

**Central Administrative Tribunal
Principal Bench**

RA NO.217/2015
in
OA NO. 1257/2015

Order reserved on : 23.11.2015
Order Pronounced on : 04.12.2015

***Hon'ble Mr. A.K.Bhardwaj, Member (J)
Hon'ble Mr. V. N.Gaur, Member (A)***

Shri Ajay Kumar Kapur,
Aged about 53+ years,
S/o Sh. V.M. Kapur,
Working as Chief Estimator (E),
O/o Supdt. Engineer (E), DCEC-II,
CPWD, IP Bhawan, New Delhi,
R/o 882, Sector-IV, R.K. Puram,
New Delhi-110022.

...Applicant

(By Advocate: Sh. D.R.Gupta)

Versus

Union of India through

1. The Secretary,
M/o Urban Development & Poverty Alleviation,
Nirman Bhawan, New Delhi.

2. The Secretary,
M/o Personnel Public Grievances Pensions,
(Dept. Of Personnel & Training),
North Block, New Delhi.

3. Director General (Works),
CPWD, Nirman Bhawan,
New Delhi.

...Respondents.

(By Advocate: Sh. Deepak Bhardwaj)

ORDER

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

Present RA has been filed with a prayer to recall order dated 28.05.2015 passed in OA No.1257/2015 which is an oral order and reads as follows:

“In the present OA, the applicant has questioned his transfer as Chief Estimator (Electrical) to Bhubaneswar on the grounds : (i) he is only ad hoc Chief Estimator and (ii) since his spouse who is working as Assistant in the Ministry of Water Resources has been posted at Delhi, in view of the OM dated 30.09.2009, the applicant needs to be accommodated in Delhi. He further submitted that the representation made by him against the transfer order has not yet been decided. Vide short reply filed on behalf of the respondents, it has been brought to the force that the applicant is longest stayee Chief Estimator (E) at Delhi and has been included in the list of longest stayee Chief Estimator (Electrical) of Northern Region.

2. We heard the learned counsels for the parties and perused the record. The plea espoused by the applicant that he is an ad hoc Chief Estimator and his spouse itself is in Delhi have not been commented upon in short reply.

3. In the circumstances, we dispose of the OA with a direction to the respondents to decide the representation dated 29.12.2014 and 29.12.2014 and 17.03.2015 made by the applicant within four weeks from the date of receipt of a copy of this. It is made clear that till the disposal of the representations, the status quo regarding posting of the applicant as of date would be maintained.”

2. We have considered the submissions made by the learned counsels 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.”

3. Order XLVII, Rule (1) of Code of Civil Procedure reads as below:-

“(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.”

4. The learned counsel for the review applicant has stated that the matter was listed before the bench on 28.05.2015 for consideration of the interim relief and not for final disposal of the case. Learned counsel has submitted that the matter came up before a coordinate bench of this Tribunal on 01.04.2015 which directed the matter to be listed before the Registrar Court for completion of pleadings. On 22.05.2015 at the request of the learned counsel of the applicant to the Registrar, the OA was placed before the present bench for consideration of interim relief on 28.05.2015 with direction to the respondents to file detailed reply within three weeks and the next date was fixed for 28.05.2015. However, when the matter came up on 28.05.2015 the bench disposed of the matter with a direction to the respondents to decide the representations dated 29.12.2014,

29.12.2014 and 17.03.2015 made by applicant within four weeks from the date of receipt of a copy of this order. According to the learned counsel, the Tribunal committed an error in disposing of the OA without considering the main relief sought in the OA for regularisation of his ad hoc promotion as Chief Estimator (Elect) w.e.f. 25.10.2013.

5. 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."

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 this case the error pointed out by the learned counsel for the applicant that the Tribunal did not decide his main prayer of consideration for regular promotion as Chief Estimator (Elect) by DPC in consultation with UPSC. The order in question was passed on 28.05.2015 and the review applicant has filed the present review application on 17.08.2015. The review application has thus been filed much beyond the limitation period of 30 days for filing review application. Secondly, the order dated 28.05.2015 is an oral order passed in open court in the presence of the advocates of both the parties with consent. In the opening sentence of the order, we have taken note of the prayer made by the applicant. If the applicant was pressing the prayer of regularising his ad hoc promotion to the post of Chief Estimator (Elect), the same should have been pointed out. It is not the case of the review applicant that he pressed for the relief of regular promotion when the order was being dictated, but the same was overlooked by the Tribunal. In the absence of any such insistence from the learned counsel for the applicant it is presumed that he did not want to press that prayer. Thirdly, the order dated 28.05.2015 has already been implemented by the respondents by taking a decision of the representation of the applicant on 07.08.2015. It is apparent that the applicant chose to wait for the order to be passed by the respondents and approached this Tribunal by filing a review application only when he found the order passed by the respondents not to be in his favour.

8. Keeping the above facts in view, we find that the present RA lacks in merit and is a misuse of the judicial process. The RA is accordingly dismissed.

(V.N. Gaur)
Member (A)

(A.K. Bhardwaj)
Member (J)

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