

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 3/8/2001

RA 16/2001 (TA 4/99)

S.M.Goyal s/o Shri Jugal Kishore r/o 1, Arvind Park, Tonk Road, Jaipur, now 52/4, Agrasen Nagar, Ajmer.

... Applicant

Versus

1. Kendriya Vidyalaya Sangathan through the Commissioner, KVS, Shaheed Jeet Singh Marg, New Delhi.
2. Asstt. Commissioner, Regional Office, KVS, Gandhi Nagar Marg, Bajaj Nagar, Jaipur.

... Respondents

CORAM:

HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER

HON'BLE MR.A.P.NAGRATH, ADMINISTRATIVE MEMBER

For thr Applicant ... Mr.P.D.Rastogi

For the Respondents ... Mr.V.S.Gurjar

O R D E R


PER HON'BLE MR.A.P.NAGRATH, ADMINISTRATIVE MEMBER

This Review Application has been filed u/s 17 of the Administrative Tribunals Act, 1985 for review of the order of this Tribunal dated 24.4.2001, passed in TA 4/99. By this order, prayer of the applicant has been partly allowed inasmuch as the respondents were directed to protect the pay of the applicant with respect to his junior Shri K.K.Bhatt w.e.f. 1.1.86. The arrears were restricted to one year prior to the date of filing of the application. The other relief relating to counting of past service for the period 6.9.52 to 30.6.69 was rejected.

2. The grounds on which this Review Application has been filed are that; i) the payment of arrears consequent to




stepping up of pay of the applicant w.e.f. 1.1.86 could not have been restricted to one year before filing of the application as the juniors were given higher pay only as per order dated 19.7.89 though retrospectively w.e.f. 1986 and the policy for stepping up was issued only in the year 1990. It is stated that with respect to these dates and the date of filing of the Writ Petition in the year 1991, arrears become payable to the applicant right from 1.1.86. ii) Regarding counting of past service, it has been stated that the resignation from Kendriya Vidyalaya Sangathan (KVS, for short), Jodhpur, in December, 1967 would not entail forfeiture of past service as Rule 26 of the CCS (Pension) Rules, 1972 (for short, the Rules, 1972) was applicable from 1.6.72 and any resignation prior to that date would not be governed by the Rules, 1972. Contention of the applicant is that the Tribunal had not appreciated the facts and law in the right perspective and thus an error is apparent on the fact of the record. It has further been stated that even if such resignation entails forfeiture of past service, this would have resulted into forfeiture of the period from 16.9.67 to 26.12.67 and the services rendered with Agarwal School from 1952 to 1965 and in Demonstration School from 15.6.65 to 15.9.67 cannot be forfeited as his applications were duly forwarded and NOCs were obtained from the previous employer. iii) That Rule 30 of the Rules, 1972 has not been considered by the Tribunal, which provides ~~that~~ for addition of five years service for pension for the posts requiring recruitment above 35 years of age and specialised qualification. iv) That the services of Shri Madan Gopal had been counted ~~which~~ in exactly the same circumstances and facts as that of the applicant. The applicant ought to have <sup>been</sup> given the same benefit as granted to shri Madan Gopal.




3. The respondents have filed reply to this Review Application and have opposed the review on the ground that the matter had been considered by the Tribunal on merits and after hearing both the parties and keeping in view the pleadings of the parties only the judgement had been delivered. Respondents' plea is that there is no error apparent on the face of the record, as has been made out by the applicant, and all questions having been decided are not open to challenge. If such a review is permitted then no decision can attain finality and any party feeling adversely affected could raise such pleas. The right to review is restricted, as provided under Order 47 of the CPC.

The applicant <sup>is</sup> stated to have reiterated the same grounds which were pleaded by him at the time of hearing of the TA and by this Review Application he is merely seeking rehearing and fresh decision of the case. Learned counsel for the respondents has placed reliance on the Hon'ble Apex Court's decision in Sheo Chandra Kanta and Ors. v. Sheikh, AIR 1975 SC 1500, wherein it was held that review of the judgement is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or ~~like~~ grave error has crept in earlier by judicial fallibility. Reliance has also been placed on the judgements of Hon'ble the Supreme Court reported in AIR 1980 SC 303, P.N. Aswara Aiyer v. Registrar, Supreme Court of India, and AIR 1980 SC 674, M's. Northern India Caterers (Pvt. Ltd.) v. Lt. Governor of Delhi. In these cases it has been held by the Hon'ble Apex Court that; "it is well settled that a party is not entitled to seek a review of a judgement delivered by this Court merely for the purpose of a re-hearing and a fresh decision of the case. Normally the principle is that the judgement pronounced by the Court is final and departure from that principle is justified only



when circumstance of a substantial and compelling character make it necessary to do so." Thus, the respondents contend that this Review Application is not maintainable and deserves to be dismissed.

4. We have heard the learned counsel for the parties. Learned counsel for the applicant submitted at the outset that he was not contesting the findings of the Tribunal in respect of counting of the period from 1952 to 1965 but stated that the Tribunal's order needs to be reviewed in respect of the period for which the applicant worked in Demonstration School i.e. 15.6.65 to 15.9.67. His plea was that the application of the applicant was forwarded from this school to KVS and the service rendered by the applicant in St. Anselm's School, Ajmer, having been counted the period spent in Demonstration School, ought to have been counted. Learned counsel for the applicant also argued that statutory provisions under Rule 30 of the Rules, 1972, which provides for counting of additional service upto the limit of five years, has not been taken into account by the Tribunal in respect of the relief of counting of past service. On the point of entitlement to arrears w.e.f. 1.1.86, the learned counsel for the applicant stated that the fact that the juniors were granted stepping up retrospectively only in July, 1989 and that the policy instructions of regulating the stepping up were received only in 1990 presumably escaped the notice of the Tribunal; and thus the Tribunal passed the order restricting the payment of arrears. Contention of the learned counsel for the applicant was that this is an apparent error which has occurred in the order of the Tribunal and needs a review. The learned counsel also produced before us a copy of the recruitment rules to indicate that the age limit for recruitment as Principal, the post against which the applicant was recruited, is 35 to




50 years and the educational qualification required is Post Graduate Diploma in Teaching Education. Thus, the learned counsel contended that the applicant fulfilled the condition as stipulated in Rule 30 of the Rules, 1972.

5. Learned counsel for the applicant also placed reliance on AIR 1963 SC 1909, Shivdeo Singh & Ors. v. State of Punjab & Ors., to contend that review was the necessity in this case to prevent miscarriage of justice.


6. The learned counsel for the respondents reiterated the stand taken by the respondents in their written reply and submitted that the applicant was only seeking re-hearing of the whole matter, which is not permissible under the law. Powers of review of this Tribunal are akin to the powers of the Civil Court, as provided in Order 47 Rule 1 of the CPC. This rule provides that the review can be undertaken for either of the following grounds; a) discovery of the new and important matter of evidence which after the exercise of due diligence was not within the knowledge of the applicant and could not be produced by the party at the time when the decree was passed or order was made of, b) some mistake or error apparent on the face of record.

7. From a perusal of our order in the TA, we find that in respect of the length of the qualifying service and counting of past service, we had come to the conclusion that the applicant is not entitled to counting of the past service for the period from 6.9.52 to 30.6.69. Learned counsel for the applicant had taken a plea that the services rendered by the applicant in Demonstration School, Ajmer, i.e. from 27.12.67 to 30.6.69 could not have been ignored. The applicant had taken this plea in his application and for this particular point there was a rebuttal by the department <sup>stating that</sup> [



the applicant was not entitled to get the benefit of this service as his services were terminated by that school and he secured employment in St. Anselm's School without their consent and knowledge. The applicant had failed to counter this contention of the respondents. There is no infirmity in our order rejecting this claim of the applicant and the matter is not open for fresh hearing.

8. In respect of the plea raised on behalf of the applicant that the provisions of Rule 30 of the Rules, 1972 have not been considered, we find that this ground had never been taken by the applicant in his application before the Hon'ble High Court of Judicature for Rajasthan, which stood transferred to this Tribunal. The learned counsel while arguing for review referred to additional affidavit filed by the applicant, wherein Annexure 18 has been enclosed which makes a mention of this clause in addition to various other factors. We find that this Ann.18 is a representation submitted by the applicant in response to some notification in Rajasthan Patrika dated 7.7.95 regarding Lok Pension Adalat. In the affidavit no specific ground has been taken in so far as Rule 30 of the Rules, 1972 is concerned. In fact the applicant has only taken a ground that his past service should be counted under the provisions of CCS (Pension) Rules, 1972 because similarly circumstances and similarly situated persons have been given this benefit. Since the ground in respect of Rule 30 of the Rules, 1972 had not been taken by the applicant, he cannot be permitted to raise fresh grounds in the Review Application. The Review Application cannot result into re-hearing of the matter where the case could be agitated on fresh grounds. A mere mention of this fact in a representation, on which no specific mention has been made in the written submissions, cannot be a justification by itself for reviewing the



orders. Thus, in so far as counting the past service is concerned or the benefit of Rule 30 of the Rules, 1972 is concerned, we do not find any reason for review and this REview Application in so far as these issues are concerned, is liable to be rejected.

9. Coming to the issue of arrears consequent to stepping up of the pay of the applicant with respect to his juniors, we do find that the applicnat had taken a specific plea that vide Ann.2 pay of Shri K.K.Bhatt, his junior, was stepped up retrospectively and also that the condition laid down for such stepping up was issued by the government vide letter dated 8.6.90. S.B.Civil Writ Petition was filed in the High Court of Judicature for Rajasthan in 1991. In that view we agree that the applicant was entitled to payment of arrears right from 1.1.86, after stepping up of his pay with respect to Shri K.K.Bhatt. Our order under review is thus liable to be modified to this extent.

10. In view of the discussion aforesaid, we modify the order passed in TA 4/99 on 24.4.2001 as follows :-

"In view of the facts and circumstances, we modify the order to the extent that the arrears of stepping up of pay shall be paid to the applicant w.e.f. 1.1.86." Remaining portion of the order shall remain unchanged.

The Review Application stands disposed of accordingly with no order as to costs.

  
(A.P.NAGRATH)

MEMBER (A)

  
(S.F.AGARWAL)

MEMBER (J)