

(RA No.060/00003/2018)

CENTRAL ADMINISTRATIVE TRIBUNAL

CHANDIGARH BENCH

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**REVIEW APPLICATION NO.060/00003/2018 IN
ORIGINAL APPLICATION NO.060/00573/2016**

Chandigarh, this the 16th day of January, 2018

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**CORAM:HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J) &
HON'BLE MS. P. GOPINATH, MEMBER (A)**

Professor (Dr.) Rajiv Bhandari son of Late Sh. K.L. Bhandari age 56 years working as Professor of Physics at Post Graduate Government College, Sector 11, Chandigarh (U.T.) (Group A)

....Applicant

VERSUS

1. The Secretary, Department of Education, Chandigarh Administration, Sector 9, Union Territory Secretariat, Chandigarh.
2. The Director Higher Education, Department of Education, Chandigarh Administration, Sector 9, Union Territory Secretariat, Chandigarh.
3. The Principal, Post Graduate Government College, Sector 11, Chandigarh (U.T.)
4. Barhm Parkash Yadav @ Braham Parkash @ B.P. Yadav working as Associate Professor in Defence Studies at Post Graduate Government College, Sector 11, Chandigarh (U.T.)
5. The Administrator, U.T. Chandigarh, Raj Bhawan, Sector 6, Chandigarh.

....Respondents

**ORDER (By Circulation)
JUSTICE M.S. SULLAR, MEMBER (J)**

1. The epitome of facts and material, relevant for deciding the present Review Application (RA), filed by the applicant and emanating from the record is that the applicant was promoted from the post of Associate Professor, to Professor in Physics,

under Career Advancement Scheme (CAS) of the University Grant Commission Regulations, 2010, w.e.f. 25.9.2014, vide impugned order dated 9.3.2015 (Annexure A-1 therein in the Original Application (OA) No. 060/00573/2016). He challenged the order (Annexure A-1), to the extent of his promotion w.e.f. 25.9.2014 instead of 15.2.2012, raising variety of grounds contained therein in the main OA.

2. Having completed all the codal formalities, hearing the learned counsel for the parties and considering the entire material on record, with their valuable assistance, the OA was dismissed vide detailed order dated 6.12.2017 (Annexure RA-1), by this Tribunal.

3. Now the applicant has preferred the instant RA only on the ground that certain observations made in paras 17, 19 and 21 etc. are not favourable to him. We have perused the record carefully.

4. A bare perusal of the record would reveal that all the points, which were taken and urged by the applicant, were duly considered and repelled in the main judgment, Annexure RA-1, by this Tribunal. The operative paras 15 to 20 of which read as under :-

“15. What cannot possibly be disputed here is that the UGC issued Regulations (Annexure A-7), regulating the appointment of teachers and other academic staff in Universities and Colleges, and measures for maintaining all standards in higher education in the year 2010. Regulation 6.0.1 postulates that the method of selection procedure shall incorporate transparent, objective and credible methodology of analysis of the merits and credentials of the applicants based on weightages given to the performance of the candidates in different relevant dimensions and his/her performance on scoring system proforma, based on the Academic Performance Indicators (for brevity, **API**) as provided in this Regulations in Tables I to IX of Appendix III. Sequellly, Regulation 6.0.7 further posits that the process of selection of Professors shall involve inviting the bio-data with duly filled Performance Based Appraisal System (for short, **PBAS**) proforma developed by the respective

universities based on the **API** criteria based **PBAS** set out in this Regulation and reprints of five major publications of the candidates. According to the proviso to this Regulation, such publications submitted by the candidate shall have been published subsequent to the period from which the teacher was placed in the Assistant Professor stage –II, and such publication shall be provided to the subject experts for assessment before the interview and the evaluation of the publications by the experts shall be factored into the weightage scores while finalizing the outcome of selection. Regulation 6.0.6 also deals with the minimum qualification, norms etc. for selection of Associate Professor to the post of Professor. Similarly Regulation 6.3.7 envisages that all the selection procedure shall be completed on the day of the selection committee meeting, wherein, the minutes are recorded along with **PBAS** scoring proforma and recommendation made on the basis of merit and duly signed by all members of the selection committee in the minutes. Likewise, as per Regulation 6.3.8, CAS promotions being a personal promotion to the incumbent teacher holding a substantive sanctioned post, on superannuation of the individual incumbent, the said post shall revert back to its original cadre. Similarly Regulation 6.5.1 reads as under:-

“(i) Ten percent of the number of the posts of Associate Professor in an Under Graduate College shall be that of Professors and shall be subject to the same criterion for selection/appointment as that of Professor in Universities, Provided that there shall be no more than one post of Professor in each Department.

Provided further that one-fourth (25%) of the posts of Professor in Under Graduate College shall be directly recruited or filled on deputation by eligible teachers and the remaining three-fourths (75%) of posts of Professors shall be filled by CAS promotion from among eligible associate Professors of the relevant department of the Under Graduate College.

For avoidance of doubt, it is clarified that sanctioned posts include the posts approved under both direct recruitment and CAS promotion.

(ii) Identification of posts of Professor in an Under Graduate College for being filled through direct recruitment/deputation shall be carried out by the affiliating/concerned University acting in consultation with the College. Where the number of posts of Professor worked out as a percentage of the number of posts of Associate Professor for CAS promotion or direct recruitment/deputation is not an integer, the same shall be rounded off to the next higher integer.

(iii) The selection process is to be conducted by the university by receiving PBAS proformas from eligible Associate Professors based on seniority and three times in number of the available vacancies. In case the number of candidates available is less than three times the number of vacancies, the zone of consideration will be limited to the actual number of candidates available. The selection shall be conducted through the API scoring system with PBAS methodology and selection committee process stipulated in these Regulations for appointment of Professors. For direct recruitment of the 25% of the posts, the Rota-quota system shall be followed starting with the promotions and the direct recruitment quota shall be rotated in an alphabetical order.”

16. Not only that, Appendix-III Table -I pertains to proposed scores for Academic Performance Indicators (**API**) in recruitment and CAP promotions of University/College teachers. Appendix III of Table II(A), stipulates the other conditions of promotion under CAS, which provides that a person who holding the post of Associate Professor (Stage 4) and is aspiring for the post of Professor/equivalent cadres (stage 5) is required to have **API** scores- 75 per year for teaching-learning evaluation related activities (category I), 15 per year for co-curricular, extension and profession related activities (Category II), 100 per year for minimum total average annual score under categories I and II, 40 per year(120/assessment period) for research and academic Contribution (Category III), along with other educational essential qualifications, as per the provisions of UGC Regulations.

17. Therefore, a co-joint and meaningful crux of the provisions of UGC Regulations would reveal that a person is eligible for promotion to the post of Professor, under CAS only, if he possesses all the requisite indicated essential qualification, and other applicable norms, scores of educational and other activities,. At the same time, the initiation of process of promotion, on the methodology of preparing the PBAS proforma on the basis of API scoring system, is a condition precedent for promotion. Besides it, the promotion to the post of Professor would depend upon variety of other relevant factors, such as seniority, availability of vacancy etc., to be calculated, as contemplated under the UGC Regulations, and not otherwise. The regulations nowhere provide that the date of promotion would be the date, when a person becomes eligible, as claimed by the applicant. On the contrary, the date of promotion has to be assigned from the date of initiation/preparation of PBAS methodology & other pointed relevant factors, and not prior thereto. The mere fact that a person has completed the requisite number of years and became eligible for a particular post on a particular date, ipso facto, is not, at all, the relevant factor, much less cogent, for assigning the date of promotion, in the instant case.

18. There is yet another aspect of the matter which can be viewed entirely from a different angle. It is not a matter of dispute that having considered the requisite qualification, experience and other pointed relevant activities, a panel of candidates, including the name of applicants was prepared, in pursuance of Regulation 6.5.0 of UGC Regulations, 2010, and the process for promotion was initiated on 25.9.2014, by the Competent Authority. The eligible candidates were selected by the Selection Committee. The name of the applicant was recommended for re-designation on the post of Professor by the duly constituted Committee, vide proceedings dated 12.01.2015 (Annexure A-2).

19. As a consequence thereof, and as per the past practice, the Competent Authority has rightly assigned the date of promotion as 25.09.2014, i.e. the date of initiation of recruitment process/preparation of **PBAS** proforma on the basis of **API** scoring system, to 11 eligible candidates, including the applicant (at Sr. No. 5) vide impugned order dated 09.03.2015 (Annexure A-1). If feeble and unsubstantiated argument of counsel for the applicant for retrospective promotion, is accepted, then it will amount to nullifying the entire process of promotion, as contemplated under the UGC Regulations. Not only that, the applicant,

who is junior and stands at Sr. No. 5 of the list of promoted Professors, would become senior to other promoted Professors (senior professors at Sr. No. 1 to 4), at their back, which is not legally permissible.

20. Therefore, it is held that the applicant is not, at all, entitled to retrospective promotion w.e.f. 15.02.2012, the alleged date of his eligibility. On the other end, he was entitled, and rightly assigned date of promotion, along with other similarly situated promoted Professors, as 25.09.2014, vide impugned order dated 09.03.2015 (Annexure A-1). In this manner, the impugned order, does not suffer from any disability and illegality, as claimed by the applicant, deserves to be and is hereby maintained, in the obtaining peculiar facts and special circumstances of the present case.”

5. Meaning thereby, all the issues raised and urged on behalf of the applicant were duly negated by this Tribunal. The mere fact that certain observations were recorded in indicated paras, against the applicant, ***ipso facto***, is not a ground, much less cogent to review the order because the entire crux of the material was duly considered while deciding the main OA, in the manner indicated hereinabove.

6. It is now well recognized principle of law that the earlier main order can only be reviewed if the case squarely falls within the legal ambit of review and not otherwise. Order 47 Rule 1 CPC read with Section 22(3)(f) of the Administrative Tribunals Act, 1985, regulates the provisions of review of the orders. According to the said provision, a review will lie, only when there is discovery of any new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge, or could not be produced by the review applicant, seeking the review, at the time when the order was passed, or made on account of some mistake or error apparent on the face of the record, and not otherwise, which is totally lacking in the instant case. The order cannot be reviewed in a casual manner, on the wishful thinking of the applicant.

7. Sequelly, it is now well settled principle of law that the scope for review is rather limited, and it is not permissible for the forum hearing the review application to act as an Appellate Authority, in respect of the original order by a fresh and re-hearing of the matter, to facilitate a change of opinion on merits. The reliance in this regard can be placed on the judgments of the Hon'ble Supreme Court in cases of **Parsion Devi and Others Vs. Sumitri Devi and Others** (1997) 8 SCC 715, **Ajit Kumar Rath Vs. State of Orissa** (1999) 9 SCC 596, **Union of India Vs. Tarit Ranjan Das** (2003) 11 SCC 658 and **Gopal Singh Vs. State Cadre Forest Officers' Association & Others** (2007) 9 SCC 369.

8. An identical question came up to be decided by Hon'ble Apex Court in case **State of West Bengal and Others Vs. Kamal Sengupta and another** (2008) 8 SCC 612. Having interpreted the scope of review and considering the catena of previous judgments mentioned therein, the following principles were culled out to review the orders:-

(i) The power of the 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 specified 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 on the face of record justifying exercise of power under Section 22(3)(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 larger bench of the Tribunal or of a superior Court.

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(vii) 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.

(viii) 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.”

9. Meaning thereby, the original order can only be reviewed if case strictly falls within the pointed domain of Order 47 Rule 1 CPC read with Section 22(3)(f) of the Administrative Tribunals Act, 1985 and not otherwise, which is totally lacking in this case.

10. In the instant R.A., the review Applicant has not pleaded any error on the face of record, warranting review of the order dated 6.12.2017 (Annexure RA-1). Hence, we are of the considered opinion that the applicant has filed the instant R.A. on speculative and unsustainable ground, which deserves to be dismissed, in the obtaining circumstances of the case.

11. In the light of the aforesaid prismatic reason, the instant Review Application deserves to be and is hereby dismissed by circulation. All concerned be informed accordingly.

(P. GOPINATH)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)
16.01.2018

HC*