

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

Review Application No.58/95

Dt. of order: 30.10.95

Bhavani Prasad Sharma : Applicant

Vs.

Tara Chand Sharma & Ors. : Respondents

CORAM:

Hon'ble Mr.O.P.Sharma, Member(Adm.)

Hon'ble Mr.Ratan Prakash, Member(Judl).

PER HON'BLE MR.O.P.SHARMA, MEMBER(ADM).

Shri Bhawani Prasad Sharma has filed this Review Application against a common order dated 24.8.1995 Annx.FA1 passed by the Tribunal in O.A.No.93/94 Tara Chand Sharma Vs. Union of India & Ors., O.A.No.121/94 P.C.Bairwa Vs. Union of India & Ors, O.A.No.122/94 Sunil Kumar Garg Vs. Union of India & Ors. and O.A.No.172/94 Smt.Asha Saxena Vs. Union of India & Ors. In all these four O.As, Shri Bhavani Prasad Sharma was one of the 33 private respondents.

2 The person seeking the review, after setting out facts and arguments on the basis of which review has been sought, has stated that "other legal averments" shall be submitted when this review application is heard. The implication is that the review application should be disposed of after hearing the parties in the open court. Rule 17(3) of the C.A.T (Procedure) Rules provides that unless otherwise ordered by the Bench concerned, a review application shall be disposed of by circulation and the Bench concerned may either dismiss the application or direct notice to the opposite party. On a careful consideration of the facts and circumstances of the present case, we are of the view that this review application can be and deserves to be disposed of by circulation amongs the Members who passed the original order of which a review has been sought and it is, therefore, not necessary to issue notice to the opposite parties and to list the review



application for hearing in the open court.

3. In the O.As, the applicants were aggrieved by grant of higher seniority to respondents Nos.3 to 35 on the post of Computer in the Directorate of Census Operations, Jaipur. In the order dated 24.8.95, the Tribunal had observed that the applicants in the O.As were already functioning as Computers on a regular basis by 10.10.90. By orders dated 14.3.91 passed subsequently the private respondents Nos.3 to 35 who had initially been appointed as ad hoc Computers between 25-9-1980 and 17-9-1981 with no right to count ad hoc service for the purpose of seniority were declared to be regular on the post of Computer. By a separate letter dated 9/10-3-1982 issued by the Registrar General of Census Operations, the ad-hoc service of the private respondents in the OA (of whom Shri Bhavani Prasad Sharma is one) was counted towards seniority in the post of Computer. The Tribunal held that the respondents Nos.3 to 35 could not be granted higher seniority over the applicants who were already functioning as Computers on a regular basis on the date on which the private respondents earlier appointed as ad hoc Computers were regularised and were granted benefit of past ad-hoc service for the purpose of seniority. The official respondents were directed to recast the seniority of the applicants vis a vis the private respondents accordingly.

4. In the Review Application Shri Bhavani Prasad Sharma has mentioned various grounds. One is that at the time of hearing on 11.7.95, a circular letter dated 23.10.79 issued by respondent No.1 had been submitted on behalf of the private respondents but its contents and implications had been ignored by the Tribunal while drawing its conclusion. This has been listed with the Review Application as Annx.PA2. The other is that detailed submissions were made in the written arguments explaining that the applicants themselves had not

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been appointed as per rules and their initial appointments as LDC/ Asstt.Compilers were to be treated as temporary and ad hoc and therefore they could not be treated as having been promoted on the post of Computer on a regular basis and in accordance with the rules. On the other hand, it was only on account of administrative and inordinate delay that a decision to regularise the services of respondents Nos.3 to 35 was taken as late as in March 1991. The above is a summary of the main and essential grounds for seeking a review of the order dated 24.8.1995.

5. We have considered the matter carefully. Written arguments were indeed submitted by the respondents on conclusion of the hearing. However, parties have to put forward their respective cases during the arguments within the confines of their pleadings. Circular letter dated 23.9.79 (Annx.RA2) was admittedly not part of the pleadings of the respondents. However, even accepting the position that it was submitted during the arguments and that reliance on the contents of this circular letter would be permissible even during the arguments because what the circular letter contains is the official position regarding recruitments to various posts, we do not find that this circular affects the factual and the legal position on the basis of which the Tribunal passed its order dated 24.8.95. By this circular letter, exemption had been granted to the filling up of posts of Asstt.Compiler and Computer, created for 1981 census, through the Staff Selection Commission but it was further mentioned therein that if these posts were continued beyond 1982-83, the absorption/regularisation of the incumbents will depend, amongst others, on their qualifying in the prescribed test/ interview by the Staff Selection Commission. It is the case of the party seeking a review now that the applicants in the O.As were initially appointed as LDCs/Asstt.Compilers

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without their being subjected to recruitment by the Staff Selection Commission and therefore, their appointment was not as per the rules and therefore, their subsequent appointment to the post of Computer could not be considered to be regular and in accordance with the rules as they were not subjected to the process of selection by Staff Selection Commission as envisaged in circular letter dated 23-10-1979. This is indeed the thrust of the entire contents of the review application.

6. The respondents had no doubt stated in their pleadings that since the applicants had not completed the requisite period of service in the lower grade of Asstt. Compiler at the time of promotion to the post of Computer, in accordance with the relevant recruitment rules, their appointment to the post of Computer could not be considered to be regular. However, we may point out that the official respondents had themselves promoted the applicants to the post of Computer on a regular basis on the basis of a duly constituted DPC and had even placed them on probation for a period of 2 years. (Subsequently, it was even certified by the official respondents that the applicants had completed their probation satisfactorily.) Not only had the official respondents not taken any steps to correct the irregularity, if any in the appointment of applicants as Computers by promotion but their own conduct in the matter of promotion of applicants to the post of Computer showed that they had treated these promotions as regular. Moreover, although the official respondents had raised the above plea in their replies, this was not the reason for their assigning a higher seniority to respondents Nos. 3 to 35 above the applicants. It was not the case of ~~either~~ the official respondents to the O.As that higher seniority was being granted to respondents Nos. 3 to 35 by orders dated 14.3.91 (by counting their previous ad hoc service for the purpose of seniority), for the reason that the

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applicants appointed as Computers in August and October 1990 on a regular basis had in fact not been appointed as Computers on regular basis in accordance with the Rules. Higher seniority came to be assigned to private respondents Nos. 3 to 35 for the reason that by order dated 14-3-1991 their services were regularised and by a subsequent letter issued in consultation with Dept. of Personnel and Training their ad-hoc service was treated as counting towards seniority. After the order dated 14-3-1991 was passed, the respondents Nos. 3 to 35 were treated as senior to the applicants in the OA. Therefore, regardless of the mode by which the applicants were initially recruited to the post of LDC/Asstt. Compiler, their appointment to the post of Computer on promotion was in fact treated as a regular one by the official respondents by not disturbing that position and the issue in the O.As was whether respondents Nos. 3 to 35 could be granted higher seniority over the applicants by an order passed subsequent to the regular appointment/promotion of the applicants to the post of Computer, by counting the ad hoc service of respondents Nos. 3 to 35 in the post of Computer for the purpose of their seniority in the post of Computer.

7. By drawing attention to the circular letter dated 23.10.79 and by other arguments in the review application challenging the appointment of the applicants to the initial posts held by them as also their promotion to the post of Computer, Shri Bhavani Prasad Sharma, who has sought the present review, has in fact tried to reopen the issue of the appointment of the original applicants to the post of Computer whereas the issue involved in the O.A was whether respondents Nos. 3 to 35 were entitled to count their ad hoc service on the post of Computer for the purpose of seniority in the said post and thereby steal a march over the applicants appointed as Computers on a regular basis on an earlier date. A review of

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the original order is not maintainable on such a ground.

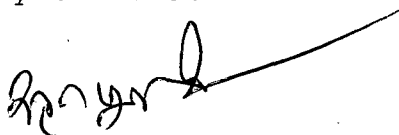
8. Also as a plain reading of the review application shows, Shri Bhavani Prasad Sharma has sought a reappreciation of the evidence on the basis of which order dated 24.8.95 was passed. This is also outside the scope of a review application.

9. The Tribunal had noted the arguments of the official respondents that the promotion of the applicants to the post of Computer was not in accordance with the eligibility criterion prescribed in the Recruitment Rules but had given a finding that the applicants had already been functioning as Computers on a regular basis in October 90. Thus, by implication, the arguments of the official respondents that the applicants had not been appointed on the post of Computer on a regular basis had been rejected by the Tribunal. Contrary to what has been stated by Shri Bhavani Prasad Sharma in the review application, the relevant Recruitment Rules were taken into consideration while passing the order dated 24.8.95, as a plain reading of the order in the OAs shows.

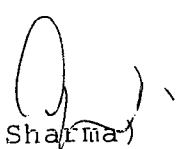
10. This review application is not maintainable in terms of Order XXXVII Rule 1 of the CPC. A review cannot be sought for securing a different conclusion on merits, on the basis of the facts which were already before the Tribunal when it passed the original order. As already stated above document Annx.PA2 does not make any difference to the case.

11. The Review Application is, therefore, rejected in limine.

By circulation.


(Ratan Prakash)

Member(Judl.)


(O.P.Sharma)

Member(Adm.)