

**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR**

Review Application No. 72 of 2005
(In O.A. No. 189 of 2005)

this the 16th day of December 2005

G.L. Daharia Applicant

V e r s u s

Union of India & Ors. Respondents

O R D E R (In Circulation)

By M.P. Singh, Vice Chairman –

This Review Application has been filed by the applicant to review the order passed by the Tribunal on 28th September, 2005 in OA No. 189 of 2005.

2. The ground taken for review in the Review Application is that the panel was issued on 10.6.1991 and the applicant was promoted vide order dated 14.6.1991. Thus, the life of the panel was exhausted on 14.6.1991 and thereafter its extension up to 28th June, 1993 is invalid and uncalled for and is based on patent error of fact. Moreover, the applicant was exonerated within 14 months but the issuance of the charge sheet itself was declared to be ab initio and hence, nonest from the date of its issuance i.e. 27.4.1992. The statutory limit of 150 days was violated by the disciplinary authority and hence it was invalid.

3. From the facts, we find that the Tribunal vide its order dated 28th September, 2005 has passed the following order :

“6. We have given careful consideration to the rival contentions made on behalf of the parties. The undisputed facts are that the applicant has qualified the selection for the post of Asstt. Loco Inspector and has been empanelled for the said post vide order dated 10th June, 1991 (Annexure R-2). The promotion order was

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also issued vide order dated 24th December, 1992 (Annexure A-5) but the applicant could not be appointed as a charge sheet was pending against him at that point of time. He has been exonerated of the charges by the respondents vide order dated 28th June, 1993 i.e. after more than 2 years. Since the panel can be enforced for a period of 2 years only and he has been exonerated after more than 2 years, he cannot be appointed against the post of Asstt. Loco Inspector against the selection made in the year 1991. The applicant has not been able to show us any document to the effect that a Government servant on exoneration can be considered for appointment even after the validity of the panel has lapsed."

On perusal of the file of the aforesaid OA we find that the respondents in their reply have specifically stated that the applicant though placed on panel could not be effectively promoted to the grade of Rs. 2000-3200/- through promotion orders issued on 14.6.1991 (Annexure R-3) and necessary remarks were made against his name. However, the applicant did not accept the promotion order and gave his refusal to work as Supervisor and expressed his desire to work on line as Driver vide his application annexed at Annexure R-4. The refusal of the applicant was accepted by the respondents vide order dated 22.10.1991 (Annexure R-5) and he was permitted to work on the post of Goods Driver. The instructions relating to refusal of promotion as provided in Swamy's Establishment and Administration is as under :

"Refusal of promotion –

17.12. When a Government employee does not want to accept a promotion which is offered to him he may make a written request that he may not be promoted and the request will be considered by the appointing authority, taking relevant aspects into consideration. If the reasons adduced for refusal of promotion are acceptable to the appointing authority, the next person in the select list may be promoted. However, since it may not be administratively possible or desirable to offer appointment to the persons who initially refused promotion, on every occasion on which a vacancy arises, during the period of validity of the panel, no fresh offer of appointment on promotion shall be made in such cases for a period of one year from the date of refusal of first promotion or till a next vacancy arises, whichever is later. On the eventual promotion to the higher grade, such Government servant will lose seniority vis-à-vis his juniors promoted to the higher grade earlier irrespective of the fact whether the posts in question are filled by selection or

otherwise. The above mentioned policy will not apply where ad hoc promotions against short term vacancies are refused.”

4. In view of the aforesaid instructions the applicant could not have been promoted. Moreover, a charge sheet had also been issued although he was exonerated subsequently. Hence, we do not find any patent illegality in the order passed by the Tribunal. It is a settled legal position that the review proceedings are to be strictly confined to the ambit and scope of Order 47 Rule 1 of CPC. In exercise of the jurisdiction under Order 47 Rule 1 of CPC it is not permissible for an erroneous decision to be reheard and corrected. It must be remembered that a review petition has a limited purpose and cannot be allowed to be an appeal in disguise. The Hon’ble Supreme Court in the case of Union of India Vs. Tarit Ranjan Das, 2004 SCC (L&S) 160 held that “Administrative Tribunals Act, 1985 S. 14 – Review – Scope – the Tribunal cannot act as an appellate court while reviewing the original order.”

5. In view of the foregoing, we do not find any merit in this Review Application and accordingly, the same is rejected at the circulation stage itself.


(Madan Mohan)
 Judicial Member

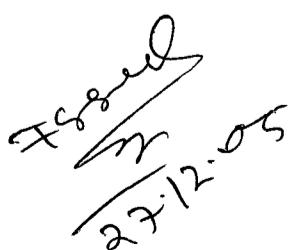

(M.P. Singh)
 Vice Chairman

Rkv.

पृष्ठांकन सं. ओ/न्या.....जल्दपुर, दि.....
 यतिनिधि दिन 11/12/05

- (1) समिय, उद्योगसामाजिक नियोनेटिव्स, जल्दपुर
- (2) आवेदक की/की पत्री, दि.....को जल्दपुर
- (3) प्रत्यर्थी की/की पत्री, दि.....को जल्दपुर
- (4) विधायक, देशभाषा, जल्दपुर विधायकीय संघ, एवं आवश्यक कार्यकार्ता, दि.....

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 डप रजिस्ट्रार


 27/12/05