

3

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,
JAIPUR

RA No.3/92 (OA No.650/96)

Date of order:20.3.1998

Union of India through Secretary to the Government of India, Ministry of Finance, Department of Revenue, New Delhi.

.. Applicant

Versus

Balwant Singh Bhatia, Assistant Collector of Central Excise (Retired).

.. Respondent

ORDER

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

This Review Application has been filed by the respondent in OA No. 650/96 seeking a review of the order of the Tribunal passed on 3.11.1997 in the aforesaid OA, Balwant Singh Bhatia v. Union of India through Secretary to the Government of India, Ministry of Finance, New Delhi by which the Tribunal had directed grant of interest at the rate of 12% per annum for the period from 1st May, 1993 to the date of payment of arrears to the applicant therein. The applicant in the Review Application has sought deletion of the aforesaid direction contained in the order of the Tribunal.

2. In OA No. 650/96, Shri Balwant Singh Bhatia had prayed that notional promotion to senior scale Rs. 1100-1600 of Assistant Collector may be granted to the applicant from the date from which it had been granted to his juniors and consequential pensionary benefits may also be granted to him alongwith interest at 18%

QW

4

till the date of the payment. The Tribunal after hearing the parties came to the conclusion that in view of the directions of the Hon'ble Supreme Court dated 13.8.1990, some of which were of an interim nature, the applicant in the OA had acquired a right to promotion to the senior scale of Assistant Collector. The Govt. respondent in the OA had passed the promotion order on 1.2.1996. Therefore, the Tribunal held that the applicant in the OA had ^alegitimate grievance that the promotion order has been considerably delayed and therefore, he was entitled to payment of interest on the delayed payment of arrears. The Tribunal had also observed that no reasons have been assigned for the delay in passing the order of promotion consequent upon the direction of the Hon'ble Supreme Court. The applicant made his first representation regarding his grievance on 19.4.1993. Therefore, the Tribunal had directed that simple interest of 12% per annum shall be granted to the applicant from 1st May 1993 to the date of payment of arrears as a consequence of the order dated 1.2.1996 granting promotion to the applicant.

3. Besides the Review Application which has been filed on 6.3.1998, the applicant in the Review Application has also filed a Misc. Application, No. 52/98, seeking condonation of delay in filing the Review Application. The period prescribed for filing the Review Application is 30 days from the date of receipt of a copy of the order of which review has been sought. The Tribunal's order was received by the Commissioner of Central Excise, Mumbai-II on 11.11.1997 and was forwarded to the Central Board of Excise and Customs where it was received on 14.1.1998. The period of 30 days expired on 11.12.1997. However, since the

9

⑧

order sought to be reviewed was actually received in the Ministry of Finance only on 14.1.1998, The Review Application is not barred by limitation, according to the applicant in the Review Application. Even if it is assumed that the Review Application is barred by limitation, the Review Applicant has prayed for condonation of delay on the grounds mentioned in the Misc. Application.

4. After carefully going through the grounds mentioned in the Misc. Application, we condone the delay in filing the Review Application and proceed to dispose it of on merits.

5. After going through the Review Application, we are of the view that it can be disposed of by circulation and it is not necessary to fix it for hearing for the purpose of its disposal. It is accordingly being disposed of by circulation.

6. The grounds mentioned in the Review Application for seeking review are that the applicant in the OA had retired on superannuation in October, 1985 i.e. nearly 5 years before the date of the interim order of the Hon'ble Supreme Court dated 13.8.1990. Therefore, his case could not be placed before the DPC while considering the cases of adhoc promotees for grant of senior scale in terms of the interim order of the Hon'ble Supreme Court. When Shri Bhatia represented in April, 1993 for the first time for grant of senior time scale of pay, efforts were made to collect his service records from the office of his last posting. It came to the notice of the respondent in the OA that his ACR Dossiers had been destroyed. Shri Phatia's case was considered on the basis of whatever relevant records and documents were available in the absence of ACR

⑧

: 4 :

Dossiers and he was granted promotion to the senior time scale ^{by order dated 1.2.1996} w.e.f. 6.11.1984 with arrears of pay and allowances and consequent retirement dues based on the revised pay. According to the applicant in the Review Application, there were adequate reasons for the delay in issuing the order dated 1.2.1996 granting senior time scale to the applicant in the OA because of non-availability of crucial records. This fact, however, was not brought to the notice of the Tribunal at the time of hearing. The review applicant has further stated that the final judgment was delivered by the Hon'ble Supreme Court on 22.11.1996 and if the final judgment is taken in to account, Shri Phatia would not have been promoted as Assistant Collector on a regular basis in 1980 and, therefore, he would not have been entitled to promotion in the senior time scale w.e.f. 6.11.1984 as per the Office Order dated 1.2.1996 passed in his case. The judgment of the Hon'ble Supreme Court dated 22.11.1996, however, could not be brought to the notice of the Tribunal at the time of hearing of the OA. It is on these ~~grounds~~ grounds viz. not placing relevant material/facts/judgment before the Tribunal at the time of hearing that the order granting interest at the rate of 12% per annum on arrears came to be passed by the Tribunal. Therefore, the review applicant has sought a review of the Tribunal's order.

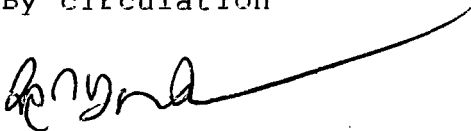
7. We have carefully considered the averments in the Review Application in the light of the order passed by the Tribunal in OA No. 650/96 and the provisions contained in Order XXXVII Rule 1 of the Code of Civil Procedure. If a review is sought on the ground that certain new and important matters or evidence were not within the knowledge of the party seeking review or

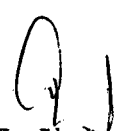
A

which could not be produced at the time when the order was passed by the Court, the parties have further to show that it was even after the exercise of due diligence that the matters did not come within the knowledge of the parties or these could not be produced at the time when the order was passed. There is no indication in the application for review that due diligence was exercised by the parties and inspite of such exercise of due diligence, the matter or evidence in question could not be produced before the Tribunal. There is no indication in the application seeking reivev why it took as long as nearly 3 years after the applicant submitted a representation to the respondent in the OA to pass order dated 1.2.1996. As far as the judgment of the Hon'ble Supreme Court is concerned, it has been passed on 22.11.1996. It is a matter of argument whether the final judgment of the Hon'ble Supreme Court has the effect which is sought to be attributed to it by the applicant in the Review Application but even if it is assumed ^{that} ~~what~~ ^{have} they stated is correct, the Tribunal's order is dated 3.11.1997 i.e. it was passed after nearly one year of the date of the judgment of the Hon'ble Supreme Court. With exercise of due diligence, the respondent in the OA could certainly have brought it to the notice of the Tribunal if they had thought ^{that} ~~it~~ had an important bearing on the subject matter of the OA. In any case, failure to bring a judgment to the notice of the Tribunal cannot constitute a proper ground for review.

8. We are, therefore, of the view that there is no merit in this review application. It is dismissed

By circulation


(Ratan Prakash)
Judicial Member


(O.P. Sharma)
Administrative Member