

**Central Administrative Tribunal
Principal Bench**

RA No.219/2017
MA No.3832/2017
in
OA No.92/2015

New Delhi this the 27th day of October, 2017.

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

1. Dr. V.S. Rao Chintala,
S/o Sri Venkateswara Rao,
D-1/A-08, HUDCO Place Extension,
Andrews Ganj,
New Delhi-110 049.
2. Dr. V. Sampath,
S/o Shri K. Varadarajan, IAS (Retd.),
Presently residing at C9/100, Kendriya Vihar,
Poonamallee High Road, Velappanchavadi,
Annamalai Nagar,
Chennai-600777
Tamil Nadu.
3. Shri T.V.P. Bhaskara Rao,
S/o T. Sanjeeva Rao,
Presently residing at TF-1, Chase Enclave,
Mundvel, Vasco Da Gama,
Goa-403 802.
4. Dr. K.J. Ramesh,
S/o K. Jayaram Chetty,
D-1/41, HUDCO Place Extension,
Andrews Ganj,
New Delhi-110 049.
5. Dr. M. Sudhakar,
S/o M. Subbaramaiah,
FF1, Home Craft Building No.6,
Techno Park,
Chogam Road,
Porvarim,
Goa-403 521.

-Applicants

Versus

1. Secretary to the Government of India,
Ministry of Earth Sciences (MoES)
(formerly Department of Ocean Development-DoD),
Mahasagar Bhavan, Block 12,
CGO Complex, Lodhi Road,
New Delhi-110003.
2. Secretary to the Government of India,
Department of Science & Technology (DST),
Technology Bhavan,
New Mehrauli Road,
New Delhi-110 016.
3. Secretary to the Government of India,
Department of Personnel and Training (DoPT),
North Block
New Delhi-110 001.

- Respondents.

(By Advocate : Shri R.N. Singh with Mr. Amit Sinha)

O R D E R (By Circulation)

Mr. K.N. Shrivastava, Member (A):

MA No.3832/2017

Through the medium of this Miscellaneous Application (MA), the applicants have prayed for condonation of delay in filing RA No.219/2015 seeking review of the Tribunal's order dated 30.05.2016 in OA No.92/2015, whereby the OA filed by the applicants was dismissed.

2. The applicants had challenged the Tribunal's order dated 30.05.2016 in Writ Petition (C) No.11279/2016 before the Hon'ble

High Court of Delhi, which was allowed to be withdrawn by the Hon'ble High Court vide order dated 12.04.2017. The order reads as under:

“Learned counsel for the petitioner seeks permission to withdraw the present writ petition with liberty to file a review application. We allow the petitioner to withdraw the present writ petition, however, we do not comment upon whether or not the review application would be maintainable and entertained. Review application, if filed, would be examined as per the parameters of review. It will be open to the respondent to rely upon the order dated 29.11.2016 passed by this court in the Writ Petition (C) No. 11279/2016. The respondent shall also be entitled to contest application for condonation of delay, if any, filed.”

3. In terms of the liberty granted by the Hon'ble High Court, the applicants have filed RA No.219/2017, togetherwith this MA seeking condonation of delay.

4. Although the order of the Hon'ble High Court allowing these applicants to withdraw the Writ Petition was passed on 12.04.2017, there has been considerable delay in filing the RA, which in fact was filed on 26.09.2017. As per Rule 17 of the Central Administrative Tribunal (Procedure) Rules, 1987, RA is required to be filed within 30 days. In the present case, since the Hon'ble High Court's order was passed on 12.04.2017, the review should have been filed within 30 days from the date of the said order of the Hon'ble High Court.

5. The sole ground pleaded in the prayer for seeking condonation of delay is that some of these review applicants have already retired from service and have returned back to their respective native

places and hence it took some time for them to contact each other and to decide filing the RA.

6. For the reasons stated in the MA, the delay in filing RA-219/2017 is condoned.

RA No.219/2017

7. The review applicants who were the original applicants in OA-92/2015, through the medium of this RA, filed under Rule 17 of Central Administrative Tribunal (Procedure) Rules, 1987 readwith Rule 24 readwith Order 47 Rules 1 and 2 of CPC, 1908, have prayed for review of the order dated 30.05.2016, whereby the OA was dismissed. The applicants had prayed for granting them promotion under the Flexible Complementing Scheme (FCS) to the grade of Scientist 'G' from their respective date(s) of acquiring eligibility. This prayer has been declined by the Tribunal vide the order under review.

8. The grounds pleaded by the applicants for seeking review of the Tribunal's order are the same, which they had pleaded for seeking the reliefs in the OA. The sum and substance of the grounds mentioned in the RA is that the applicants are entitled for promotion under the FCS from the respective date(s) of their eligibility in terms of the judgment of the Hon'ble High Court in **S.K. Murthi** (W.P. (C) No.14263/2004) dated 05.10.2010. This pleading

had already been considered by the Tribunal in adjudicating OA-92/2015.

9. It is settled law that *sine qua non* for review of an order is existence of an error apparent on the face of the record of the order. In the instant case the review applicants have miserably failed to point out any apparent error on the face of the record of the Tribunal's order.

10. 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 Para (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 a

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.”

11. For the reasons discussed in the foregoing paras, we do not find any merit in the RA. Accordingly, the RA is dismissed in circulation. No costs.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

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