

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH; JAIPUR.

Review Application Nos. 29/2003, 30/2003, 31/2003, 33/2003, and 35/2003. in their respective O.A. Nos. 299/2003, 375/2003, 394/2003, 376/2003, 393/2003.

Dated: 13th day of April two thousand five.

Hon'ble Mr. J.K. Kaushik, Judicial Member.

Hon'ble Mr. A.K. Bhandari, Administrative Member.

1. Union of India through the
Secretary, Department of Personnel & Trg.
Govt. of India, New Delhi.
2. The Chairman, Central Board of Excise
and Customs, Department of Revenue,
M/o Finance, North Block, New Delhi.
3. The Chief Commissioner, Central Excise
and Customs Jaipur Zone,
Jaipur.
4. The Commissioner, Central Excise and
Customs, Statute Circle,
'C' Scheme, Jaipur:

Applicants/ 1 to 4 in R.A

Nos. 29, 30, 31,,33,and 35

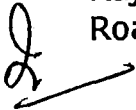
rep by Mr. T.P. Sharma : Counsel for the applicants.

VERSUS

Rajendra Kumar Dubey, s/o Shri Ram Gopal Dubey, r/o 7/146,
Malviya Nagar, Jaipur. : Respondent in R.A. No. 29/2003

G.K. Gaur, S/o Shri Bhagwati Prasad Sharma, r/o 132, Barodia
Scheme, Jaipur. : Respondent in R.A. No. 30/2003

Rajendra Sharma s/o Shri Amar Singh, R/o D-38, Madho Singh
Road, Bani Park, Jaipur. : Respondent in R.A. No. 31/2003



CR)

K.L. Vaishnav, s/o Shri Bhagwati Prasad Sharma, , r/o 132,
Barodia Scheme, Jaipur. : Respondent in R.A. No. 33/2003

G.P. Dadhich, S/o Shri J.P. Dadhich, C/o Shri Rajendra Sharma,
1-J-42, Jawahar Nagar, Jaipur

: Respondent in R.A. No. 35/2003

ORDER

Per Mr. J.K. Kaushik, Judicial Member.

The Review Applications Nos. 29/2003 to 36/2003 filed by the by the applicants in the aforesaid and three other OAs were decided by a common order dated 5.2.2004 under the rule 17 of CAT procedure Rules 1987 (for brevity the rules), came to be earlier decided by circulation in accordance with sub rules of rule 17 of said rules which empowers this Bench of the Tribunal to adopt such mode for deciding the review application and obviously it was not considered necessary to hear any of the parties. The relevant portions of the said rules is excerpted as under:

" 17(3). Unless otherwise ordered by the Bench concerned, a review application shall be disposed of by circulation and the Bench may either dismiss the application or direct notice to the opposite party."

The review applications came to be dismissed on dated 5.2.2004 accordingly with the following order (operative part) :

"11. In the premises, the Review Application Nos. 29/2003, 30/2003, 31/2003, 32/2003, 33/2003, 34/2003, 35/2003, and 36/2003, are frivolous, misconceived and meritless and same stands rejected. The applicants are saddled with costs of Rs. 500/- in respect of each review application, to be deposited with the registry of this bench of the Tribunal within a period of



two months from the date of receipt of a copy of this order. The amount of the costs so deposited be utilised for purchase of law book for Library of this Tribunal and the Dy. Registrar shall keep a track on the same."

2. The aforesaid order has been set aside by their Lordships of the Hon'ble High Court at Jaipur Bench vide order dated 18.5.2004 with following directions:

" Accordingly these writ petitions succeed and the same are allowed. The order dated 5.2.2004 of the Learned Tribunal in Review Applications is quashed and set aside. The learned Tribunal is directed to revive the Review Applications to their original numbers and decide the same on merits after affording full opportunity of hearing to both the parties. The review applications shall be decided by the learned tribunal within a period of two months from the date of receipt of the copy of this order."

3. In compliance of the aforesaid directions, these review applications have been revived to their original numbers. We have extended full opportunity to all the parties and have heard the arguments advanced by learned counsel representing them at a considerable length. We have also carefully and dispassionately considered the submissions made and the pleadings as well as the records of case.

4. The aforesaid review applications have been filed under section 22(3)(f) of Administrative Tribunal Act, 1985) (sic section 17 of the Central Administrative Tribunal Act, 1985) against the order passed in their respective Original Applications on dated 20.11.2003 and the operative portions are identical and

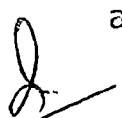


reads as under: -

"In view of what has been stated and discussed above, there is force in the instant application and therefore the same is partly allowed. The impugned order in so far as it relates to the applicant stand quashed and the applicant shall be entitled to all consequential benefits. However, this order will not preclude the respondents from passing any fresh order in accordance with law. With regard to other relief(s) claimed by the applicant he is at liberty to approach the Tribunal according to law. No costs."

5. The factual aspect as enunciated in the review application is that the respondents (applicants in OAs) were promoted from the post of Inspector of Central Excise & Customs to the post of Superintendent of Central Excise & Customs vide order-dated 23.9.2002. The review DPC was held in pursuance with the DOPT's clarification dated 28.1.2003, regarding the reservation policy. The respondents belong to general category and had to be reverted as per the recommendations of the review DPC for making rooms for the 17 SC/ST reserve category candidates. The main ground on which the review applications have been filed is that the applicants rectified their mistakes and for this reason no show cause or pre-decisional hearing to the respondents was necessary. Certain decisions have been cited in support of the same. The next ground is that the order of the Tribunal is against the rules and is liable to be reviewed. Yet another ground is the Tribunal has committed a serious error in relying on the principles of natural justice.

6. The learned counsel for the applicants in these review applications (respondents in OAs), has endeavoured hard to



persuade us that the principles of natural justice was not required to be followed and no pre-decisional hearing or show cause notice was necessary before passing the impugned order. He made us to traverse through various documents annexed to the OAs. He was at pains to submit that the applicants were simultaneously promoted on the same day through another order and this fact was lost sight of by this bench of the Tribunal. He further contended that once they have been promoted immediately, none of their rights could be said to be infringed and they were not at all adversely affected. He feebly submitted that he could have cited the judgments referred to in these RAs for which he made a request at the time of hearing of the OA and also contended that they could be also considered even now. However he did not show or produce any of them even now. He repeated his submissions a number of times and did not adduce anything more.

7. Per contra, the learned counsel for the respondents (applicants in OA), has with equal vehemence countered the contentions raised on behalf of the applicants and has submitted that the respondents were holding the promotional posts ever since 1995 and they were given regular promotions vide order dated 23.9.2002. The promotion, which have been said to be given simultaneously with the reversion order, would result in completely damaging their service career and there can be no doubt that the impugned order visited the applicants with evil consequences. He has also tried to persuade us that this bench of the Tribunal was fully conscious of the adversity caused by the

made effective from a future date i.e. prospectively, wiping of their vested rights of seniority, pay fixation etc. on the same. He also submitted that no judgement was cited on behalf of the applicants (respondents in OA) at the time of hearing and the only thing that took place was that the cases were passed over for a while for getting the factual aspect ascertained from the departmental authorities relating to issuance of show cause notice to which reply came in negative.

8. Before adverting to the factual aspect of this case, we would ascertain legal position and a scope of review. Section 22(3) of the Administrative Tribunals Act, 1985 confers on an Administrative Tribunal discharging its functions under the Act, the same powers as are vested in a civil court under the Code of Civil Procedure while trying a suit in respect, inter alia, of reviewing its decisions. Section 22(3) (f) is as follows:

"Section 22(3) (f):

A Tribunal shall have, for the purpose of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely, -

(a) to (e)

(f) reviewing its decisions;

(g) to (i)..... "

A civil court's power to review its won decisions under the Code of Civil Procedure is contained in Order 47 Rule 1. Order 47 Rule 1 provides as follows:

"Order 47 Rule 1;

Application for review of judgment.

(1) Any person considering himself aggrieved,-

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a court of



Small Causes, and who, from the discovery of new and important matter or evidence which after the due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply a review of judgment to the Court which passed the decree or made the order.

(2) xxx "

9. The power of review, which is granted, to an Administrative Tribunal is akin to the power given to a civil court under Order 47 Rule 1 of the Code of Civil procedure. Therefore, any person (inter alia) who considers himself aggrieved by a decree or order from which an appeal is allowed, but from which no appeal has been preferred can apply for review under Order 47 Rule 1(1) (a) . This position is settled by the Apex Court in case of **Gopabandhu Biswal v. KRISHNA CHANDRA MOHANTY & ORS** [1998 SCC (L&S) 1147]. It also is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, CPC. In connection, the decision of the Supreme Court, in the case of **Aribam Tuleshwar Sharma v. Aribam Pishak Sharma**, [AIR 1979 SC 1047], is instructive wherein their Lordships of supreme court have held as under:

"It is true as observed by this Court in Shivdeo Singh v. State of Punjab, there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person

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seeking the review or could not be produced by him at the time when the order was made; nor some mistake or error apparent on the face of the record is found in the order. We are not impressed with the main submission of the learned counsel for the applicants that the factum of simultaneous promotion was lost sight of and as rightly pointed out by the learned counsel for the respondents with full consciousness of the same the order came to be passed. Equally is untrue the plea that the impugned did not adversely affected the respondents; rather we concur the submission of learned counsel for the respondents which is logical as well as appeals to the reason. Incidentally, we may also point out that there is no such ground taken in the review application and the learned counsel for the respondents deserves appreciation for having patiently replied the same without any objection. It would be pertinent to notice that unchecked review has never been the rule. We find that proper grounds do not support these review petitions and the same are not maintainable as such. Thus no interference is called from this Bench of the Tribunal.

12. If such groundless reviews are permitted every disappointed litigant may avenge his defeat by a routine review petition. (*P. N. Eswara Iyer v. The Registrar, Supreme Court of India* {AIR 1980 SC 808 refers}). We have also observed that the applicants seem to be in the habit of filing such frivolous applications in routine for some extraneous reasons, may be to make some scores. *It is seen from the paper book of the case file* that they also filed MAs for extension of time for implementing



the orders of this Tribunal, which are sought to be reviewed today. One side they clearly intended to implement the orders and other side review is being sought. However, the said MAs came to be rejected on ground of maintainability and being misconceived, on dated 15.1.2003. If the authorities become little sensitive and taken note of observation of apex court excerpted in para 8 of the order in OA, such frivolous applications could have been avoided and this can add to lighten the burden on public exchequer as well as save valuable time of the courts which are already overburdened and such time can be utilized for deciding the long pending cases.

13. In the premises, the Review Application Nos. 29/2003, 30/2003, 31/2003, 33/2003,, and 35/2003 are frivolous, misconceived and meritless and the same stand rejected, accordingly. The applicants are saddled with costs of Rs. 1000/- in respect of each review application, to be paid to the contesting respondents (applicants in respective OAs) within a period of two months from the date of receipt of a copy of this order. Liberty is reserved to the applicants in this RA to recover the amounts of costs from the official(s) who may be responsible for filing of these review applications.

(A.K. Bhandari)
Administrative Member

(J.K. Kaushik)
Judicial Member

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