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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

RA 276/2003
MA 1955/03
IN
OA 292/2003

New Delhi, this the 19th day of September, 2003

Hon'ble Shri V.K. Majotra, Member (A)
Hon'ble Shri Shanker Raju, Member (J)

Union of India

...Review applicant

Versus

D.P. Sharma

...Respondent

ORDER (BY CIRCULATION)

Shri Shanker Raju, Member (J)

MA 1955/03 seeking condonation of delay in filing the review petition is allowed for the reasons assigned therein.

2. By an order dated 4.7.2003, on meticulous consideration of rival contentions and in accordance with the rules and position of law, OA was allowed directing respondent (review applicant) to pay to the applicant higher pay for the period when he had shouldered higher responsibility.

3. Respondent (review applicant) filed this petition on the ground that on receipt of the order of the Tribunal, matter was taken with DOP&T where the same was not agreed to.

4. It is further stated that appointment of the applicant as Chairperson of Appellate Tribunal for Foreign Exchange was impugned in WP No. 14674/2003

before the High Court of Kerala at Ernakulam as well as in WP No. 2713/2003 before the Allahabad High Court. As the petitions were similar, proceedings have been stayed in the transfer petition filed by the Central Government vide order dated 2.6.2003. It is further stated that the appointment of applicant has also been challenged before the High Court at Patna in CWJC 8568/2003.

5. In this view of the matter as the DOP&T has not agreed to the additional pay under FR 49 to the applicant and his appointment is subjudice, review of the order has been sought.

6. We have carefully considered the contentions put forth by the review applicants. At the outset a review provided under Section 22(3)(f) of the Administrative Tribunal Act, 1985 has a limited scope. Even under Order 47 rule 1 & 2, review is maintainable only on two grounds i.e. error apparent on the face of record and discovery of new material which even after due diligence could not be produced by the contesting parties.

7. A review cannot be maintained on a subsequent event or on a subsequent development i.e. when the decision is under challenge without any reference to the context.

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8. Power of review, provided under the relevant Rules and Act, cannot be exercised to re-agitate or to re-argue the matter as if in appeal. An error apparent on the face of the record should be one which strikes on the face of it. The above view is fortified by the following decisions of the Apex Court:

AIR 1975 SC 1500
Chandra Kanta & Anr. vs. Sheikh Habib

AIR 1995 SC 455
Meera Bhanja vs. Smt. Nirmala Kumari Choudhury

1998(Vol.I) SLJ 85 (SC)
K Ajit Babu & Ors. vs. Union of India & Ors.


9. Apex Court in Nand Kishore Ahirwar vs. Hari Das Persedia, 2001(9) SCC 325, while dealing with order 47 rule 1 CPC held that reconsideration of judgement in a subsequent matter cannot be a ground to review the same.

10. In Ramdev Chauhan vs. State of Assam 2001 (5) SCC 714, three Judges Bench of the Apex Court though dealing with review under Article 137 of the Constitution held "power of review is a restricted power which authorises the court which passes the order sought to be reviewed, to look over and come through the order, not in order to substitute fresh or a second order but in order to correct it or improve it because some materials which it ought to have considered has escaped its consideration".

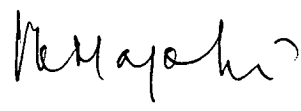
11. If one has regard to the above decision and the settled position of law the ground taken by the review applicant that the DOP&T has not agreed to the additional pay cannot be a valid ground for our interference. The DOP&T disagreement is a subsequent event in compliance of the directions is neither an error apparent on the fact of record or discovery of a new material.

12. In so far as pendency of petitions challenging the appointment of the applicant is not relevant in issue as the same are subsequent events and would by no manner have any bearing on applicant's having shouldered higher responsibility as Chairperson of ATEFE. On decision of the above petitions law shall take its own course. However, the appointment of respondent is not yet set aside.

13. In the result, for the foregoing reasons, finding no infirmity in the order, RA is bereft of merit and is beyond the scope of review and is, therefore, dismissed. No costs.


(Shanker Raju)
Member(J)

/na/


(V.K. Majotra)
Member(A)