

**Central Administrative Tribunal
Principal Bench, New Delhi.**

**RA-30/2016
MA-405/2016 in
OA-1558/2014**

Reserved on : 08.03.2016.

Pronounced on : 14.03.2016.

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. Shekhar Agarwal, Member (A)

1. The Department of Science & Technology
through its Secretary,
Technology Bhawan,
New Mehrauli Road, New Delhi.

2. The Secretary,
Department of Personnel & Training,
Ministry of Personnel & Training,
North Block, New Delhi.

.... Review Applicants

(through Sh. Ravi Kant Jain, Advocate)

Versus

Sh. S.K. Banerjee,
S/o late Sh. Jiban Banerjee,
R/o Dept. Of Science & Tech.,
12/5, Sector-I, Pushp Vihar,
New Delhi.

..... Respondent

(through Mr. Vinod Zutshi, Advocate)

O R D E R

Mr. Shekhar Agarwal, Member (A)

This Review Application has been filed by respondents in OA for review of our order dated 13.05.2015, the operative part of which reads as follows:-

"4. We have heard the learned counsel for the Applicant Shri Vivek Sheek and the learned counsel for the Respondents Shri Manjeet Singh Reen. Admittedly, the Department of Personnel and Training has promoted the Applicant as Assistant on ad hoc basis vide order dated 04.08.2008 and nominated him to the cadre of Culture. But the Respondent-DST where he was working did not relieve him in public

interest. The Applicant had no role in the matter. He never requested the Respondent-DST or the Respondent-DOP&T to retain him in the DST itself. Considering the facts and circumstances of the case, the DOP&T themselves granted the request of the Respondent-DST and re-nominated him to the cadre of Science and Technology itself. The Respondent-DST has also thereafter fixed his pay in the pay scale of Assistant with effect from 04.08.2008 itself and paid the salary and allowances accordingly. Now the Respondents have come up with the contention that in the DOP&T's order dated 16.09.2008 it was mentioned that his promotion will take effect from the date he joins duty and accordingly his date of appointment shall be from 17.09.2008 instead of 04.08.2008. But the actual position, as stated above, is that the Respondent-DST has asked the DOP&T to continue in their own cadre as Assistant on ad hoc basis from the date of promotion, i.e., 04.08.2008. The Respondent-DST thereafter treated him as Assistant on ad hoc basis and paid all the salary and allowances admissible to the Assistant. Therefore, it is most illogical to say that the Applicant has taken charge of the post of Assistant with effect from 17.09.2008 particularly when he has actually been working as Assistant in the cadre of DST from 04.08.2008 itself.

5. In view of the above position, we are of the considered view that the impugned Office Order No.A.32015/02/2008-Admn.I(B) dated 01.05.2013 is illegal and the same has been issued in a very arbitrary manner. Consequently, we quash and set aside the aforesaid order and allow this OA with all consequential benefits. The Respondents shall also pass appropriate orders in compliance of the aforesaid directions within a period of one month from the date of receipt of a copy of this order.

6. There shall be no order as to costs."

2. Earlier the review applicants had filed Writ Petition (C) No. 11783/2015 before Hon'ble High Court of Delhi challenging the aforesaid order. Thereafter, they had themselves sought leave of the Court to withdraw the aforesaid Writ Petition with liberty to file a review application before this Tribunal. Hon'ble High Court of Delhi while allowing withdrawal of the Writ Petition had also directed that in case a review application was filed, the Tribunal would take a lenient view with regard to the plea of limitation. The review applicants have accordingly filed this review application along with MA-405/2016 for condonation of delay in filing the review application. Taking note of the directions of Hon'ble High Court of Delhi, we take a lenient view as far as limitation is concerned and condone the delay in filing the review application. We have proceeded to decide the review application on merits.

3. The review applicants have stated that this Tribunal has failed to appreciate that the OA applicant was working with the review applicants on deputation basis and could not have been granted ad hoc promotion till DoP&T had agreed to his retention with the review applicants. This is because the cadre of Assistants was centralized cadre and DoP&T was the cadre controlling authority. Further, they have stated that even the OA applicant had never made a request to the review applicants to relieve him in pursuance of his promotion order. The Tribunal has also not appreciated that ad hoc promotion does not confer any right on the promoted employee and cannot be granted violating seniority. In this case, one Sh. Om Prakash was senior to the OA applicant but even then the OA applicant was erroneously promoted before Sh. Om Prakash. Even the order dated 04.08.2008 was not an order of promotion but only an indication of a decision taken to promote certain UDCs on ad hoc basis upto 31.12.2008. Further, the review applicants have submitted that this Tribunal did not appreciate that the review applicants were within their right to rectify their own mistake and that if this mistake was not rectified, it will have serious ramifications in the cadre of Assistants across Ministries/Departments.

4. The OA applicant has filed reply to the review application opposing the same. He has stated that the review jurisdiction cannot be invoked to rehear the case and cannot be allowed as an appeal in disguise. He has relied on several judgments in support of his contention, such as, Parsion Devi and Ors. Vs. Sumitri Devi and Ors., 1997(8) SCC 715, Ajit Kumar Rath Vs. State of Orissa & Ors., AIR 2000 SC 85, B.R. Khoka Vs. Delhi Transport Corporation (RA-223/2015 in OA-4464/2014), State of West Bengal and Others Vs. Kamal Sengupta and Another, (2008) 8 SCC 612, Kamlesh Verma Vs. Mayawati and Others, (2013) 8 SCC 320,

Chhaju Ram Vs. Neki, AIR 1922 PC 112 and Union of India Vs. Sandur Magnese & Iron Ores Ltd., JT 2013(8) SC 275.

5. We have heard both sides and have perused the material placed on record. After considering the various grounds taken by the review applicants, we are of the opinion that review applicants have not pointed out any error in the judgment apparent on the face of the record. In fact, in the guise of review they are trying to re-argue their case. If the review applicants were aggrieved by our findings, remedy lies elsewhere. Clearly, the grounds taken by the review applicants cannot be used to invoke the review jurisdiction of this Tribunal. If we were to permit this, we would be sitting in appeal over our own judgment.

6. While considering the scope of review, Hon'ble Supreme Court in the case of **Aribam Tuleshwar Sharma Vs. Aribam Pishak Sharma**, (1979) 4 SCC 389 referred to an earlier decision in the case of **Shivdeo singh Vs. State of Punjab**, AIR 1963 SC 1909 and observed as under:-

"It is true as observed by this Court in **Shivdeo Singh v. State of Punjab**, AIR 1963 SC 1909, there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which is inherent in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all matters or errors committed by the Subordinate Court."

6.1 Similarly in the case of **Ajit Kumar Rath Vs. State of Orissa and Others**, AIR 2000 SC 85 the Apex Court reiterated that power of review vested in the Tribunal is similar to the one conferred upon a Civil Court and held:-

“The provisions extracted above indicate that the power of review available to the Tribunal is the same as has been given to a court under Section 114 read with Order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it. **It may be pointed out that the expression “any other sufficient reason” used in Order 47 Rule 1 means a reason sufficiently in the rule.**

Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment.”

[Emphasis added]

6.2 In the case of **Gopal Singh Vs. State Cadre Forest Officers’ Assn. and Others** [2007 (9) SCC 369], the Apex Court held that after rejecting the original application filed by the appellant, there was no justification for the Tribunal to review its order and allow the revision of the appellant. Some of the observations made in that judgment are extracted below:-

“The learned counsel for the State also pointed out that there was no necessity whatsoever on the part of the Tribunal to review its own judgment. Even after the microscopic examination of the judgment of the Tribunal we could not find a single reason in the whole judgment as to how the review was justified and for what reasons. No apparent error on the face of the record was pointed, nor was it discussed. Thereby the Tribunal sat as an appellate authority over its own judgment. This was completely impermissible and we agree with the High Court (Justice Sinha) that the Tribunal has traveled out of its jurisdiction to write a second order in the name of reviewing its own judgment. In fact the learned counsel for the appellant did not address us on this very vital aspect.”

7. On the basis of above analysis, we find that there is no merit in this review application and the same is dismissed. No costs.

(Shekhar Agarwal)
Member (A)

(V. Ajay Kumar)
Member (J)

/Vinita/