

**Central Administrative Tribunal
Principal Bench, New Delhi**

R.A. No.16/2018 in O.A. No.229/2012

This the 1st day of February 2018

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)**

Tarsem Lal Sharma
Aged 66 years
s/o late Shri Dheru Ram
r/o Flat No.220, 1st Floor
Metro View Apartments, MIG Flats,
Phase II, Pocket B, Sector 13, Dwarka
New Delhi – 110 078

..Applicant

Versus

1. Union of India through Secretary
Ministry of Science & Technology
Department of Science & Technology
Technology Bhawan, Institutional Area
New Mehrauli Road, New Delhi – 110 016
2. The Surveyor General of India
o/o the Surveyor General of India
Survey of India
Harthibarkala Estate
Dehradun – 248 001
Uttarakhand
3. Dr. Mahesh Chandra Tiwary
Head (Boundary Cell), JNB 3065
Ministry of External Affairs, New Delhi

..Respondents

O R D E R (in circulation)

Mr. K.N. Shrivastava:

Through the medium of this R.A., the review applicant has sought review of this Tribunal's order dated 13.12.2017 passed in O.A.

No.229/2012. The applicant had prayed for the following reliefs in the said O.A.:-

- “(i) Quash and set aside the impugned order dated 22.9.2011 whereby the representation of the applicant has been rejected;
- (ii) Quash and set aside the impugned seniority list circulated vide SG’s letter No. E1-1068/701 (Coll.69) dated 21.4.2016 (Source : Official website of Survey of India), wherein name of the Applicant appears at Sl 78, shown to have been promoted on 1.10.1995 and consequent to which the name of the Applicant does not appear in the seniority lists as on 1.1.1991 onwards till the list as on 1.1.1995.
- (iii) Direct Respondent No. 2 to correct the seniority of the applicant by placing him above Mahesh Chandra Tiwari in the seniority lists 1.1.1991 onwards.
- (iv) Consequently, the respondents may be directed to extend the benefit of Non-Functional Up-gradation (Grade Pay Rs.10,000/-) w.e.f. 26.10.2006, as has been extended to the 1984 batch of ‘direct recruit’ officers in terms of the relevant DoP&T OMs dated 24.4.2009 and 25.9.2009 and all other benefits which have been extended to the juniors of the applicant”.

2. The O.A. was dismissed vide order dated 13.12.2017; operative part of which reads as under:-

“9. The applicant was considered for promotion in the DPC meeting held in UPSC on 13th, 14th and 15th February, 1990 obviously in terms of the 1989 Rules. Since his overall ACR grading was only ‘Good’ and the benchmark for promotion was ‘Very Good’ he could not be promoted. The applicant had been promoted as STS on ad hoc basis on 28.10.1988, although he claims that he got his regular promotion as STS w.e.f. 21.12.1991 against a vacancy of the year 1990 referring to Annexures A-14 and A-15 documents. But he has failed to produce any proper order of the official respondents promoting him on regular basis to the post of STS in the year 1991, as claimed by him. Be that as it may, the fact remains that following the judgment of the Bangalore Bench of the Tribunal in P.V. Rajshekhran (supra), the respondents have published fresh seniority lists of STS cadre from 1.1.1990 to 1.1.2012 vide Annexure A-2 order dated 2.12.2012. These seniority lists have attained finality since challenge against them before the Ahmedabad Bench of the Tribunal in the case of D. Sahu (supra) had been repelled by the Ahmedabad Bench vide order dated

22.07.2013 and the said order of the Ahmedabad Bench has been upheld by the Hon'ble High Court of Gujarat. The applicant has challenged the validity of the seniority list published on 2.2.2012 in this OA, which is hit by the principle of *res judicata* in view of the judgment of the Ahmedabad Bench of the Tribunal in D. Sahu (supra). The representation of the applicant for re-fixation of his seniority position in the grade of STS and further request for granting NFSG to him in the grade pay of Rs.10,000/- have been rejected by the respondents vide impugned Annexure A-1 order dated 22.09.2011 in the backdrop of the seniority lists notified vide Annexure A-2 OM dated 2.2.2012. Since the applicant has been assigned seniority of the year 1995 in the grade of STS, he has been declared non-eligible for grant of NFSG in the grade of Rs.10,000/- in terms of the DoPT OM dated 24.04.2009 (Annexure A-3). Hence, we do not find any infirmity or illegality in the impugned Annexure A-1 order.”

3. In support of his prayer for review of the order dated 13.12.2017, the applicant has pleaded the following grounds:-

- “b) Because the order passed by the Hon'ble Tribunal is illegal, arbitrary.
- c) Because the respondents have violated the principles of natural justice and also violated the fundamental rights of the petitioner.
- d) Because the respondents have violated Art. 14, 15, 21 of the constitution of India and have illegally held that the applicants are not entitled for promotion.

Therefore, there has been an error apparent on the face of record in the impugned judgment Dt. 13.12.2017 and the humble prayer of the applicant to personally hear this RA in the interest of justice.”

4. From the averments made as well as the above grounds pleaded for seeking review of the Tribunal's order dated 13.12.2017, it is quite clear that the review applicant has not pointed out any error on the face of the record of the order. Existence of an error apparent on the face of the record is *sine qua non* for review of the order.

5. On the power of the Tribunal to review its own orders, the Hon'ble Supreme Court has laid down clear guidelines in its judgment in the case of **State of West Bengal & others Vs. Kamal Sengupta and another**, [2008 (3) AISLJ 209] stating therein that “the Tribunal can exercise powers of a Civil Court in relation to matter enumerated in clauses (a) to (i) of sub-section (3) of Section (22) of Administrative Tribunal Act including the power of reviewing its decision.” At paragraph (28) of the judgment, the principles culled out by the Supreme Court are as under:-

- “(i) The power of 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 specific 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 in the fact of record justifying exercise of power under Section 22(2) (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 a larger bench of the Tribunal or of a superior court
- (vii) A decision/order cannot be reviewed under Section 22(3)(f).
- (viii) 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.
- (ix) 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.”

6. For the reasons discussed in the foregoing paragraphs, we do not find any merit in the R.A. Accordingly, the R.A. is dismissed in circulation. No costs.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

February 1, 2018
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