

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

**M.A. No.3300/2017 In
R.A. No.202/2017 In
O.A. No.3519/2013**

New Delhi this the 21st day of September, 2017

**HON'BLE MR. JUSTICE PERMOD KOHLI, CHAIRMAN
HON'BLE MS. NITA CHOWDHURY, MEMBER (A)**

Shri Dinesh Kumar Singh
S/o Shri P.P. Singh
R/o 24-C, Evershine Apartments,
D-Block, Vikas Puri,
New Delhi-110018. Review Applicant

Versus

1. Union of India
Through Secretary-Commerce,
Department of Commerce
(Supply Division)
Udyog Bhawan,
New Delhi-110001.
2. The Secretary,
Department of Personnel & Training,
North Block,
New Delhi.
3. Secretary,
Union Public Service Commission,
Dholpur House,
Shah Jahan Road, New Delhi.
4. The Director General (S&D),
DGS&D, 5, Sansad Marg,
Jeevantara Building,
New Delhi-110001. Respondents

ORDER BY CIRCULATION

Hon'ble Ms. Nita Chowdhury, Member (A)

MA No.3300/2017

This MA has been filed by the Review Applicant in Review Application (RA) No.202/2017 claiming that the same has been filed by him after a delay of more than 159 days on account of the fact that he is

a retired Government servant. Hence, he has prayed that the MA may be allowed.

In view of his assertion, the MA is allowed.

RA No.202/2017

The facts, in brief, are that while deciding the Original Application (OA) bearing No.3519/2013, this Tribunal considered all the issues raised by the Review Applicant and disposed of the same on merits on 10.01.2017 (Annexure-A). The operative part of the said order reads as under:-

“12. The same very issue came to be considered by the Apex Court in ***State of Uttar Pradesh & Others Vs. Ashok Kumar Srivastava and Another*** Civil Appeal No.6967 decided on 21.08.2013. In the said case, after relying upon the various judgments of the Supreme Court in ***Union of India v. S.S. Uppal and another (1996) 2 SCC 168; State of Karnataka and others v. C. Lalitha (2006) 2 SCC 747; State of Uttaranchal and Another Vs. Dinesh Kumar Sharma (2007) 1 SCC 683; and Pawan Pratap Singh and Others Vs. Reevan Singh and Others (2011) 3 SCC 267***, it was ruled that seniority has to be decided on the basis of rules in force on the date of appointment and no retrospective promotion or seniority can be granted from a date when an employee has not even been born in the cadre.

13. This Tribunal in the matter of ***J.D. Vashisht & Others Vs. U.O.I. and Others*** in ***OA No. 3811/2012*** has elaborately considered and explained the matter with regard to retrospective promotion with which we are in full agreement and as such applicant cannot be granted retrospective promotion from the date of occurrence of the vacancy, i.e. 16.11.2012.

14. In view of the above, relief claimed under clause (c) of para 8 to the extent challenge is to the order dated 17.07.2014 is allowed in view of the order passed in OA No.176/2015. The other reliefs claimed, particularly for direction to promote applicant to the post of Deputy Director General (Supply)-SAG from the date of occurrence of vacancy, i.e., 29.12.2010 is impermissible in law and is denied.

15. The OA is accordingly partially allowed in above manner. No costs”.

2. Now the Review Applicant has filed the present RA bearing No.202/2017 for reviewing the indicated order, mainly on the grounds which have already been considered by this Tribunal while deciding the main OA.

3. The main ground pressed into service by the Review Applicant to review the order is that the Tribunal failed to appreciate that in his case, DPC was held on 11.11.2011 whereas, in fact, he was promoted with effect from 16.11.2012 and thus prayed that OA could not have partially been allowed by directing the respondents to promote the petitioner notionally from the date when the DPC was held, i.e., 11.11.2011.

4. It is now well settled principle of law that the earlier order can only be reviewed if the case squarely falls within the legal ambit of review and not otherwise. Order 47 Rule 1 CPC read with Section 22(3)(f) of the Administrative Tribunals Act, 1985 regulates the provisions of review of the orders. According to the said provision, a review will lie only when there is discovery of any new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by the review applicant seeking the review at the time when the order was passed **or made on account of some mistake or error apparent on the face of the record.** It is now well settled principle of law that the scope for 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 and re-hearing of the matter to facilitate a change of opinion on merits. The reliance in this regard can be placed on the judgments of the Hon'ble Supreme Court in cases of ***Parson Devi and Others vs. Sumitri Devi***

and Others (1997) 8 SCC 715, Ajit Kumar Rath Vs. State of Orissa (1999) 9 SCC 596, Union of India Vs. Tarit Ranjan Das (2003) 11 SCC 658 and Gopal Singh Vs. State Cadre Forest Officers' Association & Others (2007) 9 SCC 369.

5. An identical question came up to be decided by Hon'ble Apex Court in case ***State of West Bengal and Others Vs. Kamal Sengupta and Another (2008) 8 SCC 612***. Having interpreted the scope of review and considering the catena of previous judgments mentioned therein, the following principles were culled out to review the orders:-

- “(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".

6. Meaning thereby, the original order can only be reviewed if case strictly falls within the domain of Order 47 Rule 1 CPC read with Section 22(3)(f) of the Administrative Tribunals Act, 1985 and not otherwise. In the instant RA, the review applicant has not pointed out any error apparent on the face of record warranting a review of the order dated 10.01.2017 (Annexure-A). Moreover, the issues now sought to be urged, were subject matter of the OA and have already been adjudicated upon by the Tribunal.

7. In the light of the aforesaid reasons, as there is no apparent error on the face of record, so no ground is made out to entertain the present Review Application, which is accordingly dismissed.

(NITA CHOWDHURY)
MEMBER (A)

(JUSTICE PERMOD KOHLI)
CHAIRMAN

Rakesh