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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,
JAIPUR

Date of order: 20.8.1996

FA No. 9/1995 (OA No. 21/1990)

Union of India and Ors. Applicants

Versus

Prakash Chand Khundia Respondent

Mr. Manish Bhandari, Counsel for the applicants in the FA.

Mr. P.V.Calla, counsel for the respondent in FA.

COFAM: Hon'ble Mr. Gopal Krishna, Vice Chairman

Hon'ble Mr. O.P.Sharma, Administrative Member

ORDER

For Hon'ble Mr. O.P.Sharma, Administrative Member

In this Review Application the Union of India and other official respondents have prayed that the order passed by the Tribunal on 12-12-1994 (Ann.R2) in OA No. 21/1990, Prakash Chand Khundia Vs. Union of India and Ors., may be reviewed for the various grounds mentioned in the Review Application.

2. In the order dated 12-12-1994 (Ann.R2) passed by the Tribunal in the aforesaid OA, it was held that a person selected in an earlier panel is senior to the one who entered higher grade through subsequent panel. The OA was allowed and the respondents were directed to give benefit to the applicant of entering into higher grade on an earlier date with consequential benefits.

3. Notices of the Review Application was given to Shri P.C.Khundia. No reply has been filed on his behalf. Mr. P.V.Calla has appeared for Mr. Khundia and has argued the matter. We have also heard Mr. Manish Bhandari, counsel for the applicants in the Review Application i.e. Union of India and others, who were official respondents in the OA.

4. In the Review Application several grounds have been

taken for seeking a review of the order passed on 12-12-1994. One of the grounds taken by the applicants seeking review is that in the reply to the OA an objection was taken to the maintainability of the OA on the ground that it was barred by limitation. This objection taken by the respondents at that time in the reply filed by them was not considered and dealt with by the Tribunal while passing the order dated 12-12-1994. Further, they have stated that there is a conflict between the judgments of Jaipur Bench of the Tribunal and of the Bombay Bench of the Tribunal with regard to the matter dealt with in the Tribunal's order. The posts in question are controlled by the Headquarter, Bombay and, therefore, they have to take into account the judgment passed by the Bombay Bench of the Tribunal in this regard. Yet another objection taken by them is that if the applicant was aggrieved by the promotions given to other employees, all such other persons were necessary parties to the OA. Therefore, the applicant was not entitled to any relief, whatsoever, from the Tribunal. Any favourable order passed in favour of the applicant w.e.f. 1-10-1980 as per directions of the Tribunal would prejudice the right of the persons already promoted. There are ^{also} some other grounds mentioned therein in support of the plea of review of the order of the Tribunal.

5. During the arguments the learned counsel for Mr. P.C.Khundia stated that once the Tribunal passed order Ann.R2 after going through the reply filed by the respondents in the OA, it was presumed that the Tribunal had considered all the points raised by the respondents. It was, therefore, not necessary for the Tribunal to give a specific finding on the question of limitation. He added that the relief granted by the Tribunal is on the basis of the well settled position in law that a person selected on the basis of an earlier panel is to be treated as senior to the one selected on the basis of the

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subsequent panel and therefore, the Tribunal was not wrong in passing the above order even if there is no specific mention about the ground regarding limitation in the order of the Tribunal. He further stated that none was present on behalf of the respondents on the date when the OA was heard and therefore, the respondents have no right to file the Review Application with regard to the order dated 12-12-1994. The learned counsel for Shri Ibhundia has also drew our attention to the averments in the Review Application to the effect that the judgment dated 12-12-1994 has been passed in haste without considering all the points raised and therefore, on that ground also it deserves to be reviewed. According to Mr. Calla, the Review Application deserve to be dismissed on the ground of not using proper language before the Court.

6. We have heard the learned counsel for the parties and have perused the records. At this stage it is not necessary for us to deal with all the grounds raised in the Review Application. The respondents had raised the plea of limitation in the OA with regard to its maintainability. The Tribunal's order dated 12-12-1994 (Ann.B1) does not show that this plea was considered by the Tribunal. The order dated 12-12-94, therefore deserves to be reviewed and recalled so that a fresh order can be passed. It is rather unfortunate that the respondents have not used proper language while making this Review Application but that, in our view, cannot be a ground for rejecting the Review Application straightway if there is merit in some other grounds raised therein. The non-consideration of the ground regarding plea of limitation raised by the respondents amounts to an error apparent on the face of the record. Accordingly, we recall our order dated 12-12-1994. The OA shall now be heard afresh on merits and it may be listed

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for hearing on 3-9-96. The Review Application is allowed accordingly.

(O.P.Sharma)

Administrative Member

Gopalkrishna
(Gopal Krishna)

Vice Chairman