

**Central Administrative Tribunal
Principal Bench**

**RA No.167/2016
In
OA No.3706/2013**

Order reserved on : 12.01.2017
Order pronounced on : 22.02.2017

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. V.N. Gaur, Member (A)**

1. Govt. of NCT of Delhi
Through its Principal Secretary,
Health and Family Welfare,
Delhi Secretariat, IP Estate
New Delhi
2. The Dean,
Maulana Azad Medical College
2 Bahadur Shah Zafar Marg,
New Delhi

..Review Applicants

(By Advocate : Mr. N.K. Singh for Ms. Avnish Ahlawat
Mr. Rajeev Kumar)

Versus

Dr. Anoop Raj
12 Mahadev Road
Near GPO, New Delhi

...Review Respondent

(By Advocate : Mr. Varun K. Chopra)

ORDER

Hon'ble Mr. V.N. Gaur, Member (A) :-

The present Review Application has been filed by the respondents in OA No.3706/2013 in respect of the order of this

Tribunal dated 10.07.2015 by which the OA was disposed of with the following order :-

“Mr. Varun Chopra, learned counsel for applicant submitted that if the applicant is treated as Professor of Excellence by the respondents, with all consequential benefits, till he attains the age of 65 years, he would not press the Original Application. Mr. N K Singh, learned proxy counsel for respondent Nos. 2 to 4 Govt. of N.C.T. of Delhi readily submitted that for rest of his tenure, the applicant would be treated as Professor of Excellence, with all consequential benefits.

2. In view of the statement made by learned proxy counsel for respondent Nos. 2 to 4, the Original Application is disposed of. No costs.”

2. The grounds for review are that :

(i) The OA No.3706/2013 was filed relying upon the OA Nos.2998/2013 with OA No.3632/2013, OA No.992/2013, OA No.1055/2013 and OA No.299/2013, in which the Tribunal had granted stay on the impugned orders and in OA No.3706/2013 also, an ex-parte stay was granted on the same analogy.

(ii) In the reply filed in the OA, it had been stated that the above mentioned OAs had been dismissed by the Tribunal rejecting the claim of holding the post of HOD by teaching faculty beyond the age of 62 years. When the matter was heard on 10.07.2015, the learned junior counsel assisting the Standing Counsel appeared and ‘innocuous’ kind of statement was made by the learned counsel for applicant that if the applicant was treated as Professor of Excellence with all

consequential benefits till the age of 65 years, he would not press the Original Application. The junior counsel consented to that but with clear understanding that procedure for declaring a person as Professor of Excellence as per OM dated 24.02.2012 will be followed.

(iii) The eligibility for consideration for Professor of Excellence was that the person should be HAG level officer but the applicant in the OA was SAG level officer, hence not entitled for extension upto the age of 65 years.

(iv) The junior counsel neither intended nor could have given a consent which was contrary to OM dated 24.02.2012. The batch of OAs rejected by the Tribunal was challenged before the Hon'ble High Court of Delhi in WP(C) No.2740/2014 and that was also dismissed on 30.05.2016. The applicant in the OA, therefore, has no case for insisting for consideration as Professor of Excellence.

(v) The respondents in the main OA also filed WP(C) No.6299/2016 before the Hon'ble High Court of Delhi submitting that the proxy counsel who had made the statement before the Tribunal was not authorised to do so and the submission made by him was against the provisions of law and the earlier decisions rendered by the Tribunal. The Hon'ble High Court took a view that in case the submission

made by the counsel is to be withdrawn, an application for review should have been filed before the Tribunal. In case the review is filed within two weeks, the respondent would not raise the plea of limitation before the Tribunal. The learned counsel appearing on behalf of the petitioners in the Hon'ble High Court submitted that the application will be moved within three days. Subsequently, vide order dated 16.09.2016, Hon'ble High Court clarified that in the order dated 22.07.2016, the time granted for filing review application was two weeks and not three days. The present Review Application had been filed by the review applicant on 10.08.2016.

3. When the matter came up for arguments on 20.09.2016, the learned Sr. Advocate appearing on behalf of the original applicant submitted that no reply was needed to be filed from their side. In compliance of the directions given on 21.10.2016, Shri N.K. Singh, learned junior to the Standing counsel for GNCTD, with whose consent the order dated 10.07.2015 was passed, has also filed an affidavit on 16.09.2016 stating the facts as enumerated in the Review Application and to say that he could not have given consent for the order to be passed which is contrary to the stand taken by the department or contrary to the settled position of law. The learned counsel for the respondent in Review Application has raised an issue that the time granted by the Hon'ble High Court in its order dated 22.07.2016 was only two weeks, which expired on

05.08.2016, but the Review Application was filed on 10.08.2016. The RA was, therefore, not maintainable. It was further argued that the junior counsel who appeared in the final hearing on 10.07.2015 had given 'consent' on instructions, after consulting the department. The department and the learned junior counsel cannot now say that they gave a consent which was contrary to the rule position and law when they were aware that the batch petition referred to by the review applicants had been dismissed on 26.04.2014.

4. We have heard the learned counsels for the parties and perused the record. The power of review of this Tribunal is derived from Section 22 (3) (f) of the Administrative Tribunals Act. The Hon'ble Supreme Court in **Ajit Kumar Rath v. State of Orissa and Others**, (1999) 9 SCC 596 held that "power of review available to the Tribunal under Section 22 (3)(f) is not absolute and is the same as given to a Court under Section 114 read with Order 47 Rule 1 of CPC."

5. In **Sow Chandra Kanta and another v. Sheik Habib**, AIR 1975 SC 1500 the Hon'ble Supreme Court had held:

"Once an order refusing special leave has been passed by this Court, a review thereof must be subject to the rules of the Supreme Court Rules, 1966, and cannot be lightly entertained. Review proceeding does not amount to a re-hearing. A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept

in earlier by judicial fallibility. Even if the order refusing special leave was capable of a different course, review of the earlier order is not permissible because such an order has the normal feature of finality. [933 F-G; 934 B] Observation : It is neither fairness to the Court which decided nor awareness of the precious public time lost what with a huge back-log of dockets waiting in the queue for disposal, for counsel 'to issue easy certificates for entertainment of review and fight over again the same battle which has been fought and lost."

6. In ***Union of India v. Tarit Ranjan Das***, (2004) SCC (L&S) 160 the Hon'ble Apex Court held that the scope of review is rather limited and it is not permissible for the forum hearing the review application to act as an appellate authority in respect of the original order by a fresh order and rehearing of the matter to facilitate a change of opinion on merits.

7. In ***State of West Bengal and others vs. Kamal Sen Gupta***, 2008 (8) SCC 8012, the Hon'ble Supreme Court after taking a thorough overview of the judgments with regard to the power of review culled out the principles that would govern such power:

"35. The principles which can be culled out from the above noted judgments are :

(i) The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/analogous to the power of a Civil Court under Section 114 read with Order 47 Rule 1 of CPC.

(ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.

(iii) The expression "any other sufficient reason" appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.

(iv) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(f).

(v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.

(vi) A decision/order cannot be reviewed under Section 22(3)(f) on the basis of subsequent decision/judgment of a coordinate or larger bench of the Tribunal or of a superior Court.

(vii) While considering an application for review, the Tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.

(viii) Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the Court/Tribunal earlier.”

8. In this background of the settled legal position the review applicants have to establish that there is an error apparent on the face of record. In this case, the contention of the review applicants that consent given by the learned junior counsel was contrary to the rule position and law carries conviction. The applicant in the OA had stated that his prayer in the OA was on the same lines as that of the applicants in the OA No.2998/2013 and batch. It is not in dispute that OA No.2998/2013 and batch were dismissed by the Tribunal on 26.04.2014 and that order was upheld by the Hon'ble High Court of Delhi on 30.05.2016. The learned counsel for respondent in Review Application has also not challenged the

submission made by the learned counsel for the review applicants that under the OM dated 24.02.2012 only a person in HAG can be declared as Professor of Excellence while the applicant was only a SAG level officer. Further on verification from the records of the OA, it is seen that the respondents in the OA, in their reply filed on 25.08.2014 had taken the preliminary objection that the OA deserved to be rejected out rightly “in view of the fact that a batch of similar OA Nos.992/2013 with OA No.1055/2013, OA No.2998/2013 with OA No.3632/2013, OA No.828/2014, OA No.992/2013, OA No.1055/2013, OA No.2998/2013, OA No.3632/2013 (repetition of OA Nos. sic) involving the same issue was dismissed by this Tribunal vide its order dated 26.04.2014.”

9. It is, however, observed that when the matter was taken up for hearing on 10.07.2015, there was no detailed argument and no reference to the contentions made by either of the parties in their pleadings. On the oral consent of the junior learned proxy counsel for the respondent Nos.2 to 4 in the OA that for rest of his tenure the applicant would be treated as Professor of Excellence with all consequential benefits, the Tribunal disposed of the OA. However, from the consideration of the legal position and the facts, as presented by the review applicants, it is established that there is an error in the order dated 10.07.2015 because of the submission of the learned proxy counsel for respondents which was contrary to the law and rules.

10. The RA is, therefore, allowed. In view of the admitted position that the controversy in the present case is same as in the OA No.2998/2013 and batch dismissed by this Tribunal by order dated 26.04.2014, and upheld by the Hon'ble High Court of Delhi by order dated 30.05.2016, the OA No.3706 is also, therefore, dismissed.

(V.N. Gaur)
Member (A)

(V. Ajay Kumar)
Member (J)

February, 2017

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