

**Central Administrative Tribunal  
Principal Bench**

**RA No.85/2016  
In  
OA No.4357/2014**

Order reserved on : 02.05.2016  
Order pronounced on : 31.05.2016

**Hon'ble Mr. V. Ajay Kumar, Member (J)  
Hon'ble Mr. V.N. Gaur, Member (A)**

Shri Manish M. Gade,  
Economic Officer,  
Room No.431,  
NITI Aayog (Erstwhile Planning Commission),  
Parliament Street,  
New Delhi-110001.

...applicant

(By Advocate : Shri Ramesh Datta)

**Versus**

Union of India & Others : through

1. The CEO/Secretary,  
NITI Aayog, (Erstwhile Planning Commission),  
Parliament Street,  
New Delhi.
2. The Joint Secretary/Adviser (Admn.),  
NITI Aayog, (Erstwhile Planning Commission),  
Parliament Street,  
New Delhi.
3. The Director (Admn.)  
NITI Aayog, (Erstwhile Planning Commission),  
Parliament Street,  
New Delhi.
4. The Department of Personnel & Training (DOP&T),  
Through its Secretary,  
The Ministry of Personnel,  
Public Grievances and Pensions,  
North Block,  
New Delhi.

...respondents

(None)

**ORDER****Mr. V.N. Gaur, Member (A) :-**

The review applicant has filed this RA in the OA No.4357/2014 pointing out what he claims to be errors apparent on the face of record in Order dated 25.02.2016 passed by this Tribunal in the OA. There are mainly two grounds on which the RA has been filed. The first ground is that in para 4 of the order, the Tribunal has extracted paragraphs 17.10 and 17.11 of OM No.22011/5/91-Estt.(D) dated 27.03.1997 issued by the Department of Personnel & Training (DOP&T), which read thus :-

“17.10 The general principle is that promotion of officers included in the panel would be regular from the date of validity of the panel or the date of their actual promotion whichever is later.

17.11 In cases where the recommendations for promotion are made by DPC presided over by a Member of the UPSC and such recommendations do not require to be approved by the Commission, the date of Commission's letter forwarding fair copies of the minutes duly signed by the Chairman of the DPC or the date of the actual promotion of the officers, whichever is later, should be reckoned as the date of regular promotion of the officer. In cases where the Commission's approval is also required the date of UPSC's letter communicating its approval is also required the date of UPSC's letter communicating its approval or the date of actual promotion of the officer whichever is later will be relevant date. In all other cases the date on which promotion will be effective will be the date on which the officer was actually promoted or the date of the meeting of the DPC whichever is later. Where the meeting of the DPC extends over more than one day the last date on which the DPC met shall be recorded as the date of meeting of the DPC.”

2. The review applicant has pointed out that he has obtained a copy of the aforementioned OM of DOP&T, a copy of which has been annexed with the RA also, but that OM does not contain any such paragraphs as reproduced above. It has been argued that the

instructions of DOP&T, as contained in the paras 17.10 and 7.11 reproduced above have been the main ground on which the Tribunal decided the matter. When no such paragraphs exist in the OM, it is an error apparent on the face of record. The second ground highlighted is that the Tribunal in para 5 of the Order dated 25.02.2016 has erroneously relied on the Hon'ble Supreme Court judgment in **Baij Nath Sharma Vs. Hon'ble Rajasthan High Court at Jodhpur** (1998) 7 SCC 44, as the facts of that case did not resemble with the facts of the case of the applicant in OA No.4357/2015. It has been pointed out by the review applicant that the appellant in **Baij Nath Sharma's** case (supra) was governed by the Rajasthan Judicial Service Rules whereas the applicant in the OA is governed by the Central Civil Services Rules. Further, it is not the case of the respondents, unlike in **Baij Nath Sharma** (supra), that they had no intention to fill up the vacancies of 2011-2012 by promotion. On the contrary, the respondents are duty bound to hold DPCs according to the laid down time schedule for filling up the vacancies and in case the DPC is not held in a particular year, the certificate has to be passed by the Competent Appointing Authority stating the reasons for not doing so. The review applicant has further quoted various judgments of Hon'ble Supreme Court and Hon'ble High Court of Delhi in support of his contentions raised in the main OA.

3. The power to review its own Order has been vested in the Tribunal by Section 22(3)(f) of the Administrative Tribunals Act, 1985. This is the same power as vested in a Civil Court under Order XLVII Rule (1) of the Code of Civil Procedure, 1908 which reads as follows :-

“1. **Application for review of judgment.** 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 scope of the power of review by Civil Courts has been further elaborated by various judgments of Hon'ble Supreme Court which, in essence, lay down that by way of review neither the review applicant can reargue his case afresh, nor the Civil Court can become its own Appellate Authority. The scope of review is limited to situations where a new evidence has been discovered, which

despite due diligence, was not within the knowledge of the applicant earlier or on account of some mistake or error apparent on the face of record. These principles have been reiterated in :-

- (i) ***Union of India v. Tarit Ranjan Das***, (2004) SCC (L&S) 160
- (ii) ***Ajit Kumar Rath v. State of Orissa and Others***, (1999) 9 SCC 596
- (iii) ***State Of West Bengal & Ors vs Kamal Sengupta & Anr*** 2008 (9) SCALE 509
- (iv) ***Gopal Singh Vs. State Cadre Forest Officers Association & Ors.*** 2007 9 SCC 369

5. Confining ourselves to the boundary defined for review, we will now deal with the contentions raised by the review applicant as mentioned in the preceding paras. According to the learned counsel, DOP&T OM No.22011/5/91-Estt.(D) dated 27.03.1997 does not contain the para 7.10 and 7.11, as reproduced in the Order of this Tribunal. It is noticed that the statement of the review applicant is partially correct as apparently there is mistake in quoting the OM number in the OA. The correct reference is DOP&T OM No.22011/5/86-Estt.(D) dated 10.04.1989 regarding "Departmental Promotion Committee and related matters - consolidated instructions on". Due to over-sight, the reference number of the relevant OM has been wrongly printed in that Order, but contents of the paragraph numbers 17.10 and 17.11 have been correctly reproduced, as in the OM dated 10.04.1989. A bare perusal of the Order dated 25.02.2016 could show that the

conclusion drawn by the Tribunal was guided by the contents of those paragraphs and not by the OM number. Thus, even though there may be mistake in reproducing the reference number of the OM, there was no mistake in the contents of the paragraphs and, therefore, it cannot be argued that the error in citing reference number would have affected the decision of the Tribunal.

6. The second argument of the review applicant is that the facts of the case in **Baij Nath** (supra) was not comparable with the facts of the case of the OA and, therefore, the ratio of that judgment would not be applicable to the applicant's case. In this context, it is noted that to apply *ratio deci dendi* of one case to another does not necessarily requires that the facts of the two cases should be identical. In **Baij Nath** (supra) itself, the Hon'ble Supreme Court extracted its earlier decision in **Union of India and Ors. Vs. K.K. Vadera & Ors.** AIR 1990 SC 442, which was in respect of Defence Research and Development Rules, 1970, and applied the ratio to the case of the appellants involving Rajasthan Judicial Service Rules. Therefore, the review applicant cannot term it as an error that the facts of one of the judgments of Hon'ble Supreme Court, on which this Tribunal relied on, are quite different to the case of the applicant herein. Even for the sake of argument, if the plea of the review applicant is accepted, it would only imply that the Tribunal's

Order was wrong, but the remedy against a wrong judgment is not a review.

7. Taking into account the aforesaid discussion, we find that the review applicant has not been able to establish any error apparent on the face of the record that could have led to a different conclusion in the Tribunal's Order dated 25.02.2016. The RA, therefore, is dismissed as devoid of merit.

( V.N. Gaur )  
Member (A)

( V.Ajay Kumar )  
Member (J)

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