

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 11th day of November, 2008

REVIEW APPLICATION NO.23/2008

IN

ORIGINAL APPLICATION NO.105/2004

CORAM :

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER
HON'BLE MR.B.L.KHATRI, ADMINISITRATIVE MEMBER

Babu Lal Mudgal
S/o Shri Ratan Lal Sharma,
Retired from the post of DDM (PLI-I),
O/o Chief Post Master General,
Rajasthan Circle,
Jaipur.

... Applicant

Versus

1. Union of India through
Secretary to the Government,
Department of Posts,
Ministry of Communication,
Dak Bhawan, Sansad Marg,
New Delhi.
2. Chief Post Master General,
Rajasthan Circle,
Jaipur.
3. Shri Bodan Lal Meena,
Assistant Director,
Postal Services,
Jodhpur Region, Jodhpur,
At present SSPOs Alwar.
4. Shri C.M.Gehlot,
Sr.Supdt., RMS,
Jaipur Division,
Jaipur.

... Respondents

ORDER

PER HON'BLE MR.B.L.KHATRI

This Review Application has been filed by the applicant for reviewing the order dated 3.9.2008, passed by this Bench of the Tribunal in OA 105/2004. The applicant had filed the said OA thereby praying for the following relief :

- "(i) That the entire records relating to this case be called for and after perusing the same the official respondents be directed to promote the applicant in the cadre of HSG-I (IPO line) w.e.f. 3.4.91 with all consequential benefits, by quashing the letter dated 5.3.2003 (Ann.A/1) with the letter dated 4.4.97 (Ann.A/7) and declaring the promotion of respondents No.3 and 4 against procedure and rules.
- (ii) By another appropriate order the official respondents be further directed to treat the applicant senior to respondent No.3 (Bodan Lal Meena) and accordingly grant all the consequential benefits to the applicant.
- (iii) Any other order, direction or relief may be passed in favour of the applicant which may deemed fit, just and proper under the facts and circumstances of the case.
- (iv) That the costs of this application may be awarded."

2. The said OA was decided by this Bench of the Tribunal vide order dated 3.9.2008, dismissing the same. The applicant has submitted this RA for review of the said order.

3. In the OA the applicant was aggrieved against the dismissal of his application through order dated 5.3.2002 (Ann.A/1), passed by the Chief Post Master General. Grievance of the applicant was against the order dated 3.4.91 (Ann.A/5) regarding promotion of ASPOs to officiate in HSG-I (IPO line) cadre, whereby Shri B.L.Bhambhi, Shri Bodan Lal Meena and

Shri C.M.Gehlot had been promoted to officiate in HSG-I (IPO line).

4. In Grounds (A),(B),(C),(D),(G)&(H), the review petitioner/applicant has again raised the point that as per order dated 13.4.87 (Ann.A/4) the competent authority has regularly promoted the applicant as well as private respondents in the cadre of ASPOs and has placed their names in the order of seniority. As per this order, the applicant is senior to respondents No.3 and 4 because his name is at S.No.39, whereas names of respondents No.3 and 4 are at S.No.56 & 52 respectively. Therefore, action of the respondents in treating respondent No.3 as senior to the applicant and promoting him on the basis of seniority in HSG-I was totally against the rules.

5. Secondly, in Ground-(A), it is submitted that the gradation list/seniority list corrected upto 1.7.86 has no legal sanctity in the eye of law for the purpose of further promotion in the cadre of HSG-I (IPO line), the same was not required to be challenged at all by the applicant in the OA as further promotions were required to be made as per the seniority position given in the promotion order of HSG-I (IPO line) dated 13.4.87 (Ann.A/4).

6. In Grounds (E),(F)&(H), the applicant has again raised the grounds already decided vide order dated 3.9.2008.

7. Thirdly, the applicant has contended that out of three total posts of HSG-I (IPO line), the respondents have filled two posts

Pr

by SC candidates namely; S/Shri B.L.Bhambhi and C.M.Gehlot thereby providing reservation to the extent of 66.33% and if the vacancy filled up by Shri Bodan Lal Meena is also taken into account then the percentage of reservation would amount to 100%. The main thrust of the applicant is that the respondents have exceeded the limit of reservation.

8. As regards point No.1&2, we find that the criteria for promotion to HSG-I (IPO line) is seniority-cum-fitness in ASPOs cadre with at least two years of service in ASPOs cadre. There were three vacancies in HSG-I (IPO line) cadre for the year 1991 community-wise break up whereof is as under :

Unreserved	:	01
SC	:	02 [one carried forward point]

Shri B.L.Bhambhi being senior to the applicant in ASPOs cadre was selected against the carried forward point of SC for the year 1986. No DPC was convened in the year 1989 and 1990 and Shri B.L.Meena being senior to the applicant in ASPOs cadre was selected against the unreserved vacancy and Shri C.M.Gehlot, who is junior to the applicant was selected against the vacancy reserved for SC. However, the applicant could not be selected due to non-availability of any more vacancy for unreserved category. The following senior most officials of the ASPOs cadre were in the normal zone of consideration:

<u>S.No.</u>	<u>Name</u>	<u>No.of Circle Gradation list of ASPOs</u>
1.	Shri R.D.Giroh	05

2.	Shri J.P.Meena	24
3.	Shri A.R.Gurnani	38
4.	Shri B.L.Bhambhi	51
5.	Shri R.S.Udawat	52
6.	Shri Bodan Lal Meena	53
7.	Shri A.S.Tyagi	59
8.	Shri B.D.Mukhija	63
9.	Shri N.R.Bhardwaj	64

The officials figuring at S.No.1,2,3 & 5 could not find place in select panel drawn up by the DPC due to unsatisfactory record of services as reflected in their CRs. S/Shri B.L.Bhambhi and B.L.Meena figuring at S.No.4&6 respectively were placed in select panel with due regard to seniority cum fitness as also their senior most position amongst the remaining officials shown above. The remaining other caste candidates were not considered since unreserved vacancy stood filled by Shri B.L.Meena. The name of applicant figures at S.No.70 of the circle gradation list of ASPOs corrected upto 1.7.86 (which was not challenged by the applicant) and as such he could not find place even in the zone of consideration what to say of the select panel. The following officials were in the extended zone for remaining one SC point :

1.	Shri Kanhaiya Lal Kalosia	74
2.	Shri C.M.Gehlot	75
3.	Shri J.P.Verma	76
4.	Shri P.C.Bunkar	77

The fact remains that selection of Shri B.L.Bhambi (SC) and Shri Bodan Lal Meena (ST) was inevitable in view of their position being senior-most amongst the officials within zone of consideration and obviously selection against an SC point was

made only by selecting Shri C.M.Gehlot and as such the allegation of the applicant that the prescribed limit of reservation in the case of promotion against HSG-I was exceeded is unfounded. Promotion of the ASPOs for officiating in HSG-I (IPO line) cadre has correctly been made as per the seniority list corrected upto 1.7.86 by the DPC convened in the year 1991. This was the only seniority list by which promotion to the cadre of HSG-I was considered and decided. This seniority list has never been challenged by the applicant and still the applicant is of the confirmed opinion that this seniority list is not required to be challenged as this seniority is to be taken as shown in the order of promotion dated 13.4.87 from the post of Inspector of Post Offices to the post of ASPOs. The applicant is under the mistaken belief that the serial numbers shown in the promotion order are as per the seniority list. In the promotion order these serial numbers have been shown as per the seniority list of Inspectors of Post Offices, who have been promoted as ASPOs. For promotion to the cadre of HSG-I, the seniority list of the ASPOs, corrected upto 1.7.86, has rightly been taken into account. As per this seniority list, Shri B.L.Bhambi is at S.No.51, Shri Bodan Lal Meena is at S.No.53, the applicant is at S.No.70 and Shri C.M.Gehlot is at S.No.75, who is junior to the applicant and was promoted against the reserved vacancy.

9. As regards other points raised by the applicant in Grounds (E),(F)&(H), in view of the facts mentioned in the order dated 3.9.2008, in para-8, it is clear that this is not a case of 100% reservation. The contention of the applicant that reservation

AM

exceeded ceiling limit is also not correct. Promotions have been made as per the roster point, which has already been indicated in the reply by the respondents and also in the order dated 3.9.2008. All these points raised by the applicant had already been considered in para-12 to 19 of the order dated 3.9.2008. Promotions have been ordered as per the roster point and as per the judgement of the Apex Court in the case of R.K.Sabharwal v. State of Punjab [1995 SCC (L&S) 548], wherein it was held that the posts shown at the reserve points are to be filled from amongst the members of reserved categories and the candidate belonging to the general category are not entitled to be considered for the reserved posts. On the other hand, the reserve category candidates can compete for the non-reserve posts and in the event of their appointment to the said posts their number cannot be added and taken into consideration for working out the percentage of reservation. In this judgement, the issue regarding operation of roster system was decided and as per this judgement, the entire cadre strength should be taken into account to determine whether reservation upto the required limit has been reached. It was held that if the roster is prepared on the basis of the cadre strength, that by itself would ensure that the reservation would remain within the ceiling limit of 50%. In substance, the Hon'ble Apex Court said that in the case of hundred-point roster each post gets marked for the category of candidate to be appointed against it and any subsequent vacancy has to be filled up by that category candidate alone (replacement theory). Thus, as per this roster system, the ceiling limit of 50% reservation cannot be exceeded.

Pr

10. As regards filling up of backlog vacancy of SC category by one Shri B.L.Bhambi is concerned, the applicant has not impleaded him as a necessary party. However, the respondents have rightly filled up the same as per Govt. of India, Department of Personnel & Training, OM No.36012/6/88-Estt.(SCT) dated 25.4.89, which provides the normal instructions regarding limitation that the reservation should not exceed 50% of the vacancies will apply only to the current vacancies and not to the backlog vacancies. All the backlog vacancies reserved for SCs/STs will be filled up by the concerned candidates belonging to the reserved category concerned without any restriction whatsoever as they belong to a distinct group of "backlog vacancies". This order of the DOPT was applicable to the backlog vacancies at the relevant time as the DPC was held in the year 1991. The legal position has already been discussed in the original order dated 3.9.2008.

11. The Constitutional validity of the (Eighty First Amendment) Act, 2000, which provides for lifting of the 50% cap on carry over vacancies, has been upheld by the Hon'ble Apex Court in the case of **M.Nagaraj & Ors. v. Union of India & Ors.** [(2007) 1 SCC (L&S) 1013].

12. As regards the point of promotion/appointment of SC candidate against the vacancy for general category subject to merit-cum-fitness is concerned, it is pertinent to refer to the judgement of the Apex Court in the case of **Union of India &**

Pr

Ors. v. Satya Prakash & Ors. [2006 (3) SLJ 371 (SC)], which has taken the view that a reserved candidate who is selected on merit, cannot be adjusted against reserved category but would get adjusted only against general category. This view has also been upheld in the following judgements of the Apex Court :

1. **Union of India v. Virpal Singh Chauhan** [1996 (1) SLJ 65 (SC)],
2. **R.K.Sabharwal v. State of Punjab** [(1995) 2 SCC 745], &
3. **Ritesh R.Sah v. Dr.Y.L.Yamul & Ors.** [(1996) 2 SCC 253].

13. From the above discussion, we find that all the points now raised by the applicant through this RA have already been adjudicated upon by this Bench in the order dated 3.9.2008. In this RA, the applicant could not explain as to how this RA is covered by the power of review of the Tribunal.

14. The power of the Tribunal to review its order under Section-22(3)(f) of the Administrative Tribunals Act, 1985 is analogous to the power of a civil court under Section-114 read with Order-47 Rule-1 of the Code of Civil Procedure. While trying a suit, in respect of the following matters, namely -

- "(a) - (e) --
- (f) reviewing its decisions;
- (g) -(i) --"

The scope of review had been explained by the Apex Court in the case of **Ajit Kumar Rath v. State of Orissa & Ors.** [2000 SCC

M

(L&S) 192]. In this connection, it is pertinent to reproduce para 30 & 31 of the judgement, which reads as under :

"30. The provisions extracted above indicate that the power of review available to the Tribunal is the same as has been given to a court under Section 114 read with Order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of a person on the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it. It may be pointed out that the expression "any other sufficient reason" used in Order 47 Rule 1 means a reason sufficiently analogous to those specified in the rule.

31. Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgement."


The scope of review had also been elucidated by the Hon'ble Apex Court in the recent case of State of West Bengal and Others v. Kamal Sengupta and Another [(2008) 2 SCC (L&S) 735]. In this connection, it is pertinent to reproduce para-18 of the order as under :

"18. Since the Tribunal's power to review its order/decision is akin to that of the civil court, statutorily enumerated and judicially recognized limitations on the civil court's power to review the judgement/decision would also apply to the Tribunal's power under Section 22(3)(f) of the Act. In other words, a tribunal established under the Act is entitled to review its order/decision only if either of the grounds enumerated in Order 47 Rule 1 are available. This would necessarily mean that a tribunal can review its order/decision on the discovery of new or important matter or evidence which the applicant could not

produce at the time of initial decision despite exercise of due diligence, or the same was not within his knowledge or if it is shown that the order sought to be reviewed suffers from some mistake or error apparent on the face of the record or there exists some other reason, which, in the opinion of the Tribunal, is sufficient for reviewing the earlier order/decision."

15. In view of the grounds on which review can be sought under Order 47 Rule 1 of the CPC, the scope of which has been explained by the Apex Court in the above cited two judgements, the applicant has not been able to make out any case for review of order dated 3.9.2008 as per the grounds mentioned in Order 47 Rule 1 of the CPC. We are, therefore, of the opinion that allowing an opportunity of being heard to the review petitioner would be a mere formality as the applicant could not at all make out any case for review of the order dated 3.9.2008. It was held in the case of **Ashok Kumar Sonkar v. Union of India & Ors.**, [2007 (3) SLJ 420], that the principles of natural justice were not required to be complied with where the same would be only an empty formality as the applicant could not make out any case for review and could not show that the original order of this Bench is covered by any of the grounds mentioned in Order 47 Rule 1 of the CPC, as explained by the Hon'ble Apex Court in the two judgements already cited in this order.

16. The Review Application is therefore dismissed, by circulation.


(B.L. KHATRI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)