

**Central Administrative Tribunal
Principal Bench**

RA NO.287/2015 and
MA NO. 3769/2015
in
OA NO. 3781/2013

This the 27th day of November, 2015

Hon'ble Mr. A.K.Bhardwaj, Member (J)
Hon'ble Mr. V. N.Gaur, Member (A)

Virender Kumar (aged about 60 years)
S/o late Sh. Desh Ram
R/o Village & PO Bagdola,
Sector-8, Dwarka,
New Delhi.

- Applicant

Versus

1. South Delhi Municipal Corporation
Through Commissioner,
Civic Centre, Minto Road,
New Delhi.
2. Additional Commissioner (Engineering),
South Delhi Municipal Corporation
Civic Centre, Minto Road,
New Delhi.
3. Chief Accountant-cum-Financial Accountant,
South Delhi Municipal Corporation
Civic Centre, Minto Road,
New Delhi.
4. Executive Engineer,
Hot Mix Plant,
Additional Commissioner (Engineering),
Municipal Corporation of Delhi,
Moti Nagar,
New Delhi.

- Respondents

ORDER (IN CIRCULATION)

Hon'ble Shri V.N.Gaur, Member (A)

RA No. 287/2015 and MA No.3769/2015 have been filed in this Tribunal's order dated 29.07.2015 passed in OA No.3781/2013. The operative portion of the order reads thus:

"2. We have heard the learned counsels of both the sides and find that on 20.05.2015 the learned counsel for the applicant produced an office order dated 04.06.2014 to the effect that with a view to remove anomaly in the pay scales granted in first and second financial upgradation under the ACP Scheme by different Screening Committees, Senior Operator in the grade of Rs.4000-6000 would be upgraded to Rs.4500-7000 as first financial upgradation and Rs.5000-8000 as the second financial upgradation. This has not been denied by the learned counsel for the respondents. Taking cognizance of this development, we dispose of this OA with the direction to the respondents to review its order dated 03.04.2013 (Annexure A-1 to the OA) and consider the claim of the applicant for second financial upgradation in the pay scale of Rs.5000-8000 within six weeks from the date of receipt of a copy of this order. OA is accordingly disposed of."

2. The RA has been filed on 06.11.2015 more than three months after the pronouncement of the order in OA No.3781/2013 and as such is beyond the period of limitation of 30 days for filing a review application provided in the Rule 17 (1) of the CAT (Procedure) Rules, 1987. However, for the reasons stated in MA No.3769/2015 seeking condonation of delay and in the interest of justice, the same is allowed and the delay is condoned.

3. The main contention of the review applicant for recalling the order dated 29.07.2015 is that the OA was barred by limitation and contrary to Section 21 of the Administrative Tribunals Act, 1985. The cause of action for the applicant arose in April 2006 while the OA

was filed in November 2013. The applicant also had not filed any application for condonation of delay. Further the grounds mentioned in the reply affidavit were not considered by this Tribunal. Besides arguing on merits once again in the RA, the review applicant has also submitted that the applicant had never made any representation (Ref. Ground-D of RA) to the respondents. On the other hand, in para 12 of the RA itself, the review applicant has mentioned “that the petitioner made representation on 31.1.2011 and requested for grant of a pay scale of Rs.5000-8000. The representations were made on 24.5.2011 and 9.12.2011. Copy of the representations dated 31.01.2011, 24.05.2011 and 09.12.2011 are annexed herewith and marked as Annexure-5 (colly.).” Thus, the surviving grounds put forth by the respondents for seeking review of the order dated 29.07.2015 are the ground of limitation and that grounds mentioned in the reply affidavit were not considered.

4. It is trite that in its review jurisdiction the powers of this Tribunal are those of a civil court as provided under Section 22 (3) (f) and Order XLVII, Rule (1) of Code of Civil Procedure which reads thus:

“22 (3) A Tribunal shall have, for the purposes of [discharging its functions under this Act], the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely :-

(f) reviewing its decisions;”

“Order XLVII, Rule (1) of CPC

(1) 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.”

5. It is well established law that after the pronouncement of order in a case, the Court becomes functus officio and cannot pass any further order in that matter except under the review jurisdiction which again is limited to a situation where there is an error apparent on the face of the record or where new facts have been brought in.

6. In the present case the applicant in the OA had produced an office order dated 04.06.2014 issued by the respondents wherein a decision had been taken which if implemented would satisfy the relief claimed by the applicant. Taking note of that order and the fact that the learned counsel for the respondents did not dispute the existence of such an order, the respondents were directed to consider the claim of the applicant for second financial upgradation in terms of that

office order. It is obvious that this Tribunal had not gone into the merits of the claim of the applicant. It was not, therefore necessary to examine each argument taken in the counter affidavit when the respondents themselves were stated to have passed an order that would meet the relief claimed in the OA. The matter was left to the respondents to consider the claim of the applicant in terms of that order. Interestingly in this RA the respondents have neither admitted nor denied the existence of the order dated 04.06.2014 on the basis of which the OA was disposed of. The question of limitation was neither pressed nor considered by the Tribunal though the grievance of the applicant in the OA being related to grant of higher pay scale under MACP, could have been considered as a continuing cause of action.

7. From the submissions of the review applicant, we do not find any error in the order dated 29.07.2015 that could be classified as an error apparent on the face of the record and justify invoking review jurisdiction in the instant case. We, therefore, find RA being devoid of merit and the same is dismissed in circulation.

(V.N. Gaur)
Member (A)

(A.K. Bhardwaj)
Member (J)

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