

Central Administrative Tribunal

Principal Bench, New Delhi

RA-165/2013 in OA No.2129/2010

New Delhi, this the 7th day of September, 2016

**Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)**

Shri Satish Chand Meena
SO/MGO/OS-1
Ministry of Defence,
B Block(Room No.21),
DHQPO, New Delhi-11Applicant

(By Advocate : Mr. Padma Kr.S.with Mr.K.K.Mishra)

Versus

1. Union of India
Through The Secretary
Ministry of Defence , South Block,
DHQ, PO, New Delhi.-11
2. The Secretary
Unions Public Service Commision,
Dholpur House, Shahjahan Road,
New Delhi.
3. Joint Secretary (Training) &
Chief Administration Officer
Ministry of Defence, E. Block,
D.H. QPO, New Delhi-11
4. The Secretary,
DOP&T, North Block,
New Delhi. Respondents

(By Advocate: Mr. Naresh Kaushik)

ORDER (ORAL)

Hon'ble Mr. P.K. Basu, Member (A)

This Review application has been filed against the order dated 5.5.2011 passed in OA No. 2129/10, which had been dismissed on parity of reasons on the ground that similar controversy stands adjudicated by this Tribunal in OA No.

3511/10, Shri Manoj Manu and another vs. The Secretary

DoP&T and ors.. The case of the learned counsel for the applicant is that OA No. 2129/10, **Satish Chand Meena vs. UOI**

&ors, had been dismissed for parity of reasons but the order in OA No. 3511/10, **Shri Manoj Manu and another vs. The Secretary, DoP&T,** had been challenged before the Hon'ble High

Court vide W.P. (C) No. 3297/2011, which was dismissed vide its judgment dated 15.2011. Later on, the Hon'ble Supreme Court set aside the order of the High Court as well as Tribunal and issued mandamus to the UPSC to forward the names of the next three candidates to the DoP&T for appointment to the post of Section Officer's Grade and that they shall get the seniority from the date when Rajesh Kumar Yadav was appointed to the said post. Further, the direction was that their pay shall notionally be fixed, without any arrears of the pay and other allowances.

2. It is, therefore, argued that since the Original ratio decided by the Tribunal in OA No. 3511/20 in **Manoj Manu and another vs. The Secretary, DoP&T** (supra) has been turned down by the Hon'ble Supreme Court, automatically the argument of parity of reasons adopted by the Tribunal would no longer survive and, therefore, review application should be allowed.

3. Learned counsel for the respondents has put forth the following arguments:-

(i). That the applicant has chosen not to challenge the Tribunals order when he was aggrieved by that order but slept over it and waited for the decision in **Manoj Manu and another vs. The Secretary DOP&T and ors.** to be overruled by the Hon'ble Supreme Court and then this OA was filed after more than two years. Therefore, it is argued that the matter deserves to be dismissed on the ground of limitation.

(ii). In order 47 of the CPC the explanation to **Rule-1** states as follows:-

[Explanation.- The fact that the decision on a question of law on which the judgment of the Court is based has been reserved or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.]

(iii) Judgment of the Supreme Court in State of West Bengal and Ors vs. Kamal Sengupta and Anr.,(2008) 8 SCC 612, decided on 16.06.2006 has been relied upon in which the following ratio has been laid down:-

Ratio Decided

"Tribunal cannot review a decision/order under Section 22(3)(f) on the basis of subsequent decision/judgment of a co-ordinate or Larger Bench of the Tribunal or of a superior Court unless there is an error apparent on the face of the record or certain matter or evidence could not be produced at the time of initial decision despite exercise of due diligence."

4. In view of the above, it is argued that review cannot be entertained as it is based on reversal of the order of the High Court and the Tribunal by the Hon'ble Supreme Court 'in another case' of Manoj Manu and therefore no review lies.
5. In reply, the learned counsel for the applicant argued that the order of the Hon'ble Supreme Court in Manoj Manu (supra) case cannot be treated 'in another case' as it relates to the same examination.
6. Learned counsel for the applicant also states that as per doctrine of merger, after the judgment of Hon'ble Supreme Court, the order of the Hon'ble High Court and the Tribunal get merged into it, and, therefore there has been no delay.

7. Heard the learned counsel for the parties and perused the pleadings available on record and legal provisions pointing out by them. From the provisions of Order 47 explanation to rule (1) quoted above, as well as the judgment of the Hon'ble Supreme Court in Kamal Sengupta (supra), it is clear that reversal of the order of Higher Court/ Tribunal is 'in another case' and this cannot be a ground for review as the applicant has failed to point out any error apparent on the face of the record etc. As regards the explanation of the learned counsel for the applicant on delay not arising due to the doctrine of merger, this cannot be accepted for the same reason that decision in Manoj Manu(supra) will be treated as 'in another case' for the purpose of order 47 and hence will have no bearing in the present case. The RA, which lacks merit and is also hit by limitation, is, therefore, dismissed. No costs.

(Dr. Brahm Avtar Agrawal)
Member (J)

/mk /

(P.K. Basu)
Member A)