



CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA

No. RA 350/00002/2015
(OA 350/01167/2014)

Present : Hon'ble Ms Bidisha Banerjee, Judicial Member
Hon'ble Mr. P.K.Basu, Administrative Member

ANIL KUMAR SRIVASTAVA

-VS-

UNION OF INDIA & ORS.

For the petitioners : In person

For the Respondents : None

Order on : 30.3.16.

O R D E R

Ms Bidisha Banerjee, JM

O.A. 1167/14 was disposed of on 27.11.2015 in the following manner :

"In such view of the matter the OA is disposed of with a direction upon the respondents to consider antedating seniority of the applicant in Grade V w.e.f. a date when a suitable physical vacancy arose or from 2.11.1998, if not earlier. The respondents shall also ascertain whether any junior was allowed to steal a march over and above the applicant prior to grant of promotion to the applicant on regular basis. In such a case the respondents would be at liberty to give a personal hearing to the said junior and fix the seniority of the present applicant, appropriately in accordance with law.

OA is accordingly disposed of. No costs."

2. The RA is filed on 9.2.2016 seeking to review the order dated 27.11.2015 passed in O.A. No.1167/2014
3. This R.A has been placed on circulation as per the rules and we have perused the same. We find that this R.A is within the period specified in Section 22(f) of the Administrative Tribunals Act, 1985. We have also perused the order sought to be reviewed and the original records of the O.A.

The ingredients under which power of review is exercisable is no more res-integra. The Hon'ble Apex Court in **State of West Bengal & Ors. Vs. Kamal Sengupta and Anr. [2008 (3) AISLJ 209]**, dealing with the power and jurisdiction to review an order have summarised as under :

- (i) Power of Tribunal to review is akin to Order 47 Rule 1 CPC read with Section 114,
- (ii) Grounds enumerated in Order 47 Rule 1 to be followed and not otherwise,
- (iii) Any other sufficient reason appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.
- (iv) Order cannot be reviewed on the basis of subsequent decision/judgment of co-ordinate larger Bench or superior Court,
- (v) Adjudication with reference to material which was available at the time of initial decision. Subsequent event/development is not error apparent.
- (vi) Mere discovery of new/important matter or evidence not sufficient ground for review. The party has to show that such matter or evidence was not within its knowledge and even after exercise of due diligence, the same could not be produced earlier before the Tribunal.

The Apex Court again in **Gopal Singh vs. State Cadre Forest Officers' Association & Ors. [(2007) 2 SCC (L&S) 819]**, has held that "a Tribunal cannot sit over its own judgment as an appellate authority." It cannot write a second order. In a review reasons have to be given why a review is justified. Error apparent on the face of the record has to be justified.

The Hon'ble Apex Court in the recent decision in **Civil Appeal Nos. 7514-7515 of 2005 (Union of India & Ors. -vs- N.R.Parmar & Ors.) with 3 (three) Others** held that promotion could be effective from the date of DPC only., We would like to extract hereunder the para 9 of the said judgment :

"9. We have heard the learned counsel appearing for the contending parties at considerable length and we are of the view that as far as inter se seniority is concerned, the same has to be based on the vacancies arising for a particular year. Thereafter, the seniority has to be determined on the basis of rota quota rule which has been illustrated in the aforesaid illustration contained in the O.M. of 7.2.1986. As far as direct recruits are concerned, the crucial date on which they have to be considered will be the date when the Staff Selection Commission makes the selection of direct recruits. Hence the date of forwarding the dossier of direct recruits by the Commission to the department, date of actual joining or taking over charge by the direct recruit would all be irrelevant. It would be the date on which

the Staff Selection Commission makes the selection of the direct recruits that will be the material date for fixing the seniority. This would avoid injustice being done on account of administrative delays, i.e., delay in matter of issue of orders of appointment and posting and of actual taking over of charge. Similar will be the position in regard to promotees. It will be the date on which the promotee is selected for promotion by the departmental promotion committee. Hence the date on which the promotee actually assumes charge of the promotional post similarly will be relevant. The seniority list which is impugned in the present proceedings, it appears, has not followed the instructions which we are not issuing in the present order.

(emphasis supplied)

As such, clearly and categorically by way of disambiguating the ambiguity the Hon'ble Apex Court in the cited judgment highlighted that with regard to promotes, the date of DPC alone will be the criterion for reckoning the service of them in the promotion post. In such a case, it is quite obvious and axiomatic that the applicant's service in the promotion post could be reckoned only from the date of DPC and not from the date of arisal of the vacancy.

In the OA the applicant had prayed for antedating the promotion to 1995 when DPC was held in 2002.

5. Further in the case of **K.Ajit Babu v. Union of India, (1997) 6 SCC 473**

: [1997(4) SLR 775 (SC)] the Hon'ble Supreme Court held as under :

“.....The right of review is not a right of appeal where all questions decide are open to challenge. The right of review is possible only on limited grounds, mentioned in Order 47 of the Code of Civil Procedure. Although strictly speaking Order 47 the Code of Civil Procedure may not be applicable to the tribunals but the principles contained therein surely have to be extended. Otherwise there being no limitation on the power of review it would be an appeal and there would be no certainty of finality of a decision. Besides that the right of review is available if such an application is filed within the period of limitation. The decision given by the Tribunal, unless reviewed or appealed against, attains finality. If such power to review is permitted, no decision is final, as the decision would be subject to review at any time at the instance of party feeling adversely affected by the said decision. A party in whose favour a decision has been given cannot monitor the case for all time to come. Public policy demands that there should be end to law suits and if the view of the tribunal is accepted the proceedings in a case will never come to an end. A right of review is available to the aggrieved persons on restricted ground mentioned in Order 47 of the Code of Civil Procedure if filed within the period of limitation.”

6. On microscopic examination of the entire matter with reference to the law laid down by the Hon'ble Apex Court as well as the Hon'ble Andhra Pradesh High Court, referred to above we find no justification to review the order dated 27.11.2015 and as such this R.A is dismissed. No costs.

7. Inform the parties accordingly.

~~(P.K.BASU)~~
MEMBER (A)

(BIDISHA BANERJEE)
MEMBER (J)

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