

CENTRAL ADMINISTRATIVE TRIBUNAL
Jabalpur Bench
Circuit Court Sittings
Bilaspur

Review Application No.35 of 2007
(in OA Nos.525&526/2005)
[60003507060208]

Jabalpur, this the 6th day of February, 2008

Hon'ble Dr.G.C.Srivastava, Vice Chairman
Hon'ble Shri A.K.Gaur, Judicial Member

M.W.Ansari, Aged about 45 years, S/o Late Hazi Ahmed Ali, Presently posted as Inspector General of Police (Training), Police Head Quarter, Raipur (C.G.)
-Review Applicant

(By Advocate Shri Anand Kumar Tiwary)

V E R S U S

1. Union of India, through the Principal Secretary, Ministry of Home Affairs, New Delhi-110 001.
2. State of Madhya Pradesh, Through the Secretary, Department of Home Affairs, Vallabh Bhawan, Bhopal (M.P.)
3. State of Chhattisgarh. Through the Secretary, Department Home Affairs, D.K.S. Bhawan, Raipur (CG)
4. S.P.Pandey (IPS), C/o Director General of Police, Police Head Quarter, Bhopal (M.P.)
5. S. Ibrahim (IPS) Joint Director, Intelligence Bureau (Ministry of Home Affairs, North Block, New Delhi).
6. A.K.Dhasmana (IPS), Joint Director (RAV) Research and Analysis Wing, through the Home Secretary, Government of India, Ministry of Home Affairs, North Block, New Delhi
7. Vijay Kumar Singh, (IPS), C/o Director General of Police, Police Head Quarter, Bhopal (M.P.)

Ch

8. Rajendra Kumar, (IPS), C/o Director General of Police, Police Head Quarter, Bhopal (M.P.)
9. Dr. S.K.Shrivastava, (IPS), C/o Director General of Police, Police Head Quarter, Bhopal (M.P.).
10. Sanjiv Kumar Singh (IPS), C/o Director General of Police, Police Head Quarter, Bhopal (M.P.)
11. Seshowan Banerjee (IPS), C/o Director General of Police, Police Head Quarter, Bhopal (M.P.)
12. Ms. A Shankar (IPS), C/o Director General of Police, Police Head Quarter, Bhopal (M.P.)
13. P.K.Shrivastava (IPS), C/o Director General of Police, Police Head Quarter, Bhopal (M.P.)
14. Rajiv Kumar Gupta (IPS), C/o Director General of Police, Police Head Quarter, Bhopal (M.P.)
15. Raja Babu Singh (IPS), C/o Director General of Police, Police Head Quarter, Bhopal (M.P.)
16. K.Vaiphei (IPS), C/o Director General of Police, Police Head Quarter, Bhopal (M.P.)
17. D.C.Sagar (IPS), C/o Director General of Police, Police Head Quarter, Bhopal (M.P.)
18. Mohd. Shahid Absar (IPS), C/o Director General of Police, Police Head Quarter, Bhopal (M.P.)
19. Vishwaranjan (IPS), C/o Director General of Police, Police Head Quarter, Raipur (C.G.)
20. Praveen Mahendru (IPS), C/o Director General of Police, Police Head Quarter, Raipur (C.G.)
21. Anil M. Navaney (IPS), C/o Director General of Police, Police Head Quarter, Raipur (C.G.)
22. Ram Niwas (IPS), C/o Director General of Police, Police Head Quarter, Raipur (C.G.)
23. A.N.Upadhyaya (IPS), C/o Director General of Police, Police Head Quarter, Raipur (C.G.)

24. D.M.Awasthi (IPS), C/o Director General of Police,
Police Head Quarter, Raipur (C.G.)

25. Binay Kumar Singh (IPS), C/o Director General of
Police, Police Head Quarter, Raipur (C.G.)

26. Ashok Juneja (IPS), C/o Director General of Police,
Police Head Quarter, Raipur (C.G.)

27. Rajesh Mishra (IPS), C/o Director General of Police,
Police Head Quarter, Raipur (C.G.)

28. Arundeo Gautam (IPS), C/o Director General of
Police, Police Head Quarter, Raipur (C.G.)

29. Gurjinder Pal Singh (IPS), C/o Director General of
Police, Police Head Quarter, Raipur (C.G.)

30. T.J.Longkumar (IPS), C/o Director General of Police,
Police Head Quarter, Raipur (C.G.)

31. Vivekanand (IPS), C/o Director General of Police,
Police Head Quarter, Raipur (C.G.)

-Respondents

ORDER

By Dr.G.C.Srivastava, VC.-

This review application has been filed in respect of the common order passed by this Tribunal on 16.9.2005 (annexure A-6) in OA Nos.525/2005 and 526/2005. The aforesaid order was passed by a Division Bench comprising Hon'ble Shri M.P.Singh and Hon'ble Shri Madan Mohan, both of whom have ceased to be the Members of this Tribunal. Accordingly, as per para I.3 of Appendix IV to the Central Administrative Tribunal Rules of Practice, 1993, the Bench comprising the undersigned was constituted to hear this review application. A notice was issued to the applicant for a preliminary hearing and his counsel was heard on 29.11.2007.



2. The subject matter of the aforesaid OAs was allocation of Indian Police Service officers to Chhattisgarh cadre consequent to the bifurcation of the State of Madhya Pradesh under which the new State of Chhattisgarh was constituted.

3. The review-applicant had originally approached the Hon'ble High Court of Chhattisgarh by filing writ petition no.784/2007, wherein the learned counsel appearing for the petitioner submitted that the petitioner was a necessary party before this Tribunal in the aforesaid OAs. The said writ petition was disposed of by order dated 10th October,2007 (annexure A-7) with the following observations:-

“2. Interest of justice would be served if the petitioner approaches the Tribunal by filing original application or by making review application as advised. In case review application is moved, while considering the delay, the Tribunal shall consider the period between filing of this petition and its decision as explained. Therefore, the review petition shall not be dismissed on the ground of delay between 1-2-2007 to 10-10-2007, if review petition is filed by 22-10-2007”.

4. Although this review application has been filed on 18.10.2007 in respect of the order passed by this Tribunal on 16.9.2005, the review applicant has stated in his application that the review application is within time. In this regard, he has made the following averments in para 18 of his review application:

“18....In the aforesaid writ petition notices were issued and by vide order dated 10/10/07 the said writ petition was disposed off with directions to file review application. In the aforesaid order the limitation to file the said review application has also been condoned by this Hon'ble Court if the same is filed by 22/10/07. A certified copy of the order of this Hon'ble is filed herewith as Annexure A-07.”.



5. The above averment does not strictly conform to the order passed by the Hon'ble High Court as quoted in paragraph 2 above. Firstly, the Hon'ble High Court has not exactly directed the applicant to file review application. It has merely been stated that "[I]nterest of justice would be served if the petitioner approaches the Tribunal by filing original application or by making review application as advised". Secondly, the averment that the limitation to file the said review application has been condoned by the Hon'ble High Court if the review application is filed by 22.10.2007, is also not correct. The Hon'ble High Court has observed that "[I]n case review application is moved, while considering the delay, the Tribunal shall consider the period between filing of this petition and its decision as explained". The Hon'ble High Court has further clarified that "the review petition shall not be dismissed on the ground of delay between 1-2-2007 to 10-10-2007, if review petition is filed by 22-10-2007". Thus, the Hon'ble High Court has merely condoned delay of slightly over 8 months because of filing of the writ petition. We, however, find that by means of this review application, order dated 16.9.2005 of this Tribunal is sought to be reviewed. This review application should have been filed within a month of the passing of the aforesaid order. Instead it has been done more than 16 months after passing of the aforesaid order after deducting the period between 1.2.2007 to 10.10.2007 as condoned. The review application is not accompanied by any application for condonation of delay. It, therefore, deserves to be dismissed on the ground of delay and laches.

6. We have, however, considered the review application on merits as well. It is seen that the aforesaid OAs were disposed of without giving any relief to the applicants because the proposal to make changes in the allocation already done to Chhattisgarh cadre



had been dropped by the Government of India for want of concurrence from the State of Madhya Pradesh. The aforesaid order of the Tribunal thus does not in any way adversely affect the review applicant, who was not a party in these OAs. The review application has nevertheless been filed for the following relief:

“It is therefore humbly prayed that the order dated 16/9/05 passed in Original Applications No.525 & 526 of 2005 may kindly be set aside and any further order may kindly be passed after affording opportunity to the petitioner and other affected IPS officials by arraying them as respondents in the aforesaid Original Applications to meet the ends of justice”.

The reasons for making this prayer have been explained, inter alia, by the following averments:-

“13. That the fundamental and legal right of the petitioner are seriously prejudiced due to passing of the impugned order dated 16/9/05 without affording the petitioner an opportunity of hearing. The petitioner and the IPS officials named in the letter dated 30/5/05 were likely to be affected by the De novo exercise of allocation amongst IPS cadre for the State of Madhya Pradesh & Chhattisgarh. The petitioner is a necessary party in the case.

14....Since the petitioner is a necessary party in the case and the adjudication by the Hon'ble Tribunal without impleading him as party is bad. Hence the aforesaid impugned order deserves to be set aside for affording an opportunity of hearing to necessary parties.

15...Since, no cause of action existed adjudication by the Hon'ble Tribunal is a procedural impropriety on mere apprehension.

16... The recommendation of Ministry of Law regarding the applicability of Rule 5(2) of the IPS Cadre Rule 1954 is erroneous”.

7. A perusal of the prayer and grounds extracted above clearly shows that the review applicant has not brought out any mistake or error of fact or law, apparent on the face of record. The language of the review application shows that this is, in fact, an appeal in disguise. This Tribunal can not act as an appellate body over its

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own decision. In this context we may refer to the decision of the Hon'ble Supreme Court in the case of **K.Ajit Babu and others Vs. Union of India and others**, JT 1997 (7) SC 24, wherein it has been observed as under:

"4.Often in service matters the judgments rendered either by the Tribunal or by the Court also affect other persons, who are not parties to the cases. It may help one class of employee and at the same time adversely affect another class of employees. In such circumstances the judgments of the courts or the tribunals may not be strictly judgments in personam affecting only to the parties to the cases, they would be judgments in rem. In such a situation, the question arises; what remedy is available to such affected persons who are not parties to a case, yet the decision in such a case adversely affect to their rights in the matter of their seniority. In the present case, the view taken by the Tribunal that the only remedy available to the affected persons is to file a Review of the judgment which affects them and not to file a fresh application under Section 19 of the Act. Section 22(3)(f) of the Act empowers the Tribunal to review its decisions. Rule 17 of the Central Administrative Tribunal (Procedure and Rules) (hereinafter referred to as "the Rules") provides that no application for review shall be entertained unless it is filed within 30 days from the date of receipt of the copy of the order sought to be reviewed. Ordinarily, right of review is available only to those who are party to a case. However, even if we give wider meaning to the expression "a person feeling aggrieved" occurring in Section 22 of the Act whether such person aggrieved can seek review by opening the whole case decided by the Tribunal. The right of review is not a right of appeal where all questions decided are open to challenge. The right of review is possible only on limited grounds, mentioned in Order 47 of the Code of Civil Procedure. Although strictly speaking, the Order 47 of the Code of Civil Procedure may not be applicable to the tribunals, but the principles contained therein surely have to be extended. Otherwise, there being no limitation on the power of review, it would be an appeal and there would be no certainty of finality of a decision. Besides that, the right of review is available if such an application is filed within the period of limitation. The decision given by the Tribunal, unless reviewed or appealed against, attains finality. If such a power to review is permitted, no decision is final, as the decision would be subject to review at any time at the instance of party feeling adversely affected by the said

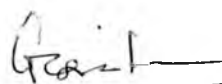


decision. A party in whose favour a decision has been given can not monitor the case for all times to come. Public policy demands that there should be an end to law suits and if the view of the tribunal is accepted the proceedings in a case will never come to an end. We, therefore, find that a right of review is available to the aggrieved persons on restricted ground mentioned in Order 47 of the Code of Civil Procedure if filed within the period of limitation".

8. In view of the above discussion we find that since this review application was filed on 16.10.2007, it is delayed by more than 16 months after deducting the period between 1.2.2007 to 10.10.2007. Further, no error apparent from the face of the order dated 16.9.2005 in OAs 525 & 526/2005, has been brought out in the review application.

9. Accordingly, the review application is rejected.


(A.K. Gaur)
Judicial Member


(Dr. G.C. Srivastava)
Vice Chairman

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पूजाकम सं. ओ/व्या. जवालपुर, दि.
पु. वि.
(1) स. वि.
(2) स. वि.
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सूचना एवं जनसम्पर्क कार्यवाही हेतु
उप रजिस्ट्रार

Shri A.K. Tiwari
Shri A.P. Chaur

Free
08/12/08