

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH; JAIPUR.**

Review Application No. 37/2003 in O.A. No. 158/2003.

05 / 02 / Day of February two thousand four.

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

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

D.L. Malhotra,
S/o Late Shri L.R. Malhotra,
R/o L. 33, Income Tax Colony, Tonk Road,
DURGAPURA- Jaipur. : Applicant.

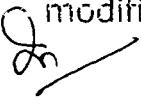
Rep. By Mr. R.N. Mathur, Counsel for the applicant.

Versus

1. Union of India through the Chairman
Central Board of Direct Taxes,
North Block, New Delhi.
2. The Chief Commissioner of Income Tax,
Jaipur Region, NCR building, Statue Circle.
Jaipur.
3. Commissioner of Income Tax, Jaipur II
NCR building, Statue Circle B.D. road,
Jaipur.
4. Zonal Accounts Officer, Central Board of Direct
Taxes, NCP building, Statue Circle, B.D. road,
Jaipur. : Respondents.

ORDER

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

Shri D.L. Malhotra, has filed this review application for
modification of the order dated 17.11.2003, to the extent that he


is entitled to get benefit of F.R. 22 (erstwhile FR 22-C - at present F.R.22 (1) (a) (i)) after his promotion on the post of Inspector, Income Tax Department. The O.A. No. 158/2003 filed by the applicant was allowed by order dated 17.11.2003 in the following terms:

"The upshot of the aforesaid discussion is that the O.A. has a force and the same stands allowed and the impugned order dated 17.01.2003(Annex. A.1) is hereby quashed. The applicant was also entitled to all consequential benefits. However, the applicant is not entitled to have the benefit of pay fixation under FR 22-C on the post of Inspector of Income tax as observed above. The rule already issued is made absolute. No order as to costs. "

2. The review application comes up by way of circulation. We have perused the pleadings made on behalf of the applicant. It has been averred that the post of Inspector of Income Tax involved assumption of greater responsibilities and importance than those attached to the post of Office Superintendent and Stenographer Gr.I and persons promoted as such prior to 01.01.96 were extended such benefits. But this Bench of the Tribunal has relied upon FP 22 (III) which raises a presumption that in case pay scale of the post to which an incumbent has been promoted is same as the pay scale of post from which promotion has been given the presumption is that such promotion does not involve assumption of duties and responsibilities of greater importance. In support of the above contention and order dated 05.03.2003) Annex. P. P. No. 2 has been filed for fixation of pay. Reliance has also been placed on a judgement of the Ernakulam Bench of this Tribunal in O.A. K-

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526/87 decided on 13.09.88, by a Single Member Bench in the case of **P. Daniel and others vs. The Chairman, Central Board of Direct Taxes**, wherein in a similar circumstance the said benefit was allowed. It is submitted that the said judgement was referred to during the course of arguments. A reference to certain subsequent representations has also been made and the same were not decided and kept pending.

3. It 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, C.P.C. In connection with the limitation of the powers of the court under Order 47, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India the Supreme Court, in the case of **Aribam Tuleshwar Sharma v. Aribam Pishak Sharma**, [AIR 1979 SC 1047], has 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 seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court."

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4. Examining the facts and circumstances of the instant review application in the light of the above principles of review, as the order, which is sought to be relied upon firstly, we do not find anything on record that the same was not at all brought to our notice. However, we would make it clear that once there is specific Rule that is F.R. 22 (III), which is directly on the point and without any ambiguity, the same is required to be adhered to. Further, a judgement cannot be construed as a statue. See **M/s Amarnath Om Parkash and others vs. State of Punjab and others** [AIR 1985 SC 218]. Thus the order at Annex P.P.9 would not be of any help to the applicant when the decision of this Bench of the Tribunal is in consonance with the specific provisions of Fundamental Rules and even if this Bench of the Tribunal did not notice, the same will not tantamount to any error apparent on the face of the record and the same cannot be a ground for review.

5. However, we hastened to cut short the whole controversy and add that similar issue has been settled by the Apex Court in the case of **Union of India vs. Ashok Kumar Bannerjee** [1993 (5) SCC 242] wherein their Lordships of the Supreme Court have categorically held as under:

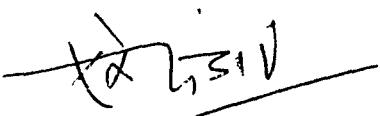
" that for pay fixation under FR 22/1) (a) (i), it is not merely sufficient that a person gets promotion from one post to another involving higher duties and responsibilities but he must move from a lower scale attached to a lower post to a higher scale attached to a higher post. In the instant case, the



applicant has been promoted to the identical time scale and, therefore, he is not entitled to fixation of pay under FR. 22 (1) (a) (i)."

Similar view has been taken by the coordinate Division Benches at Jodhpur and Hyderabad in the cases of V.P. Goel vs. Union of India and others [O.A. No. 245/2000 decided on 05.02.2002] and C.Y. Narayanan vs. UOI and ors [O.A. No. 1278/99 decided on 07.04.2000] respectively. The issue, therefore, has been settled and does not remain res-integra.

6. In view of the aforesaid discussion, we do not find any force in the review application and the same stands rejected by way of circulation.


(A.K. BHANDARI)

Administrative Member


(J.K. KAUSHIK)

Judicial Member.

JSV.