

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL JAIPUR BENCH  
J A I P U R.

RA NO.60/1995  
in  
OA NO. 46/1991

Date of order: 9-6-1996

Union of India and others : Petitioners  
vs.

Shri P.L.Gupta : Respondent

Mr.V.S.Gurjar, counsel for the petitioners  
Mr.Prahlad Singh, counsel for respondent

CORAM:

HON'BLE SHRI O.P.SHARMA, MEMBER (ADMINISTRATIVE)  
HON'BLE SHRI RATAN PRAKASH, MEMBER (JUDICIAL)

O R D E R

(PER HON'BLE SHRI RATAN PRAKASH, MEMBER (JUDICIAL))

This is a review petition filed by the Union of India and others under Section 22(3) of the Administrative Tribunals Act, 1985 read with Rule 17 & 24 of the Central Administrative Tribunal (Procedure) Rules, 1987 for reviewing of the order dated 22.11.1994 passed in OA No.46/91 P.L.Gupta vs. Union of India and others whereby the division bench consisting of Hon'ble Mr.D.L.Mehta (Vice Chairman) and Hon'ble Mr.N.K.Verma (Member Administrative) while allowing the OA gave a direction to the following effect:

"In the circumstances of the case, the OA succeeds. The applicant must be given his promotion to the higher scale of pay in the TBOP Scheme from the date when it become due to him as per prescribed procedure and give him the ante-date of seniority in the TBOP LSG grade in the light of our observations. All consequential benefits of salary etc. will also be given from such date to be determined.

There will be no order as to costs."

(2)

This review application is also accompanied by a Misc. application No.484/95 for condonation of delay in filing this review petition.

2. The review petitioners have challenged the above directions mainly on the basis that since the above reproduced direction in the OA is contrary to the principle of law laid down by Hon'ble the Supreme Court in the case of State of M.P. vs. Shrikant Chaphekar (AIR 1993 SC 1221) and amounts to an error patent on the face of the record, the review petition should be allowed and the impugned order dated 22.11.1994 passed in the OA be modified to the extent that it being contrary to the law laid down by Hon'ble the Apex Court in the aforesaid case, the directions issued to the respondent-petitioners to give promotion and award consequential benefits under the TBOP Scheme be also quashed.

3. On a notice being issued to the respondent herein Shri P.L.Gupta, the review petition has been opposed by filing a written reply, besides opposing the Misc. application for condoning the delay in filing the review petition.

4. We heard the learned counsel for the petitioners as also the respondent.

5. Before we proceed to examine the merits of the petition, it is necessary to consider the Misc. application filed by the review petitioners for condonation of delay in filing the review application. The OA was disposed of vide order dated 22.11.1994

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and a copy of which was made available to the respondent on 11-1-1995 . As per Rule 17 of the Central Administrative Tribunal (Procedure) Rules, 1987, a petition for review shall not be entertained unless it is filed within 30 days from the date of receipt of a copy of the order sought to be reviewed. In the application for condonation of delay the review petitioners have simply indicated the cause of delay in filing the review petition as that it "is not intentional or malafide but the same is bonafide and un-intentional". The review-petitioners failed to detail any of the grounds which could be reasonably accepted in filing this petition on 12.7.1995 when the copy of the order under review has been received by them on 11-1-1995 . We are of the view that the petitioners have not filed the review petition within the statutory limit prescribed under Rule 17 of the Central Administrative Tribunal (Procedure) Rules, 1987, the review petition deserves to be dismissed on this ground alone.

6. However, looking to the apprehension expressed by the review-petitioners in the petition, we deem it appropriate to consider the petition on merits also.

7. It is settled position of law that the power to review its own order by the Tribunal under the Administrative Tribunals Act, 1985 has been conferred under Section 22(3) of the Act read with Rule 17 of the Administrative Tribunal (Procedure) Rules, 1987 and is further circumscribed by the

limits laid down under Section 114 of the Code of Civil Procedure read with Order XLVII, Rule 1 of the C.P.C. It is also settled law that a review of its own order by the Tribunal/Court is permissible only on:

- 1) the discovery of new and important matter or evidence which after the exercise of due diligence of the petitioner was not within his knowledge or could not be produced by him at the time when the order in question was made;
- ii) on account of some mistake or error apparent on the face of the record; and
- iii) or for any other sufficient reason."

8. It is also being the settled law that any or all grounds which may be taken up by way of an appeal cannot constitute a ground for review. Review is permissible only within the circumscribed limits laid down under Order XLVII Rule 1 of the CPC and that too on any of the three situations enlisted therein. What the petitioners are trying to claim through the present review petition is that this Tribunal should again re-appreciate the whole matter in view of the principle of law laid down in the case of State of M.P. Vs. Shrikant Chaphekar (supra). The contention of the learned counsel for the petitioners has been that since Hon'ble the Supreme Court in the aforesaid case of State of M.P. has held that it is not the function of the Tribunal to assess the service record of a Government servant and order his promotion on that basis, the Tribunal over-stepped its jurisdiction in reaching to the conclusion that the adverse remarks made therein were not sufficient to deny the respondent his promotion. Virtually the relief which is being claimed through this review petition can be raised

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only by way of an appeal. We consider that the review petitioners through this petition are seeking a modification in the operative portion of the order given in the OA filed by the respondent herein to the extent that instead of giving a straightaway direction to give promotion to the applicant in the OA to the higher scale of pay in the TBOP Scheme, the direction should have been to consider the case of the applicant to give him promotion to the higher scale of pay in the TBOP Scheme from the date when it became due to him as per prescribed procedure and also to give him ante-date seniority in the TBOP LSG grade in the light of the observations given in the order.

9. As against this, the argument of the learned counsel for the respondent herein is that the Tribunal sitting as a review court cannot give a direction as sought for by the review petitioners here.

10. We have given anxious thought to the arguments addressed to by the learned counsel for the parties.

11. We feel that in view of reasons given in the paragraphs preceding to the operative portion of the order under review, there is no ambiguity in the directions given by the division bench while disposing of the OA No.46/91 decided on 22.11.1994. However, to remove the lingering doubts and any ambiguity in the mind of the review petitioners and in the fitness of things so that the order under

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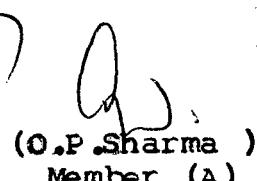
(W)

review could become effectively enforceable, it is clarified that the direction given by the division bench in the impugned order while disposing of the OA referred to above has to be understood as a direction for consideration of the applicant in the OA for his promotion to the next higher scale of pay and other benefits given therein.

12. With this observation and in the expediency and also of things and to secure the ends of justice to prevent abuse of the judicial process, this review petition is disposed of accordingly. The review petitioners (respondents in the OA) are directed to comply with the above directions within three months of the receipt of a copy of this order.



(Ratan Prakash )  
Member (A)



(O.P. Sharma )  
Member (A)