

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

R.A. No.29/2017 in
O.A. No.-668/2014

New Delhi this the 10th day of February, 2017

Hon'ble Mr. Raj Vir Sharma, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)

Smt. Jetinder Kaur,
W/o Sh. Harjeet Singh,
E-10/1 Ground Floor & Basement,
Vasant Vihar, New Delhi-110057.

-Review Applicant

Versus

1. Union of India through the Secretary,
Ministry of Health & Family Welfare,
Nirman Bhawan, New Delhi-110008.

2. Union Public Service Commission (USPC),
Through the Secretary, Dholpur House,
Shahjahan Road, New Delhi-110069. -Respondents

O R D E R (By Circulation)

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

The review applicant, through the medium of this Review Application (RA) filed under Section 22 (3) (f) of Administrative Tribunals Act, 1985, read with Rule 17 of Central Administrative Tribunal (Procedure) Rules, 1987, has prayed for review of this Tribunal's order dated 13.12.2016 passed in OA No.668/2014.

2. The grounds pleaded in the RA for review of the order in the OA are as under:-

“i) The Hon’ble Tribunal has held that the case of the Petitioner was considered by the Respondent no.1 when all the 13 person/dental surgeons were considered by the DPC on 10.02.2010, out of which 7 were promoted; the Hon’ble Tribunal has also held that the position since then has not changed and the varying stand of the Respondent no.2 is intriguing. All the other 7 Dental Surgeons were given the promotion notionally w.e.f. 29.10.2008 hence accordingly the petitioner is also entitled for the same treatment.

ii) There is no dispute with regard to the eligibility of the Petitioner for the SAG level post of consultant as on 29.10.2008.

iii) The only reason cited by the Hon’ble Tribunal for directing the Respondent No.1 to grant the promotion to the Petitioner w.e.f. 01.10.2013 is the fact that the last proposal for promotion of the Petitioner was sent by the Respondent No.1 on 03.09.2016. Therefore, it is apparent that the finding and observation preceding the direction of the Hon’ble Tribunal is based on an error. The said error is apparent on the face of record, and pertains to consideration of the factual aspect which perhaps inadvertently skipped the notice of the Hon’ble Bench.

iv) The non-consideration of the aforementioned documents will cause irreparable loss to the Petitioner both financially and otherwise.

v) It is a fit case for seeking judicial intervention in review jurisdiction of the Hon’ble Tribunal as the vital document dated 3.09.2013 was not perhaps considered in its entirety.”

3. As could be seen from the grounds for review pleaded in the RA, the main contention raised is that in the letter dated 03.09.2016 of Respondent No.1 addressed to Respondent No.2, the applicant’s case for promotion to the SAG grade of Dental Surgeon (Group ‘A’ PB-3+Grade Pay 10,000) was for the year 2009-10 whereas the Tribunal in Para-9 (ii) of the order states as under:-

“(ii) If the Respondent No.1 comes to the conclusion that the applicant was indeed eligible for promotion, then the Respondent No.1 shall grant promotion to the applicant in

the SAG of Dental Surgeon (Group 'A' PB-4+Grade Pay 10,000) w.e.f. 01.10.2013, considering that the last proposal for convening the DPC for granting promotion to the applicant was sent by Respondent No.1 to Respondent No.2 on 02.09.2013. Needless to say that the applicant shall be entitled to all consequential benefits flowing from the promotion".

4. We have gone through the RA as well as the order of the Tribunal under review. As discussed in Para-8 of the order, the applicant could not be considered for promotion as her ACR grading for the year 2003-04 was below benchmark. The said ACR was upgraded by the Competent Authority on 29.07.2011 (Annexure R-3 of the OA). As such the applicant became eligible for promotion only thereafter. It is further observed that the applicant's case for promotion was considered by Respondent No.2 once in the year 2012 and thrice in the year 2013 but she was not recommended for promotion on the ground that the Recruitment Rules were not amended aligning them with the DACP Scheme. The Tribunal has held the said action of Respondent No.2 as unwarranted.

5. Considering all these facts, in Para-9 (ii) of the order, a direction was given to Respondent No.1 to assess the eligibility of the applicant and if found eligible, grant her promotion to SAG of Dental Surgeon w.e.f. 01.10.2013, considering the date of 3rd meeting of the DPC held in the year 2013. As such, we do not find any apparent error in the order.

6. The *sine qua non* for reviewing the order of the Tribunal is existence of an apparent error on the face of record. The review applicant has failed in pointing out such an apparent error in the order of the Tribunal.

7. Laying down the guidelines for review of its order by the Tribunal, the Hon'ble Supreme Court in the case of **State of West Bengal & Others vs. Kamal Sen Gupta & Another (2008) 3 AISLJ 202** held that Tribunal can review its order under eight situations as given in Para (28) of the said judgment, which are as follows:

“(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.”

8. In the conspectus of the discussions in pre-paras, we do not find any merit in the RA. The RA is accordingly dismissed, in circulation.

(K.N. Shrivastava)
Member (A)

(Raj Vir Sharma)
Member (J)

cc.