

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD

O.A./T.A./R.A./C.P./M.A. No. RA 91 101 in OA 407/93

Mr. D. R. K. Khohy Mr. P. N. P.

Union of India & Ors.
(Applicant)

(Counsel)

Vs.

Mr. _____ MR. _____

Union of India & Ors.
(Respondent)

(Counsel)

Date

Office Order

Order

12.10.01. RA filed u/s 17 of the
ATA Act praying for the
reasons stated therein
that this court may be
pleased..

To review the order
dt 4-4-01 in OA 407/93
on the file of this Tribunal

The above OA was heard
by a bench consisting of
Hon'ble VC and Hon'ble
A.S. Sanghvi (J) and
Hon'ble VC passed the
order.

The RA is out of time
MA for condonation delay
is filed.

MA 731 101

MA filed by applicant
praying to condone the
delay in preferring RA.

Post RA along with MA
in chambers of Hon'ble V.C.
under disposal by C. S. Lokesh
Suresh

12/10 17/10

Dr. P. N. P.
29/11

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH: AHMEDABAD

RA/91 of 2001 in OA/407 of 1993 *WHY MAY 31 2001*
Ahmedabad, this the 31st day of Oct. 2001

Hon'ble Mr. V. Ramakrishnan, Vice Chairman
Hon'ble Mr. A.S. Sanghvi, Member (Judicial)

Dr. R.K. Khola
Scientist/Engineer- SF (Retd.)
B/9 Avani Row Houses
Nr. Satellite Tower,
Ahmedabad- 380015.

Applicant

Advocate: Party-in-Person.

Versus

1. Union of India, New Delhi
(Notice to be served through)
The Secretary, Deptt. of Space
Antariksh Bhavan, New BEL Road
Bangalore- 560054.
2. Prof. U.R. Rao
and/or his successor in office
Chairman, ISRO & Secretary, DOS
Antariksh Bhavan, New BEL Road
Bangalore- 560054.
3. Shri P.P. Kale
and/or his successor in office
Director, Space Applications Centre
Ahmedabad.

Respondents

Advocate --

ORDER

BY CIRCULATION

Per Hon'ble Mr. V. Ramakrishnan, Vice Chairman:

The Review Applicant is the Original
applicant in OA/407 of 1993. He had filed

O.A./407/93 seeking the following reliefs:-

"1) To quash and set aside the order of
premature retirement dated 3.5.1993 (refer Annex.
A-10 of the OA) of the petitioner and be pleased
to declare the said order as absolutely illegal
and bad, unconstitutional, null and void and
that the petitioner continues in the service of the
respondents as if the said order was never passed
against the petitioner and to confer upon him all

consequential benefits accordingly.

(ii) To declare the action of the respondents in rejecting the representation by passing the order dated 17.2.1994 (refer Annexure A-12 of the OA) as arbitrary, illegal, violative of Articles 14 and 16 of the Constitution of India and also FR 56(j) rules and to quash and set aside the same."

2. The Tribunal after hearing both the sides and after going through the various materials including copies of the A.C.Rs, Minutes of the Review Committee, the proceedings of the Representation Committee and the decision of the Appointment Committee of the Cabinet and dismissed the O.A. by a detailed order dated 4.4.2001. The Tribunal had then noted and rejected the contention of the applicant namely that the charge that he was ineffective is perverse and that while coming to its finding, adverse entries given by Professor U.R.Rao were taken into account disregarding the favourable report of Dr. Ram Vilas and Shri Pramod Kumar. It also noted that while disposing OA/44 of 1992 by a detailed order his challenge to the A.C.Rs was gone into carefully and that the Tribunal had held that the ACRs for the relevant period did not suffer from any illegality or irregularity. It had rejected the allegation of mala fides against Shri U.R.Rao and Shri P.P.Kale. It also noted that the so-called certificate given by Shri Pramod Kumar is at variance with what he had recorded in the reports he has given and such a certificate is more in the nature of a

certificate for a person seeking a job elsewhere. The Tribunal also rejected the contention that as the applicant has filed OA/44/1992 challenging certain adverse entries the matter was sub judice and the authorities could not have gone on the basis of these entries while taking a decision. It also held that the authorities had gone on the basis of the service records as reflected in his entire C.Rs dossier. As the applicant had not written self assessment report and had not brought out his contributions to the organisation, there was no scope for the authorities to take into account his claim for having done exceptional work.

The applicant also had contended that the guidelines of the Government contained in the Department of Personnel O.M. dated 5.1.1978 have binding force and they have not been followed. He had claimed that there was no doubt about his integrity and the time schedule fixed for the Review has not been adhered to and the applicant was singled out for premature retirement. This contention was also rejected after noting the Supreme Court's judgement in the case of U.O.I. vs. N.A. Chauhan- AIR 1994 (2) SCC 537 that any deviation from the executive instructions does not vitiate the order of premature retirement.

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The Tribunal held that the department has taken up the case of those few officers who prima facie were not suitable to be retained in the service and apart from the applicant one other person who was serving in Trivandrum was also retired prematurely under F.R. 56-J. It noted that the instructions/guidelines to maintain suitable register in respect of employees who are due to attain age of 50-55 years or 30 years of service as the case may be and to scrutinise the same at the beginning of every quarter by a Senior Officer in the department was not followed by the I.S.R.O. but in view of the Supreme Court decision in Chauhan's case and such an omission will not vitiate the order against the applicant.

The allegation that the Representation Committee and the Review Committee were not properly constituted was also discussed and this Tribunal noted the observations of Ernakulam Bench dated 9.11.94 while disposing OA/829 of 1993, ^{The Tribunal held} that the competent authority viz. the A.C.C. which is the highest body has gone into the matter and with due application of mind has taken the decision. It is not material as to whether the committees were properly constituted or not. The contention that the applicant was not given three months' notice and allowances as required under the rules as there was marginal

shortfall was also discussed by the Tribunal. Noticing the decision of the Supreme Court in the case of State of Orissa vs. ~~X~~ Balkrushna Sathapathy AIR 1984 SC 1127, it observed that even though he there is a shortfall the applicant's only right is that he can claim the deficit amount stated to be Rs.762/- and the order of premature retirement is not vitiated for that reason. There was also a discussion on the contention that a chargesheet was issued and the disciplinary proceedings were pending against the applicant and these were not brought to the notice of the Committee and A.C.C. It was urged by the applicant that he could not have been prematurely retired as the continuance of the disciplinary proceedings had reduced the pension and other retirement benefits of the applicant. The Tribunal had referred to various decisions relied upon by the applicant and negatived this contention in the context of the law laid down by the Supreme Court in the case of State of Uttar Pradesh and another vs. Abhai Kishore Masta 1995 (1) SC SLJ 139. When the articles of charge in the charge memorandum issued to the applicant are quite independent of the action taken under FR 56-J and the decision to retire him was taken without referring to the pendency of the disciplinary proceedings, the same would not vitiate the order. It also observed that when the

deemed proceedings under Rule 9 of the C.C.S. (Pension) Rules set up a bar for release of gratuity and commutation of pension and once it is held that orders under 56-J can be issued even when the disciplinary proceedings are pending non-release of gratuity will naturally follow *and it* cannot be regarded as not a "clean decision". Above all the Tribunal had referred in detail to the decision of the Supreme Court in the case of Baikuntha Nath Das and another vs. Chief District Medical Officer, Baripada and another (AIR 1992 SC 1020) and held that the Government decision was not mala fide or arbitrary, and the decision of ^{which} the authorities/retired the applicant on the basis of relevant materials is not at all perverse and as such, it is not a fit case ~~for~~ for the Tribunal to interfere. The O.A. was accordingly dismissed.

3. This judgement was rendered on 4.4.2001. The Review Applicant has filed the present Review Application in October 2001 after more than six months from the date of the Tribunal's order. He has also filed an M.A. for condonation of delay.

4. In the R.A. he has sought to re-argue the ~~makkar~~ entire case. He says that the authorities should not have acted on the A.C.Rs of the applicant for the years 1986 to 1991 and accord-
ing to him it was sub judice. He submits that

he has filed the R.A. for reviewing the orders of the Tribunal in OA/44/92 and the same may be referred to. The R.A. was dismissed by the Tribunal about a month back. He claims that he is one of the highest qualified persons in ISRO and that the Tribunal should have accepted this contention. He has again raised the contention that only Shri Ram Vilas has ^{he} given his observations and not others. He has referred to alleged violation of the guidelines laid down by O.M. dated 5.1.78. He says that ^{the} entire service records of the applicant has not been gone through. He also states as to how the Tribunal could have measured his efficiency. He submits that when inquiry is pending the fact of such pendency should have been brought to the notice of the Committee. He refers in this context to the decision of the Allahabad High Court. He reiterates the contention that when disciplinary proceedings are pending orders of premature retirement cannot be issued as it would amount to taking an action both under Article 310 and Article 311. He submits that he was not given full retirement benefits. He alleges that only he was singled out which is discriminatory treatment. He says that Tribunal should have upheld the charge of mala fides, as alleged by him against Shri U.R. Rao and Shri P.P.Kale.

5. All these contentions have been discussed in detail by the Tribunal while giving its finding. The applicant cannot be permitted to re-argue the entire case, on merit while filing the Review Application.

6. The Review applicant alongwith R.A. has enclosed O.M. of the Department of Personnel dated 27th June 1986 and he says that this Memorandum ~~is~~ would show that the Review Committee in his case was not properly constituted. This aspect has been dealt with by the Tribunal and in Para 17, it has observed as follows:-

" In the light of this position "irrespective of the question whether the Review Committee which considered the case of the applicant was constituted strictly in accordance with the guidelines or not the competent authority namely the A.C.C. which is the highest body has gone into this question and with due application of mind has taken the decision".

7. The applicant also refers to the Department of Personnel O.M. dated 27.10.70 which constitutes the Central Selection Board which should have five Members with Secretary (Personnel) as the Chairman and Establishment Officer as Member. The applicant's representation was disposed of by the Senior Selection Board ^{where the Central Secretary was} ~~which has~~ the highest Civil ~~Saxxx~~ servant in the Country ^{as} the Chairman and Secretary (Personnel) as Member alongwith the Establishment Officer. This is as per the constitution of the Senior Selection

Selection Board. The fact that Government had issued an order in 1970 constituting the Central Selection Board in a certain manner does not preclude the Government from changing the composition as also the nomenclature of the Board. In fact, in the present case, the Government have upgraded the ^{level} length at which the representation in such cases shall be considered. This contention has no merit.

8. The applicant also submits that his case should have been put up to the Minister of Finance as according to him he is a Member of the Appointment Committee of the Cabinet. He refers in this connection to the A.I.R. 1995 SC 568 case.

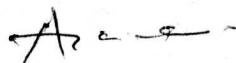
We have gone through the authority relied upon by the Review Applicant. It is ^{the} a case of Union of India vs. N.P.Damaniya. The Supreme Court in that case had held that it is open to the Govt. to disagree with the recommendations of the U.P.S.C. and Departmental Promotion Committee. In para 16 the Supreme Court refers to Ministry of Home Affairs when O.M. dated 27.11.50. This O.M. states that the U.P.S.C.'s recommendation is not accepted it should be placed before the Appointment Committee of the Cabinet consisting of Prime Minister, Home Minister and the Minister of the department concerned. In cases where Prime Minister or the Home Minister

is also the Minister in charge of the Department, the Finance Minister will be added to the Committee.

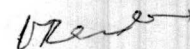
This O.M. deals with a situation where the recommendations of the U.P.S.C. is ~~xxxx~~ not to be accepted by the Government. Besides, such an O.M. was issued in 1950. There would have been periodical changes in such composition. The Establishment Officer is the Secretary of ^{he is} the A.C.C. and obviously aware ^e regarding the constitutional position of the Appointment Committee of the Cabinet in individual cases as per the instructions holding the ^{filed} ~~filed~~ at the relevant time. It is not only the case of the applicant but also of others which were dealt with by the Prime Minister and the Home Minister. It was also put up before the Minister of State (Personnel) and ~~Home~~ Minister of State (Deptt. of Space). The composition of the Appointment Committee as was done in the present case has been followed in other cases also where the Prime Minister happens to be holding direct charge of the department for example in respect of the Officers under the Ministry of Personnel. The fact that an order was issued in 1950 ^{laying} ~~laying~~ lay down certain composition does not make it obligatory that it has to be followed for all

time to come. The authorities in the normal course had dealt with the case of the applicant as per the prevailing practice and there is no reason to hold that there is an attempt to change the composition of the Appointment Committee in order to cause prejudice to the applicant.

9. In the light of the foregoing discussion we hold that none of the grounds urged in the R.A. would justify review of our orders. There is no error apparent on the face of the record and the Review Application is dismissed. M.A./731/2001 stands disposed of.



(A. S. Sanghvi)
Member (J)



(V. Ramakrishnan)
Vice Chairman

pmr

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, AHMEDABAD BENCH

Mr. DR. R.K. Kholi APPLICANT (s)

U.O.I. & Crs.

RESPONDENT (s)

[illegible]

Certified that the file is complete in all aspect

Signature of S.O. (J)

Sing. nature of
Dealing & Hand