

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

**Review Application No. 16 of 2018
In
Original Application No. 1283 of 2012**

Date of Order: 21.12.2018

Between:

P. Sudarshan, S/o. P. Laxmaiah,
Aged about 51 years, working as Draughtsman,
O/o. Sr. Quality Assurance Establishment (Electronics),
DGQA Technical Complex, Manovikas Nagar Post,
Secunderabad – 500009.

... Applicant

And

1. The Union of India, Rep. by
The Director-General of Quality Assurance
(Electronics), Ministry of Defence (DGQA),
Govt. of India, G-Block, Nirman Bhavan, New Delhi – 110 011.
2. The Controller, Controllerate of Quality Assurance (Electronics),
J.C. Nagar, P.B. No. 606, Bangalore.
3. The Sr. Quality Assurance Officer,
Sr. Quality Assurance Establishment (Electronics),
DGQA Technical Complex, Manovikas Nagar Post,
Secunderabad – 500009.

... Respondents

Counsel for the Applicant ... Mrs. Rachana Kumari

Counsel for the Respondents ... Mrs. K. Rajitha, Sr.CGSC

CORAM:

Hon'ble Mr. Justice R. Kantha Rao, Member (Judl)

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORDER (By circulation)

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

This Review Application has been filed seeking review of the order dated 08-10-2018 in OA No. 1283 of 2012, which stood dismissed on merit. The operative portion of the said order, vide the penultimate paragraph 7& 8 reads as under:-

*“7. The applicant was recruited against tracer post which was to be abolished as per cadre restructuring ordered vide lr. dt 18.7.95. On being corresponded the applicant was posted against D’Man Gr-III on 9.11.95. The respondents admit that this is a mistake and it is against recruitment rules. In fact, to be promoted as D’man from Tracer one has to have 7 years of service and later it was relaxed to 5 yrs. Further, the length of service will be relaxed if one were to be recruited with matriculate plus 2 years diploma in Draughtsman as per Min. of Defense lr dt 15.9.95. Any action to be taken has to be within the purview of the recruitment rules which are mandatory in nature. The applicant does not satisfy this condition nor does he possess the 5 yr service to be re-designated as a D’Man on the date of his joining. The letter dt 19.9.95 does stipulate that only those posts which are unfilled are to be surrendered. In view of the open admission of the respondents that they did make a mistake in placing the applicant in D’man Gr-III and that they are initiating action to rectify by giving proper notice, it would be improper for this tribunal to interfere. The mistake committed by the respondents is a bonafide mistake. If not rectified it leads to negative equality. It does discriminate those who put in the requisite service and those who did not. Favours those who did not is arbitrary. As Per Honourable Supreme Court, a bonafide mistake can be rectified as observed in **VSNL v. Ajit Kumar Kar, (2008) 11 SCC 591:***

“It is well settled that a bona fide mistake does not confer any right on any party and it can be corrected.”

8. The prayer of the applicant cannot therefore be acceded to for reasons cited and hence the O.A is dismissed with no costs.”

2. We are of the view that since no hearing is considered necessary, the Review Application is being disposed under circulation as per Rule 17(3) of the C.A.T. (Procedure) Rules, 1987.

3. The contention of the applicant is that he was appointed as Tracer on 17.8.1995 and his main argument is that there are two different G.Os of Ministry of defence, dealing with cadre review and implementation of CPWD arbitration award. The implementation of the same has to be done in a sequence. The appointment of the applicant as Draughtsman Grade –III was due to the action of the 2nd and 3rd Respondents and that he had no role in the same. The applicant further contends that the Industrial Training Institute gave him a two year

Draughtsman Course certificate. This certificate should be treated as equal to that of Diploma in Draughtsman issued by Polytechnics.

4. As seen from the order of this Tribunal, the Respondents have admitted that it was a mistake to appoint the applicant as a Tracer on 17.8.1995 as there was no post. However, the applicant does neither have the requisite length of 5 years of service nor the qualification of matriculation plus Diploma in Draughtsman to be considered for the post sought for. Moreover, a certificate issued by an ITI and a Diploma issued by a Polytechnic cannot be treated as equal since they are based on the syllabus, design and objective of the course etc. Therefore they cannot be equated as per one's choice. A number of mandatory norms are gone into while deciding the value, recognition, and status of a course by National level regulating bodies. The Respondents cannot be forced to repeat a mistake which they have admitted. By agreeing to the plea of the applicant there would be injustice done to those who became Draughtsman Grade III after putting in the service of 5 years and with the required qualifications as per the Recruitment Rules of the respondent organisation. Hence we do not find any justified averments made by the applicant calling for the Review of the decision of this Tribunal in the OA in question.

5. In fact, a plea for review, unless the first judicial view is manifestly distorted, is like asking for the moon. A forensic defeat cannot be avenged by an invitation to have a second look, hopeful of discovery of flaws and reversal of result. [Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi, (1980) 2 SCC 167]. The review also does not fall under any of the categories prescribed by the Apex Court in the case of State of W.B. vs Kamal Sengupta (2008) 8 SCC 612 which are as under:-

35. The principles which can be culled out from the above noted judgments are:

(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 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.

(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.

6. The Review application thus fails and is dismissed in circulation. No order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

(JUSTICE R. KANTHA RAO)
MEMBER (JUDL.)

Dated, the 21st day of December, 2018

evr