

(2)

**Central Administrative Tribunal
Principal Bench**

R.A. No. 210/2004

In

O.A. NO. 2284/2003

New Delhi, this the 27th day of January, 2006

**Hon'ble Mr. Justice B. Panigrahi, Chairman
Hon'ble Mr. N.D. Dayal, Member (A)**

Sh. M.R. Sehgal,
S/o Late Sh. Hans Raj Sehgal,
R/o 258, Street No. 9,
Joshi Road, Karol Bagh,
New Delhi.

...Applicant

(By Advocate: Shri Ashwani Bhardwaj)

-versus-

1. The Govt. of NCT of Delhi,
Through Chief Secretary,
G.N.C.T. of Delhi,
Secretariat, I.G. Stadium,
New Delhi.

2. Joint Secretary (TTE),
Government of NCT of Delhi,
Directorate of Training & Technical Education,
Muni Maya Ram Marg,
Pitampura, New Delhi – 110 088.

3. The Director,
Directorate of Training & Technical Education,
Muni Maya Ram Marg,
Pitampura, New Delhi – 110 088. ...Respondents

(By Advocate: Shri Ram Kawar)

O R D E R

Justice B. Panigrahi, Chairman:

This Review Application has been filed under Section 22(3)(f) of the Administrative Tribunals Act, 1985.





2. The applicant had filed a case in OA No. 2284/2003 where he had prayed for quashing the order No. F46/DTTE/LIT.Cell/2001/955/2636 dated 26.6.2003 passed by the respondents and further to direct the respondents to grant INSITU promotion to the applicant with effect from 1.4.1991 with all consequential benefits as were granted to other similarly placed persons. He had further prayed to extend the benefit of INSITU promotion from 1.4.1991 with all monetary and consequential benefits.

3. The Tribunal, by its order dated 4.6.2004, had disposed of the case by dismissing the application.

4. Undisputedly, the applicant has not filed any case before the Hon'ble High Court rather preferred to file an application for review of the judgment dated 4.6.2004.

5. In the review application, it has been inter-alia stated that the applicant was claiming INSITU promotion in the scale of pay of Rs. 2000-3200/- which is a Group 'C'

scale w.e.f. 1.4.1991. It is further stated that the Tribunal has committed an error in holding that the scale of pay of Rs. 2000-3200/- is a Group 'B' scale, therefore, such mistake, being an error on the face of record, should be clarified by directing the respondents to grant INSITU promotion to the applicant w.e.f. 1.4.1991 with all consequential benefits.

6. The applicant has further stated that the other similarly placed persons having been granted the same benefit, it appears to have no adequate ground to deny the benefit to the applicant.



7. The respondents have filed their reply to the Review Application disputing and denying the facts stated in the application. They have once again emphasized upon Notification No. 13012/2/87/EST(D) dated 30.06.1987 and submitted that a civil post carrying a scale of pay with maximum of not less than 2900/- but less than 4000/- is a Group 'B' post and not Group 'C' post as claimed by the applicant. They have also justified Tribunal's order by which it was held that the scale carrying Rs. 2000-3200/- (pre-revised) is a Group 'B' post and, therefore, the applicant was not entitled to INSITU promotion. The applicant has otherwise opted for ACP Scheme and both cannot be claimed simultaneously.

8. Learned counsel appearing for the applicant has submitted that the Tribunal has *prima facie* committed an error by holding that the scale of pay carrying Rs. 2000-3200/- (pre-revised) is a Group 'B' scale and with that impression whatever benefit ought to have been granted to the applicant has been denied. Therefore, it is an apparent error on the face of record for which he needs a clarification. He further reiterated the same stand that since other two persons, who are similarly placed, namely, V. Swaminathan and Swaran Singh, have been granted INSITU promotion, there appears to have no earthly reason why such a benefit should be denied to the applicant.

9. Learned counsel appearing for the respondents has brought to our notice that these points had been taken care while passing of the final order on 4.6.2004. In

considering the applicant's prayer, it is seen that pre-revised scale of Group 'C' was fixed over Rs. 1150/- but less than 2900/-. Similarly, Group 'B' officer were getting Rs. 2900/ but less than 4000/-. The applicant's claim was scrupulously examined by the respondents in the light of the judgment passed in OA No. 2752/2001 decided his representation dated 18.2.2000 that since the applicant's scale stagnated at the maximum of pay scale for more than a year, thus, he could not be allowed INSITU promotion to the next higher grade which happens to be a Group 'B' post. So far as M.R. Sehgal and V.Swaminathan are concerned, it is stated that M.R. Sehgal was stagnating in pay scale of Rs. 1640-2900/- (pre-revised) on 1.1.1990 and was granted the benefit of first stagnation w.e.f. 1.1.1992. The next pay scale in which INSITU promotion could be considered is the pay scale of Rs. 2000-3200/- happens to be a Group 'B' pay scale as per the above Notification. In case of V. Swaminathan, it is clarified that he belongs to a different technical wing, where the hierarchy of the cadres is different. This aspect was also duly considered by this Tribunal in the judgment passed on 4.6.2004.

10. The Apex Court in *Ajit Kumar Rath vs. State of Orissa & Ors*, reported in 2000(1)(SC)(SLR), 622, held as under:

"29. The provisions extracted above indicate that the power of review available to the Tribunal is the same as has been given to a court under Section 114 read with Order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of a person on 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 order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of laws or fact which stares in the face without any elaborate argument being needed for establishing. It may be pointed out that the expression "any other sufficient reason" used in Order 47 Rule 1 means a reason sufficiently analogous to those specified in the rule."

11. The Apex Court in ***B.H.Prabhakar & Ors. vs. M.D. Karnataka State Coop. Apex Bank Ltd.***, reported in 2000(4) (SC)(SLR), 529, observed as under:

"Constitution of India, Article 136- Review-Petitions for review of earlier judgment - No error, much less any patent error of law could be demonstrated by the review petitioners for supporting these petitions- In review proceedings nothing can be re-argued nor any new contention be raised - Review petitions not maintainable."

12. The Apex Court in ***Union of India vs. Paul Manickam & Another***, reported in 2000(3)SCC 342, observed as under:

"19. As noted supra, for the first time in the review application it was disclosed that the representation was made to the President of India and no representation was made to the State of Tamil Nadu or the Union of India who were arrayed in the writ petition as parties. This appears to be a deliberate attempt to create confusion and reap an undeserved benefit by adopting such dubious device. The High Court also

78

transgressed its jurisdiction in entertaining the review petition with an entirely new substratum of issues. Considering the limited scope for review, the High Court ought not to have taken into account factual aspects which were not disclosed or were concealed in the writ petition....."

13. In a recent judgment, the Hon'ble Supreme court in the case of *Union of India vs. Tarit Ranjan Dass*, reported in 2004(1)(SC)(SLJ) 160 held that the scope of review is very limited. The Tribunal cannot enhance the power of review to that of appellate jurisdiction. Relevant portion of the judgment is re-produced hereunder:

"13. The Tribunal passed the impugned order by reviewing the earlier order. A bare reading of the two orders shows that the order in review application was in complete variation and disregard of the earlier order and the strong as well as sound reasons contained therein whereby the original application was rejected. 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 order and rehearing of the matter to facilitate a change of opinion on merits. The Tribunal seems to have transgressed its jurisdiction in dealing with the review petition as if it was hearing an original application. This aspect has also not been noticed by the High Court. "

14. Since the original order is based on sound and valid reason, there is hardly any scope to interfere with the same. On a closure examination of the applicant's case, we did not find that there was either any error apparent on the face of the record or any discovery of new facts so as to warrant us for our interference by invoking the review

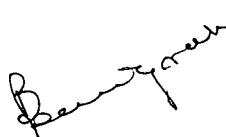
B



jurisdiction. Accordingly, the review application is dismissed.


(N.D.DAYAL)

MEMBER (A)


(B.PANIGRAHI)

CHAIRMAN

/NA/