

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

RA No. 176/2013 in

OA No. 188/2012

Order Reserved on: 09.12.2015

Pronounced on: 23.12.2015

Hon'ble Mr. V.Ajay Kumar, Member (J)

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

T.M. Sampath
Administrative Officer
National Water Development Agency,
18-20, Community Centre,
Saket, New Delhi 110 017.

- Applicant

(Applicant in person)

Vs.

Union of India through

1. The Secretary,
Ministry of Water Resources &
Ex-officio Chairman, Governing Body of NWDA,
Shram Shakti Bhawan,
Rafi Marg, New Delhi.
2. The Director General
National Water Development Agency,
Shram Shakti Bhawan,
Rafi Marg, New Delhi.
3. Shri A.B. Pandya,
Formerly Director General, NWDA &
Now Member (D&R), Central Water Commission,
Sewa Bhawan, R.K. Puram,
New Delhi.
4. Shri R.K. Jain,
Chief Engineer (HQ),
National Water Development Authority,

18-20, Community Centre,
Saket, New Delhi 110 017.

5. Shri R.K. Kharbanda
In-charge Deputy Director (Admn.) &
Deputy Director (Technical)
National Water Development Authority,
18-20, Community Centre,
Saket,
New Delhi 110 017.

- Respondents

(By Advocate: Sh. R.N.Singh)

ORDER

Hon'ble Shri V.N.Gaur, Member (A)

The applicant has filed present RA in OA No.188/2012 for the review of the order passed by a coordinate bench of this Tribunal on 30.08.2013. When the matter was taken up by this Bench on 04.11.2015, the following order was passed:

“The OA against which the present RA is filed was disposed of by a Bench consisting of Hon'ble Mr. Justice Syed Rafat Alam, Chairman and Hon'ble Dr. B.K. Sinha, Member (A). However, on specific orders of Hon'ble Chairman dated 13.04.2015, the RA is listed before this Bench. Since the Review Applicant who is the original applicant in the OA alleged that the Bench which disposed of the OA is prejudiced against him, a specific query is put to him whether he has faith in the present Bench or not, to which the applicant who is appearing in person submitted that he is having full faith in this Bench and he is ready to advance his submissions.

Heard both sides. In view of the specific contention of the review applicant that there was no meeting of Selection Committee held during the years 2010 and 2011, the respondents' counsel is directed to produce the relevant record of Selection Committee pertaining to the years 2010 and 2011 within one week. Order reserved.

By **Dasti** to respondents counsel.”

2. Sh. R.N.Singh, learned counsel for respondents has produced the original files no.5/2/2008-Admn. and 5/11/2011-Admn.on 09.12.2015 in compliance of the Tribunal's directions dated 04.11.2015.

3. During the arguments on 04.11.2015 this Bench explained the scope of review jurisdiction of the Tribunal to the applicant who is appearing in person. The applicant was asked to specify the grounds which formed the basis for filing the present RA. The applicant pointed out grounds 'H' & 'J' of the RA which, according to him, amply justify this review application. For the sake of convenience grounds 'H' & 'J' of present RA are reproduced below:

“(H) Because this Hon’ble Tribunal in para 15 of the impugned order dated 30.8.2013 has wrongly stated that selection committee meeting was held during the year 2010 and 2011 and the applicant was not selected. The fact is that no selection committee has been convened for the years 2009, 2010, 2011 and 2012. This Hon’ble Tribunal has also falsely stated that the applicant has been duly considered for promotion against the fact that no selection committee for promotion of the applicant has been convened from the year 2009 to till-date. This Hon’ble Tribunal has also failed to note the decision of the Supreme Court in **Union of India & N.R.Banerjee & others** [1997 (9) SCC 287] that the requirement of preparation of panel every year can be dispensed with only after a certificate is issued by the appointing authority that there are no vacancies. In the instant case, the appointing authority is Governing Body of NWDA and no certificate has ever been issued by the Governing Body or by the Chairman of the Governing Body.

(J) Because this Hon’ble Tribunal due to prejudice has not considered submission of the applicant of judgment of the Hon’ble High Court of Delhi decided on 28.02.2012 in the case of Dr.Sahadeva Singh versus Union of India & others [WP (C) No.5549/2007] which is squarely applicable to the case of the applicant which he relied & appended to his written submission.”

4. Referring to para 15 of the order dated 30.08.2013, the review applicant has pressed on two issues - (1) that the order wrongly states that Selection Committee meeting was held during 2010-11 and the applicant was not selected; and (2) the Tribunal failed to note the decision of Hon'ble Supreme Court in **Union of India and others vs. N.R.Banerjee**, 1997 (9) SCC 287. The relevant portion of para 15 reads as follows :

“15. It has already been noted that the applicant was considered for selection in the year 2010 but was not selected. He chose not to apply in the subsequent advertisement issued in the year 2011 but still his name was included and considered by the Management against promotion quota but he could not be found fit to be promoted. In the year 2011, two persons were selected but they chose not to join. In their counter affidavit dated 20.07.2012, the Director General, NWDA has denied that the organization is bent upon not to promote the applicant. The post of Deputy Director (Admn.) is to be filled up as per the recruitment rules in which the applicant had been given an opportunity and was considered but could not be found fit to be selected. In the sequence of events narrated above, one finds that the case has become so embroiled that though there is no mandatory requirement for preparation of panel on year to year basis as there is only one post of Deputy Director (Admn.) in NWDA, still it is desirable that the post should be filled up at the earliest instance. However, we also take note of the fact that due to frequent litigation, the matter is becoming even more complex. No recruitment took place in the year 2008 on this account. Still, we find that the respondents have been taking steps for filling up the post through selection process.”

5. It can be seen that the Tribunal had referred only to the selection held in the year 2010 in which the applicant was not selected. The order does not refer to the vacancy year for which the selection was held. The respondents have produced file no. 5/2/2008-Admn., which contains two sets of minutes of the Review Selection Committee held on 22.01.2010 to review the

panels recommended by the Selection Committee in its meeting held on 19.02.2008 and 05.11.2008. Further from the file No.5/11/2011-Admn. wherein an agenda note for selection to the post of Dy. Director (Admn.) on deputation basis has been kept, it is seen that the respondents have been making effort all along to fill up the vacancy of Dy. Director (Admn.) on regular basis but due to the reasons of not getting sufficient response to the vacancy circulars as well as ongoing legal proceedings in various OAs and Writ Petitions, the process was delayed. When the vacancy was again advertised in December 2011, the applicant did not apply for the post. However, his candidature was considered by the Selection Committee, stated to be at the directions of the Court, for promotion/appointment to the post of Dy. Director (Admn.) but not recommended. It has also been mentioned in that agenda note that the penalty imposed on the review applicant came into effect from 27.06.2008 and remained in operation till 26.06.2011. The relevant paras are reproduced below:

“3. This is to mention that earlier meetings of two Selection Committees were conducted on 19.02.2008 and 05.11.2008 and further, recommendations made by these Selection Committees were reviewed on 22.01.2010 on the directions of the Hon'ble CAT. Even then, the post could not be filled. Therefore, the above post was circulated among all Ministries/Departments etc. on 11.02.2010. The vacancy circular was also published in the Employment News in its issue 20-26th February, 2010. As we had not received enough applications, last date for receipt of applications was extended up to 31.05.2010 vide circular dated 26/27.04.2010, up to 30.06.2010 vide circular dated 03.06.2010 and further, the date was again extended up to 31.08.2010 vide circular dated 21.07.2010. In response to above, applications of

nine officers working in the different Ministries/Departments/ Offices, excluding application of departmental candidate Shri Sampath, were received for consideration for appointment to the aforesaid post. Of these, five applications were received as advance copy from the concerned officers. Their applications were subsequently not received in this office through proper channel.

4. After issue of advertisement dated 20-26th February, 2010, Shri Sampath has filed one Writ Petition in the Hon'ble High Court of Delhi and five cases in the Hon'ble CAT, New Delhi with regard to the appointment made or to be made against the post of Deputy Director (Admn) in the NWDA with a malafide intention as he was not sure about his own selection, since his name was never approved by the Selection Committee in the past. The Hon'ble High Court of Delhi has issued rule DB in Writ Petition No.9083/2009. The Hon'ble CAT has dismissed O.A.s No.1389/2010, 2704/2010, 546/2011 and 2701/2011. One O.A. No.188/2012 filed by Shri Sampath is under consideration of the Hon'ble CAT and is sub-judice. It is apparently clear that Shri Sampath has deliberately and intentionally created hindrances and obstacles in the convening of the Selection Committee Meeting from time to time with a clandestine motive to thwart the chances of other candidates. In view of the position stated above, a very long time has elapsed when the circular/advertisement was issued by the NWDA for inviting applications for appointment to the above post. In the meantime, more officers working in the different Ministries/Departments and offices, who fulfil the eligibility criteria laid down in the Recruitment Rules, have become eligible and are required to be given opportunity for consideration of their candidatures for appointment to the above post. Besides, latest ACRs of the concerned officers, who had submitted their applications earlier, would be required along with their latest vigilance clearance certificate.

5. Therefore, it was decided with the approval of the competent authority to re-circulate/re-advertise the post of Deputy Director (Admn) in NWDA, for inviting applications from willing and suitable officers for consideration of their candidature, specifically mentioning in the circular/advertisement that the concerned officers, who had applied for the above post earlier, may also submit their applications through proper channel, to get the best officer for the lone post.

6. In accordance with the above decision and in order to make selection to fill up the post of Deputy Director (Admn) by promotion/appointment on deputation basis, a vacancy circular to the different Ministries/Departments/ Offices etc., was issued

vide letter dated 29.11.2011 and advertisement published in the Employment News – 17-23, December, 2011. Last date for receipt of applications is 60 days from the date of publication of advertisement in Employment News i.e., 14th February, 2012. Further the last date for receipt of applications was extended up to 31.3.2012 vide letter dated 27.02.2012. In response to the above advertisement, seven (7) applications have been received – six (6) applications through proper channel and one advance copy from outside candidates. No fresh applications were received from the concerned officers, who had applied for the above post earlier, in response to the previous vacancy circular published in the Employment News – 20-26.02.2010. Letters/ reminders were also sent to the concerned offices of those applicants from whom applications were received through proper channel. Even after this, no response has been received either from the applicants or from the concerned offices/ parent Departments, as a very long time has elapsed and the concerned officers may have lost interest or the concerned offices may now have their own compulsion in sparing their services.

7. Three applications have been received from the departmental candidates. No fresh application has been received from Shri T.M. Sampath, Administrative Officer of NWDA, in response to the present advertisement published in December, 2011. But, his candidature is to be considered for promotion/ appointment to the post of Deputy Director (Admn) in NWDA as per the directions of the Hon'ble Court. It may not be noted that the Disciplinary Authority of the NWDA, vide its order dated 27.6.08, has imposed upon Shri Sampath a minor penalty of reduction to a lower stage in time scale of pay of Rs.9000-13500 (pre-revised) by one stage for a period of 3 years without cumulative effect. The penalty, which was upheld by the Appellate Authority, had come into effect from 27.6.2008 and remained in operation till 26.6.2011.”

6. From the foregoing, it is apparent that there is no factual error in the order dated 30.08.2013 with regard to the meetings of the Selection Committee. The review applicant has not been able to establish any error apparent on the face of the record.

7. With regard to the submission of the review applicant that the Tribunal did not note **N.R.Banerjee's** case, it can be seen from the

facts in the preceding paras that the applicant was under penalty from 2008 to 2011 and, therefore, preparation of panels during the years 2009, 2010 and 2011 as argued by the review applicant cannot be said to have prejudiced his interest. The circumstances in which the post of Dy. Director (Admn.) could not be filled up by the respondents on regular basis during that period has been brought out in their agenda note extracted above. Further, preparation of yearly panel could have become relevant had he been promoted to the post of Dy. Director (Admn.) from a date later than the date on which the vacancy arose. In the present case since the applicant was not recommended by the Selection Committee in 2012, and prior to that he was under a penalty for three years, the question of preparation of yearly panel in his context is only academic and being raised only as a technicality.

8. In ground 'J' the review applicant has complained that due to prejudice this Tribunal did not consider the decision of Hon'ble High Court of Delhi in the case of **Dr.Sahadeva Singh vs. Union of India & others**, WP (C) no.5549/2007, which is squarely applicable to the case of the applicant which he relied and appended to the written submission. In **Dr.Sahadeva Singh** (supra) the petitioner had become eligible for being considered for promotion to the post of Dy. Commissioner (Crops) in the vacancy year 2005 but no DPC was held in the year 2006 and he was

promoted to the post of Dy. Commissioner (Crops) in the year 2006. The High Court after taking note of **N.R.Banerjee** (supra) and many other judgements of Hon'ble Supreme Court directed that the petitioner be promoted as Dy. Commissioner (Crops) w.e.f. 01.01.2005. As pointed out in the previous para, the question of prejudice caused by non-preparation of year-wise panel could have become relevant, had the review applicant been promoted from a date later than the year in which he could have been promoted had the yearly panels been made.

9. From the discussion in the preceding paras, we find that the applicant has failed to point out any error apparent on the face of record in the order dated 30.08.2013 of this Tribunal. In review jurisdiction the powers of this Tribunal are those of a civil court as provided under Section 22 (3) (f) and Order XLVII, Rule (1) of Code of Civil Procedure which reads thus:

“22 (3) A Tribunal shall have, for the purposes of [discharging its functions under this Act], the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely :-

(f) reviewing its decisions;”

“Order XLVII, Rule (1) of CPC

(1) Any person considering himself aggrieved,—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from 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 decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.”

10. It needs no emphasis that the jurisdiction of the Tribunal in review is narrow and is confined to a situation where there is an error on the face of the record. 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.

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.”

11. 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.

12. Considering the preceding discussion and the reasons stated above we find the RA devoid of merit and the same is dismissed.

(V.N. Gaur)
Member (A)

(V. Ajay Kumar)
Member (J)

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