

\$~Special Bench-1

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 7962/2014**

DINESH KUMAR UPADHYAY

..... Petitioner

Through Mr. V. Shekhar, Sr. Advocate with Mr.
Abhinav Raghuvanshi, Mr. Amit Anand Tiwari &
Mr. Nishant Anand, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through Mr. Arun Bhardwaj, CGSC, Mr. A.
Sriram & Mr. Mimansak Bhardwaj, Advocates for
UOI.

Mr. Rituraj Biswas, Mr. Gopal Singh & Mr.
Advitiya Awasthi, Advocates for State of Tripura.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

16.12.2016

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CM No. 14760/2016

Application for condonation of delay of 30 days is allowed for the
reasons stated in the application.

Review Petition No. 204/2016

This application for review pertains to our observation/finding
recorded in paragraph 11 of the final order/ judgment dated 19th February,

2016, which for the sake of convenience is reproduced below:-

“11. Before us, learned counsel for the petitioner has submitted that the Government of Tripura, which had passed the order dated 9th April, 2008, was not the disciplinary authority and that the appointing authority, i.e., the Union of India had not given their concurrence. This plea and contention was not taken before the Tribunal and is also not raised in the grounds of the present writ petition. We would not permit the petitioner to raise the said oral contention at the stage of final hearing, as this requires examination of facts. Ascertained facts in this regard are not pleaded and are not on record.”

2. It is stated in the review application that the petitioner, i.e., the applicant herein had specifically challenged the competence or jurisdiction of the Government of Tripura, who had passed the order dated 9th April, 2008 under Rule 7(2) of the All India Services (Leave) Rules, 1955 (Rules, for short). It is in this context that we had issued notice on the review application and sought reply from the respondents.

3. The principal issue is whether the order under Rule 7(2) of the aforesaid Rules passed by the State of Tripura required prior or post approval or sanction of the Union of India. The admitted position is that the applicant was a 1989 batch officer of the Indian Forest Service and was allocated to the Manipur/Tripura cadre and was posted and asked to join his

parent cadre in the Tripura segment. The applicant had remained on unauthorised leave with effect from 29th June, 2001, on being relieved by the State of Chhattisgarh, till order dated 9th April, 2008 was passed.

4. Rule 2(g) of the Rules defines the term 'Government'. As per clause (iii) thereof, in case a member of the All India Service is serving in connection with the affairs of a State, 'Government' means the Government of that State. This being the position, we do not find any merit in the present review application. We also record that the State of Tripura before initiating proceedings under the Rules had written to the Union of India, who vide their letter dated 16th July, 2007 had informed the State of Tripura to take appropriate action under the aforesaid Rules.

The review application is dismissed. No costs.

SANJIV KHANNA, J.

NAJMI WAZIRI, J.

DECEMBER 16, 2016
VKR