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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.1106/2002

New Delhi, this the 16th day of September, 2003

Hon'ble Shri Shanker Raju, Member (J)

Shri Man Mohan Lal Gupta
s/o Shri Mani Ram Gupta
r/o S-41 Vijay Vihar, Uttam Nagar
New Delhi-59

Retired as: Dy. Director Audit
from the office of the Director General of
Audit, Central Revenue, A.G. - C.R.
Building, New Delhi

. . . Applicant

(None)

Versus

1. Union of India through Comptroller & Auditor General of India
10 Bahadurshah Zafar Marg,
New Delhi-2
2. The Dy. Comptroller & Auditor General of India
10, Bahadurshah Zafar Marg
New Delhi-2
3. Shri K.N. Khandelwal
Dy. CAG, O/o the CAG of India
10, Bahadurshah Zafar Marg, New Delhi-2
4. Shri Sanjeev Saluja
Accountant General
c/o The Assistant CAG (P)
o/o The CAG of India
10, Bahadurshah Zafar Marg
New Delhi-2

. . . Respondents

(By Advocate: Shri Madhav Panikar)

O R D E R

None appeared on behalf of the applicant even on the second call. Therefore, OA is disposed of in terms of Rule 15 of C.A.T. (Procedure) Rules, 1987.

2. The applicant, who has filed this OA in person, has assailed respondents' order dated 17.4.2001 rejecting his request for review of adverse remarks incorporated in his ACR for the period 1994-95.

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3. Earlier to the filing of the present OA, the applicant has approached this Tribunal by filing OA-1290/97 impugning adverse remarks in his Confidential Report for the period of 1.4.1994 to 10.1.1995.

4. This Tribunal by an order dated 28.4.1998, after observing that the reviewing officer has to properly judge the adverse remarks, directed re-examination of the matter with re-assessment by the reviewing officer with the following stipulation:-

"12. No further liberty is allowed to the applicant to reopen this matter by a fresh OA after the decision of respondent No.1, the Comptroller & Auditor General of India, on the fresh reassessment of the reviewing officer. The OA is disposed of as above. No costs."

5. By an order dated 17.4.2001, the request of the applicant was turned down. The present OA has been filed on the basis that there exists two CRs for the same period, one written on 13.6.1995 reviewed on 22.6.1995 and another written on 1.8.1995 by the reporting officer and reviewed on 9.8.1995. In this view of the matter, it is stated that request for furnishing the applicant the manuscript of his first ACR has been arbitrarily turned down. In this OA, the applicant asserts that as to maintainability of the present OA, the cause of action had arisen on the ground that previously the CR was recorded, the same was not supplied and fraud has been played on him by the respondents.

6. Despite opportunities, no reply has been filed. Right to file the reply was forfeited.

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7. Today, learned counsel of the respondents Shri Madhav Panikar orally addresses his arguments and produced the relevant records. Placing reliance on an order dated 22.7.2003 passed in OA-2061/2002 & MA-1160/2003 in G.S. Kataria v. Union of India & Anr., it is contended that in similar circumstances when the liberty has not been given, the interference by way of the fresh OA has not been entertained as not maintainable.

8. By referring to the relevant record, it is submitted that though the CR was written pertaining to the period 1.4.1994 to 10.1.1995 and as the reporting officer has not given a definite opinion on work and performance though the grading remained 'Average', he has been asked to re-write the CR of the officer bringing out the actual performance and on the basis of which the CR was written by the reporting officer in August, 1995. As such, there is no infirmity as alleged by the applicant.

9. I have carefully considered the rival contentions of the parties.

10. It is clearly submitted in the earlier order passed by the Tribunal that any order of re-assessment by the reviewing officer would not vest the applicant a cause of action or a right to file a fresh OA. Accordingly, if the applicant was aggrieved the proper remedy was to either file a review or to carry the order to the higher forum. As none of it has been complied with, the order has attained finality. As a co-ordinate

(4)

Bench, it is precluded to sit over as an appellate authority or to review the order passed by a co-ordinate Bench. As no cause of action has arisen after 17.4.2001 to the applicant and the earlier order has shut the avenues of the applicant to file the fresh OA, the embargo placed on the applicant precludes him from filing a fresh OA. Accordingly, the present OA is not maintainable and is dismissed. No costs.

S. Raju

(Shanker Raju)
Member (J)

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