMBER.

Puran Chand Malik who was the applicant in O.A No.257/94 has filed this application seeking review and recall of the order passed by the Tribunal on 20.11.96 in the aforesaid O.A, Puran Chand Malik Vs. Union of India & Anr.

2. In the aforesaid O.A, the applicant had sought directions to the respondents to give promotion to him on the post of Chief Clerk in accordance with the restructuring/up-gradation scheme with effect from the date such promotion had been given to persons junior to the applicant, and had also prayed that while considering his case for promotion, "Average" ACR may not be treated as adverse. In the order dated 20.11.96 passed by the Tribunal disposing of the O.A of the applicant, the Tribunal had taken note of the averments of the respondents that the applicant had been chargesheeted and had also been penalised for certain misconduct and therefore after taking into consideration all the relevant ACRs as well as the service record, the competent authority did not recommend the name of the applicant for promotion under the restructuring/upgradation scheme. The Tribunal had perused the relevant record relating to promotion of the applicant and had found that the applicant's case was considered for promotion in April 1993 but ^{been} his name had not ^{been} recommended for such promotion as he had been considered as unsuitable for it. A penalty of reduction to 3

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lower stages for a period of one year had been imposed on the applicant by order dated 10.9.1992 which had been subsequently modified so that it would have effect only for a period of 6 months. The Tribunal had observed that since a major penalty had been imposed on the applicant which was current on the date with effect from which such promotion was to be granted i.e. 1.3.1993, that there was nothing irregular or improper in the respondents' action in denying promotion to the applicant.

3. The drafting of the present Review Application is so poor that it is extremely difficult to understand most of the averments made therein. A sample of the averments of the applicant in the Review Application from para 4.2 page 4 of the Review application is reproduced below:

...at the most the benefit may be given since the date of expiration of penalty the benefit may be called in regard of salary in scale but in the case of the applicant the position has been reversed by the respondents and indirectly the order dated 7.1.93 by which the penalty was reduced has been taintown and it can be say that such order has been made in-affected by the action of non-empanelment and further order has become meaningless."

4. It appears that the main ground of the applicant for seeking review of the order of the Tribunal is that a minor penalty cannot stand in the way of promotion of an employee and though the penalty imposed on the applicant was a minor one, the Tribunal had erroneously described it as a major penalty. It has also been stated by the applicant that the applicant's appeal to the General Manager had already been decided but this fact was not considered by the Tribunal.

5. We have carefully considered the averments of the applicant in the Review Application to the extent we could understand these and have also considered the other material on

record including the material on record of the O.A. We are of the view that this Review Application can be disposed of without fixing a hearing. Accordingly, this Review Application is being disposed of by circulation, in limine.

6. It is true that the penalty imposed on the applicant as referred to above was described by the Tribunal as a major penalty in para 6 of the order. It was clearly an error. However, the nature of the penalty imposed had also been described as penalty of reduction to 3 lower stages for a period of one year, later reduced on appeal to have effect for 6 months. The penalty imposed formed part of the service record of the applicant and was current on the date with effect from which promotion was to be granted to the applicant. Therefore, the mere description of the penalty as major does not alter the situation that on the basis of the service record of the applicant the respondents were justified in denying promotion to the applicant. With regard to the appeal against the order of penalty, it had been decided and this fact had been taken note of by the Tribunal. We do not see any merit in any other averments in the Review Application. A review cannot be sought in order to seek reappreciation of the view taken by the Tribunal on merits of the case, on the basis of the evidence already on record. Although there was an error in the order of the Tribunal in describing the penalty imposed on the applicant as a major penalty, this is only a verbal error and it cannot have the effect of changing the conclusion of the Tribunal which is otherwise based on the facts of the case correctly described in the order of the Tribunal.

7. We, therefore, hold that there is no merit in the Review Application. It is, therefore dismissed in limine.

By Circulation.



(Ratan Prakash)
Judicial Member.

(O.P.Sharma)
Administrative Member.