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Central Administrative Tribunal Principal Bench

RA No.80/2008
MA No.936/2008
In
OA No.2539/2003

New Delhi, this the ^{15th} day of April, 2009.

**Hon'ble Mr. Shanker Raju, Member (J)
Hon'ble Dr. Ramesh Chandra Panda, Member (A)**

Sh. Gopal Dass
S/o Late Shyam Lal,
R/o G 650, Raj Nagar Part II,
Palam Colony, New Delhi-45

... Applicant
(By Advocate : Shri M.K.Bhardwaj)

Versus

1. Union of India
Through Secretary,
Ministry of Information & Broadcasting,
Govt. of India,
New Delhi.
2. The Director General,
Doordarshan,
Mandi House,
New Delhi.
3. Asstt. Director(News)
CPC, Khel Gaon,
New Delhi.

... Respondents
(By Advocate: Ms. Nidhi Bisaria)

:ORDER:

HON'BLE DR. RAMESH CHANDRA PANDA, MEMBER (A)

Shri Gopal Dass, Review Applicant herein, has approached this Tribunal under Section 22 (f) of the Administrative Tribunals Act read with Rule 24 of the Central Administrative Tribunal (CAT) (Procedure) Rules for reviewing the order dated 23.1.2005 passed by this Tribunal in OA No.2539/2003.

My order

2. Further, in the MA No.936/2008, the Review Applicant has filed the Misc. Application under Rule 24 of the CAT (Procedure) Rules 1987 for condonation of delay. The order in the OA 2531/2003 was passed on 23.1.2005. The present Review Application was filed on 6.5.2008 after a lapse of more than 3 years. The main ground for delay as submitted by the Review Applicant, is that subsequent to the order, the Applicant could get a finalized seniority list of the Lighting Assistants (LA) on 4.7.2007 on the basis of which he filed MA 1928/2007 alleging perjury against the Respondents and the said MA was dismissed on 10.4.2008 with liberty to the Applicant to take recourse for appropriate proceedings. The grounds being valid and not intentional, the delay in filing this RA is condoned.

3. The Review Applicant has prayed to allow the OA by reviewing the order dated 23.1.2005 passed in OA No.2539/2003 and has based his prayer on the ground that he has obtained a copy of All India Seniority List of Lighting Assistant to justify his claim for promotion to the post of Cameraman Gr.III as his juniors were promoted in the year 2002 ignoring the claim of the Applicant.

4. Shri M.K. Bhardwaj, the learned counsel for the Review Applicant contended that (i) there was an All India Seniority List of Lighting Assistants as received by the Applicant from Respondents (**Annexure-2, page 11**) and a copy of draft seniority list to Lightening Assistant is also available on pages 17 to 19 of the paper book, (ii) there is no Kendra-wise Seniority List for the Lighting Assistants, and (iii) the juniors of the Review Applicant were promoted whereas Applicant's claim was ignored. In view of the above, the Respondents have filed written statement more specifically to produce the zonal seniority list issued 4.10.1995 of Lightening Assistant in Doordarshan.

5. On the other hand, Ms. Nidhi Bisaria, the learned counsel for the Respondents submitted a copy of the letter no.2/10/2007-SI (A) dated 24.12.2008 along with the corrigendum no. 36(3)/2006-SI (A) dated 21.8.2006.

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She also submitted separate seniority list of Lighting Assistants for Delhi Zone and Mumbai Zone. She opposed the contentions adduced by Shri M.K. Bhardwaj and stated that there were no error in the order passed by the Tribunal. Further, she drew our attention to the order passed on 10.4.2008 by the Tribunal in MA 1298/2007 as per which the Tribunal did not find any wrong statement made before the Tribunal and the MA was dismissed under Section 340 of Cr.P.C. In the written statement the Respondents have stated that there is no all Indian seniority list of Lighting Assistants and on the other hand Kendra-wise seniority list are available, it is wrong statement by the Reviewing Applicant that the all Indian ~~seniority~~ seniority list was prepared.

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6. Having heard the rival contentions in the review application, we find that this Tribunal had already passed its order in OA No.2539/2003 dated 23.1.2005 which reads as follows:-

"The Applicant has based his claim on the draft All India Seniority list. However, the Respondents have clarified that though there was a proposal for considering promotions of Lightening assistant on all India basis but after considering all pros and cons the proposal was dropped. And it was decided not to change the recruitment rules and continue the existing arrangement. The objective of providing equitable promotional avenues to Lightening Assistants in all Kendras was achieved by restructuring the posts of Cameramen Grade-III in such a manner that every Lightening Assistant has a possibility of promotion in his Kendra. This redistribution was made vide respondents' order dated 17.3.1997. In view of the foregoing the draft seniority list cannot be the basis of a claim for promotion against a vacancy in a Kendra different from the one where the Applicant was appointed."

7. Consequent to the above order, MA was filed by the Applicant under Section 340 Cr.P.C. on the ground that Respondents had taken a stand before the Tribunal, which was on the face of the records wrong and as such perjury had taken place. The MA 1298/2007 was decided on 10.4.2008, which reads as follows:-

"7. From the perusal of the aforesaid, we do not find that a stand has been taken by the Respondents as to the All India seniority list being made final. Rather from the averments made by the respective counsel we find that this factum has come up in the observation of the Tribunal in Para-4. In order to determine whether a wrong statement has been made by the

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Respondents or not, it is not the statement made by the counsel before the Court that has to be reckoned, but it is the stand taken by the Respondents in the counter reply on which the counsel acts on behalf and under instructions of the client, i.e. Union of India. The averment made beyond counter reply shall not be construed and cannot be treated as a stand taken by the Government. In such an event any statement made beyond the ambit of the counter reply or pleadings of the concerned proceedings, shall not be construed as a material or evidence adduced before the Court on which perjury has to be presumed.

8. In the result, for the foregoing reasons, we do not find any wrong statement made before the Tribunal. As such, the application under Section 340 of Cr.P.C. is dismissed. Applicant is at liberty to take recourse for redressal of his grievance in accordance with law. No costs."

8. The review application is maintainable only if there are errors apparent in the order passed by this Tribunal. As per the trite law the Review Applicant has to prove the error apparent in the matter and is not to reargue the same point, which had already been dealt with by the Tribunal in the OA. We find here that the Review Applicant has re-argued the same matter. We are fully conscious of the limited role this Tribunal has with regard to the review application. The Tribunal cannot sit appellate forum on its own order. The review application has referred to Para 8 of the order requesting to correct the error in the order. But, we do not find any error apparent in the Para8 in special and in the order in general. Therefore, we are of the considered opinion that the Review Applicant has not made out any case to recall the order.

9. Even after the microscopic examination of the Order of the Tribunal, we could not find any reason as to how the review was justified and for what reasons. No apparent error on the fact of the records was noticed by us. The settled legal position is that this Tribunal cannot sit on appeal on its own order. We find from the Applicant's averments in the Review Application the grounds for review have not shown any error apparent in the order but pleaded the same and similar grounds which were presented before this Tribunal in the OA. We are, therefore, legally duty bound not to reopen the OA for our consideration which will amount to taking up the case on appeal. Honourable Supreme Court in

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Union of India Versus Tarit Mohan Das (2003 STPL (L&E) 32747 SC) decided on 8-10-2003 and **Gopal Singh Versus State Cadre Forest Officers Association** [2007 STPL(LE) 38452 SC] laid the ratio that the scope for review is rather limited. There should be proper reason for the Tribunal to recall and review its own order. The apparent error on the face of the record is permissible as the main ground for review. (ii) Tribunal cannot sit as an appellate authority over its own judgment and the Tribunal must not travel out of its jurisdictional domain to write a second order in the name of reviewing its own judgment. It is not permissible for the Tribunal hearing the review application to act as an appellate authority in respect of the original order by rehearing of the matter to facilitate a change of opinion on merits.

10. Taking into account the well settled legal position and the grounds averred by the Review Applicant we do not find any error apparent in the order passed by this Tribunal on 23.1.2005 in OA No.2539/2003. In our considered view there is no justification to review the said order. In the result, the Review Application is dismissed. There is no order as to cost in respect of this Review Application.



(Dr. Ramesh Chandra Panda)
Member (A)



(Shanker Raju)
Member (J)

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