

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

**R.A. No.213/2016 In
O.A. No.321/2016**

New Delhi this the 7th day of October, 2016

**HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)
HON'BLE MR. V.N. GAUR, MEMBER (A)**

Manmohan Juneja
S/o Late Shri Parshotam Dass
Aged 54 years
R/o A-134, 2nd Floor,
Preet Vihar,
Delhi-110092. ..Respondent in RA/Applicant in OA

Versus

1. Union of India,
Through its Secretary,
Ministry of Corporate Affairs,
Government of India,
5th Floor, 'A' Wing, Shastri Bhawan,
New Delhi-110001.
2. The Director (Ad-II)
Ministry of Corporate Affairs,
Government of India,
5th Floor, 'A' Wing, Shastri Bhawan,
New Delhi-110001.
3. Union Public Service Commission,
Through its Secretary,
Dhoulpur House, Shahjahan Road,
New Delhi-110011
(Performa Party) ..Respondents in RA
4. D. Bandopadhyay
Registrar of Companies, 4th Floor,
IFCI Tower 61, Nehru Place,
New Delhi-110019. Review Applicant in RA/Respondent
No.4 in OA

ORDER BY CIRCULATION

Justice M. S. Sullar, Member (J)

Record perused.

2. A bare perusal of the record would reveal that while relying upon the legal proposition set out by the Hon'ble Apex

Court in cases ***N.R. Parmar Vs. U.O.I. and Others (Civil Appeal No.7514-7515/2005)*** and ***U.O.I. Vs. N.R. Parmar and Others (2012) 13 SCC 340***, the main Original Application (OA) bearing No.321/2016 filed by the applicant, Manmohan Juneja was decided by this Tribunal, vide order dated 09.09.2016, which in substance, is as under:-

“36. As is evident from the record, that the recruitment process by way of direct recruitment in the case of the applicant was initiated on 23.08.2007, for the vacancy of the year 2005-06, recruitment year 2007-08 and the applicant joined the post of JAG on 07.11.2008, whereas the recruitment process by way of promotion, in case of respondent No.4, started on 17.09.2008, for a vacancy year 2007-08 and recruitment year is 2008-09. He joined on the post of JAG on 05.02.2009. Therefore, in that eventuality, it cannot possibly be said by any stretch of imagination that the applicant (DR) would be junior to respondent No.4 (PO) in any manner. Indeed, the impugned seniority list dated 02.12.2015 (Annexure A-1), which was abruptly changed by ignoring the relevant instructions with impunity, that too, at the back of the applicant, cannot and should not possibly be maintained in any manner and deserve to be set aside, in the obtaining circumstances of the case.

37. Moreover, the instructions dated 03.03.2008 depicted that, the inter-se seniority of direct recruits and promotees is to be fixed on the basis of rotation of quota of vacancies, the year of availability, both in the case of direct recruits as well as the promotees, for the purpose of rotation and fixation of seniority, shall be **the actual year of appointment after declaration of results/selection and completion of pre-appointment formalities as prescribed.**

38. In other words, as per these instructions, the relevant date for fixation of seniority would be the actual year of appointment. As depicted hereinabove, in the present case, the date of appointment of applicant (DR) is 07.11.2008 in recruitment year 2007-08, whereas date of appointment in the case of private respondent No.4 (PO) is 05.02.2009, in the recruitment year 2008-09. Therefore, it remained an unfolded mystery as to how and in what manner applicant (DR)

was placed, below private respondent No.4 (PO) by official respondents, in the impugned seniority list, in the garb of instructions dated 03.03.2008, particularly when they have rightly placed him (applicant) (DR) over and above respondent No.4 (PO) in all the previous circulated seniority lists (Annexure A-6 Colly.).

39. There is yet another aspect of the matter, which can be viewed entirely from a different angle. Even the instructions dated 07.02.1986 and 04.03.2014, posit, that the cases of seniority already determined in accordance with the principles on the date of issue of these orders, will not be reopened. In respect of vacancies, for which recruitment action has already been taken, on the date of issue of these orders, either by way of direct recruitment or promotion, seniority will continue to be determined in accordance with the principle in force prior to the issue of this O.M. Thus, seen from any angle, the official respondents did not have the power to suddenly unsettle the already settled seniority list, placing the applicant (DR) below private respondent No.4 (PO).

40. On the contrary, the pointed action of the official respondents, of abruptly changing the seniority list, in the indicated manner, inculcating & perpetuating injustice and causing great prejudice to the applicant, at his back, not only it smacks arbitrariness and colourable exercise of power on their part, but at the same time, it is arbitrary and without jurisdiction as well, which is not legally permissible.

41. Therefore, the ratio of law laid down in the indicated judgments of Hon'ble Apex Court is *mutatis mutandis* applicable in the instant controversy and is a complete answer to the problem in hand and the contrary arguments of learned counsel for respondents "*stricto-sensu*" deserve to be and are hereby repelled, under the present set of circumstances.

42. No other point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

43. In the light of the aforesaid reasons, the instant OA is accepted. The impugned order/Seniority List dated 02.12.2015 (Annexure A-1) is hereby quashed. At the same time, the official respondents are directed to prepare the fresh seniority list, placing applicant (DR), over and above the private respondent No.4 (PO), at appropriate stage, in view of the aforesaid

observations and in accordance with law, forthwith. However, the parties are left to bear their own costs".

3. Now the review applicant (respondent No.4 in OA) has preferred the instant Review Application (RA), mainly on the grounds that the main order dated 09.09.2016 passed by this Tribunal would result a great prejudice to him, who has a right to be promoted for the next grade of JAG in time, that this Court has not considered the observations of this Tribunal in OA Nos.4454/2011 and 3194/2010, the ratio of law laid down in **N.R. Parmar's case** (supra) was not rightly appreciated, it will cause further delay in promotion and DOP&T OM dated 14.11.2014 was wrongly interpreted. On the aforesaid grounds, the review applicant (respondent No.4 in OA) seeks to review the main order.

4. Having perused the record, we are of the firm view that the mere fact that the order dated 09.09.2016 would result delay in promotion of review applicant (respondent No.4 in the OA), the judgment in **N.R. Parmar's case** (supra) was wrongly interpreted and all other pointed pleas taken in the RA are not at all relevant to review the main order.

5. Sequelly, the observations of this Tribunal in OA Nos. 4454/2011 and 3194/2010, having entirely different facts & circumstances and given in different context, which are not at all relevant to decide the real controversy between the parties in the present case, would pale into insignificance and could not be relied upon in view of authoritative judgment on the

relevant point of Hon'ble Apex Court in **N.R. Parmar's cases** (supra).

6. Moreover, all the points now urged in the present RA filed by the review applicant (respondent No.4), have already been considered by this Tribunal, while deciding the main OA, vide order dated 09.09.2016.

7. What cannot possibly be disputed here is, that 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 **Parsion 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.

8. 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".

9. 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 as explained by Hon'ble Apex Court in the indicated judgments 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 09.09.2016 (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. In case the review applicant is aggrieved by the main order, then he ought to have challenged the same in higher forum in accordance with law.

10. In the light of the aforesaid reasons, having perused the record, as there is no apparent error on the face of record, so no ground, much less cogent, is made out to entertain the present Review Application, which is hereby dismissed by circulation, in the obtaining circumstances of the case. All concerned be informed accordingly.

(V.N. GAUR)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)
07.10.2016

Rakesh