

**Central Administrative Tribunal
Principal Bench
New Delhi**

RA No.118/2017
MA No.1695/2017
In
O.A.No.1571/2014

New Delhi this the 19th day of August, 2017.

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

S.L. Gupta, age 53 years (Joint Director) s/o Mr. Ram Gopal r/o 98, Om Vihar Phases IA, Uttam Nagar Delhi -59

..Applicant

1. Union of India through its Secretary Ministry of Water Resources Sharam Shakti Bhawan New Delhi -110 001
2. The Director Central Soil & Materials Research Station, Olof Palme Marg, Hauz Khas New Delhi -110 016
3. The Secretary DOPT Ministry of Personnel, Pension & Public Grievances North Block, New Delhi
4. The Chairman UPSC Dholpur House Shahjahan Road New Delhi
5. The Under Secretary Govt. of India Ministry of Water Resources Central Soil & Materials Research Station Olof Palme Marg, Hauz Khas New Delhi -16

..Respondents

O R D E R (By Circulation)

Hon'ble Mr. K.N. Shrivastava, Member (A):

This Review Application (RA) has been filed by the review applicant under Rule 17 of the Central Administrative Tribunal

(Procedure) Rules, 1987 read with Section 22 of the Administrative Tribunals Act, 1985, seeking review of the Tribunal's order dated 30.03.2017 in OA No.1571/2014.

2. The review applicant was the original applicant in OA-1571/2014 in which he had prayed for the following reliefs:

“8.1 To quash and set aside the order dated 10.04.2012 to an extent whereby the applicant is being given In-situ promotion under FCS to the post of Joint Director (re-designated to Scientist 'E') w.e.f. 27.03.2012 instead of 01.07.2007 and order dated 03/04.03.2014 whereby the representation of the applicant has been rejected and to further direct the respondent to antedate the promotion of the applicant to the grade of Joint Director (re-designated to Scientist E) w.e.f. 01.07.2007 with all consequential benefits including seniority and promotion and pay and allowances.”

3. In the order under review by virtue of which the OA was dismissed, the Tribunal has made the following important observations:

“16. The applicant admittedly did not put regular service in the grade of CRO from 01.07.2002 to 11.10.2006 and hence this period cannot be reckoned for determining the residency period of the applicant for in situ promotion to the next grade of Joint Director (Scientist E). 17. In the conspectus of the discussions in the foregoing paragraphs, we are of the view that the applicant acquired eligibility for promotion to the grade of Scientist E (Joint Director) on in situ basis under the Rules 2010 on 10.10.2011, and, therefore, we do not find any infirmity in the 13 O.A. No.1571/2014 respondents' impugned Annexure A-1 office order dated 10.04.2012 promoting him to the post of Scientist E (Joint Director) w.e.f. 28.03.2012. Hence, we do not find any merit in this O.A.”

4. The main grounds raised by the review applicant in this RA are as under:

- i)when the Court grants retrospective promotion to an applicant with all consequential benefits, then it is bound to be counted and considered for his next higher promotion.
- ii)after the advent of the Umbrella Notification dated 09.11.1998 of the DoPT regarding *in situ* promotions under the FCS in the Scientific departments, RRs of 1983 got superseded and the guidelines laid down in the said Notification dated 09.11.1998 did apply to the promotions in the department (CSMRS) of the applicant until the promulgation of the new RRs of 2010 and after 09.11.1998, the eligibility criteria has been considered as per the said guidelines laid down in the said OM dated 09.01.1998 pertaining to the promotions in the Scientific Departments until the advent of the revised RRs."

5. The aforementioned grounds as well as other points mentioned in the RA have already been considered by the Tribunal while adjudicating OA No.1571/2014. A mere reading of this RA gives an impression as though the review applicant has preferred an appeal against the order under review. Such surreptitious intents are not permissible in law. It is well settled that the *sine qua non* for reviewing any order of the Tribunal is existence of an apparent error on the face of the record. The applicant has failed to point out any error apparent on the face of the order under review.

6. 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 an 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."*

7. For the reasons discussed in the foregoing paras, we do not find any merit in the RA. Accordingly, the RA is dismissed in circulation.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

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