

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 24th day of November, 2006

RA No.15/2005 (OA No.592/2003)
Misc. Application No.226/2005

1. Union of India through Secretary, Ministry of Defence, Sewa Bhawan, New Delhi.
2. Controller General Defence Accounts, West Block-5, R.K.Puram, New Delhi.
3. Principal Controller of Defence Accounts (SC), No.1, Finance Road, Pune (Maharashtra).
4. Controller of Defence Accounts (SWC), Khatipura, Jaipur.

.. Applicants/respondents

(By Advocate: Shri Gaurav Jain)

Versus

P.C.Sharma
s/o Shri Kanhaiya Lal Sharma
r/o 182, Guru Jambheshwar Nagar,
Queens Road,
Jaipur.

.. Respondent/applicant

ORDER (ORAL)

The respondents in the Original Application have filed this Review Application for reviewing the order dated 7.12.2004 passed in OA No.592/2003, P.C.Sharma vs. Union of India and ors. Alongwith this Review Application, the applicant has also filed Misc.

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Application for condonation of delay in filing the Review Application.

2. The question whether this Tribunal has got power to condone the delay where the Review Application has been filed beyond the period of 30 days as mentioned in rule 30 of Central Administrative Tribunal (Procedure) Rules, 1987 came for consideration before various Benches of this Tribunal as well as Hon'ble High Court and the matter on this point is no longer res-integra. 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} ~~day~~ by taking aid and assistance of either sub-section (3) of Section 21 of the Administrative Tribunals Act or Section 29(2) of the Limitation Act. The matter was also considered by the Patna Bench of this Tribunal in RA No.99 of 2005 decided on 27.1.2006 (Union of India vs. Ramdeo Singh), whereby this Tribunal has considered the fact of two contradictory judgments of Hon'ble Calcutta High Court and the Andhra Pradesh High Court and held that delay in filing the Review Application cannot be condoned. At this stage, it would be useful to quote relevant part of para 4 of the decision of the Apex Court in the case of K.Ajit Babu vs. Union of India, 1998 (1) SLJ 85 which is in the following terms:-

".....Besides that, the right of review is available if such 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 party feeling adversely affected by the said decision. A party in whose favour a decision has been given cannot monitor the case of all times to come. Public policy demands that there should be 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."

Thus, in view of the law laid down by the Apex Court as well as the decision rendered by the Full Bench of Andhra Pradesh High Court and also the decision rendered by the Division Bench of the Patna Bench of this Tribunal in the case of Ramdeo Singh (supra), we are of the view that this Tribunal has got no power to condone the delay where the Review Application has been filed after the prescribed period of 30 days.

3. Even on merits, the applicant has not made out any case for reviewing the judgment. The judgment of this Tribunal was challenged before the Hon'ble High Court by filing Writ Petition. Before the High Court the respondents ~~have~~ took entirely new ground that the judgment of this Tribunal cannot be sustained in view of para 6.2.1. of the instructions which provide that suitability of an employee for promotion on the basis of service record did contain reference of CRs of 5 preceeding years. The Hon'ble High Court has passed the following order:-

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"The learned counsel for the petitioner on the basis of the averments made in Ground C of para 7, however, contends that since 1996 the criteria that was being observed by the DPC in accordance with the guidelines contained in para 6.12, 6.14 and 7 for assessing the suitability of an eligible Assistant Accounts Officer also required that last ACR should be above average.

We would have examined the contention of the learned counsel in all its details but it is conceded during the course of arguments that not only this point was not urged before the Tribunal at the time of arguments but the same was not even taken in the written statement filed before it. It would be inequitable at this stage to permit a totally new ground to oppose the cause of Shri P.C.Sharma. If permissible, however, the petitioner may move an application for review of the impugned order.

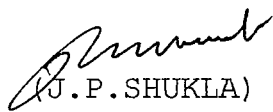
With the observation made above, the Writ Petition is dismissed."

4. Now the applicant has filed this Review Application by taking various grounds as if the matter is to be heard afresh. The respondents in the OA have conceded that they have not taken up ground as averred in Ground C of para 7. ^{the fact} ~~As~~ can be seen from para 5(G) of Review Application where it has been stated that the because the aforesaid fact could not be brought to the knowledge of Hon'ble Tribunal by the present applicants while contesting the Original Application No. 592/03, P.C.Sharma vs. Union of India and ors., either by mentioning it in their reply nor by pointing out at the time of final hearing of the original application. In view of this categorical submission made ^{by} the respondents (applicants in the Review Application) in the Review Application, it was not permissible for them to file Review Application. For the foregoing reasons the review application is bereft of merit as the respondents cannot be permitted to

take new plea which they have not taken in the OA in the garb of Review application. The law on the point is settled. The Apex Court in the case of Ajit Kumar Rath vs. State of Orissa, AIR 2000 SC 85, has held 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 the 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 face of the record or for any other sufficient reasons. 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.

5. For the foregoing reasons, we are of the view that the present Review Application cannot be entertained as the same has been filed after the period of 30 days and also have no merit. Accordingly

Misc. Application for condonation of delay and Review
Application are dismissed.



(J.P. SHUKLA)

Administrative Member



(M.L. CHAUHAN)

Judicial Member

R/