

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

R.A. No. 81/2015
O.A. No. 659/2014

Reserved on : 18.11.2015
Pronounced on : 24.11.2015

**HON'BLE MR. P.K. BASU, MEMBER (A)
HON'BLE MR. RAJ VIR SHARMA, MEMBER (J)**

Dr. Kulbhushan Sehgal
S/o Late Shri J.R. Sehgal
R/o A 118, Sector 2,
60 Sq.Mt. Plot,
Pocket OO, Rohini,
New Delhi-110085.

.. Review Applicant

(By Advocate : Shri Deepak Verma)

Versus

Union of India through:

1. The Secretary,
Ministry of Health & F.W.
Dept. of Health Research,
Nirman Bhawan,
New Delhi-110001.
2. The Director General
Indian Council of Medical Research (ICMR)
Ansari Nagar,
New Delhi-110029.
3. The Director,
All India Institute of Medical Sciences (AIIMS)
Ansari Nagar,
New Delhi-110029.

.. Respondents

(By Advocate : Shri R.N. Singh)

ORDER**By Hon'ble Mr. P.K. Basu**

This Review Application has been filed by the applicant against our order dated 06.02.2015 in O.A. No.659/2014.

2. The grounds for filing this Review Application are as follows:

(i) The order did not take into consideration the judgment of the Hon'ble Supreme Court in **V.L. Chandra Kumar and Others Vs. All India Institute of Medical Sciences and Others**, (1990) 3 SCC 38.

It is argued that the Hon'ble Supreme Court had directed the ICMR in that case to regularise the services of three petitioners, who had put over 10-15 years of service.

(ii) The applicant was not even considered for the post of Scientist 'C' though he had a right to be considered as per law.

(iii) It is argued that the Tribunal has wrongly interpreted that this matter is covered by the judgment of Hon'ble Supreme Court in **Secretary, State of Karnataka Vs. Umadevi & Others**, 2006 (4) SCC 1. In this regard, learned counsel for the applicant also produced before us a judgment of the Hon'ble Supreme Court in **State of Jharkhand and Others Vs. Kamal Prasad and Others**, (2014) 7 SCC 223, in which it has been held that ad hoc employees in continuous service for more than 10 years without

intervention/protection of court are entitled to regularisation on basis of exception carved out in para 53 of **Umadevi** (supra). He has, therefore, argued that regularisation of the applicant should have been considered and the Tribunal has wrongly applied **Umadevi** (supra) in rejecting the applicant's case.

(iv) The order dated 14.05.2015 in O.A. No.547/2014 passed by a coordinate bench of this Tribunal was placed before us, in which in similar circumstances the Tribunal had ordered for consideration of the applicant for regularisation and pending regularisation not to discontinue the services of the applicant in that case.

(v) Lastly, it is argued that the Hon'ble Supreme Court in **S. Nagaraj & Ors. Vs. State of Karnataka & Anr.**, (1993) Suppl.4 SCC 595/JT 1993 (4) SC 27, has held as follows:

"18. Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the court should not be prejudicial to anyone. Rule of stare decisis is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bends before justice. Entire concept of writ jurisdiction exercised by the higher courts is founded on equity and fairness. If the court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification, depending on if it is of fact or law. But the root from which the power flows is the anxiety to avoid injustice. It is either statutory or inherent. The latter is available where the mistake is of the court. In Administrative Law the scope is still wider. Technicalities apart if the court is satisfied of the injustice then it is its constitutional and legal obligation to set it right by recalling its order. Here as explained, the bench of which one of us (Sahai, J.) was a member did commit an error in placing all the stipendiary graduates in the scale of First Division

Assistants due to State's failure to bring correct facts on record. But that obviously cannot stand in the way of the court correcting its mistake. Such inequitable consequences as have surfaced now due to vague affidavit filed by the State cannot be permitted to continue."

and, therefore, it is argued that the Tribunal should not look at technicalities but see the overall injustice being meted out to the applicant to be thrown out on the street without a livelihood after serving the respondents for so many years.

3. Learned counsel for the respondents pointed out that it is incorrect on the part of the learned counsel for the applicant to state that **V.L. Chandra Kumar's** case has not been considered by the Tribunal as in para 3 the Tribunal has specifically considered this judgment. Secondly, as regards non-consideration of his candidature, it is argued that the applicant in his O.A. had prayed for quashing of order dated 29.11.2013 and regularisation and there was no such prayer, so he cannot raise a new prayer for consideration now. Thirdly, it is stated that **Umadevi** (supra) is a five judge judgment and has been rightly considered by the Tribunal to be applicable in the present case. The judgment of the Hon'ble Supreme Court in **Kamal Prasad** (supra) is a two judge judgment which cannot supersede the **Umadevi's** judgment being a judgment of a larger bench. Next, even if, it is argued that **V.L. Chandra Kumar** (supra) and **Umadevi** (supra) have wrongly been applied by the Tribunal, this cannot be a ground for review as the

legal remedy for that does not lie in the review application and the applicant has to approach the appropriate forum in that case.

4. As regards, judgment of this Tribunal in O.A. 547/2014, it is argued that, at best, the judgment dated 14.05.2015 will be treated as bad in law and *per incuriam* and the order of the coordinate bench in O.A. No.547/2014 cannot cause to alter the judgment in this O.A.

5. We have considered the law settled by the Hon'ble Supreme Court regarding scope of review application, specifically in **Kamlesh Verma Vs. Mayawati and Others**, (2013) 8 SCC 320 and **State of West Bengal and Others v. Kamal Sengupta and Another**, (2008) 8 SCC 612 and, in our opinion, the learned counsel for the applicant has not been able to point out any error on the face of record.

6. We have considered all the judgments cited by both the sides including **V.L. Chandra Kumar** as well as **Umadevi** quite clearly and come to a conclusion and while the applicant may legitimately differ with the logical conclusion we arrived at, that cannot be a subject matter of review and the applicant has appropriate remedies available for that. On the question of non-consideration of his candidature, as pointed out by the learned counsel for the respondents, this is a prayer which is absolutely new and not raised

in the O.A. at all. As regards judgment of this Tribunal in O.A. 547/2014, in our opinion, the contention of the applicant is completely misplaced and it is not possible to reopen matters under review on the basis of subsequent orders passed by any coordinate bench on similar issue, as rightly pointed out by the learned counsel for the respondents. While considering O.A. No.547/2014, learned counsels in that O.A. should have pointed out about our order dated 06.02.2015 in O.A. No.659/2014 and not vice-versa that orders passed in future will have effect on orders passed earlier.

7. In view of above, we find no merit in the Review Application and the same is, therefore, dismissed.

(Raj Vir Sharma)
Member (J)

(P.K. Basu)
Member (A)

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