

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No.617/93

Tribunal's order.

Dated: 2.1.95

Heard Shri R.C. Kotiankar counsel for the applicant and Shri J.G. Sawant, counsel for the respondents.

Three M.Ps are to be decided, M.P. 158/94 M.P. 445/94 and M.P. 933/94. M.Ps, 158/94 and 445/94 have been disposed of vide order dated 22.7.94.

Applicant has filed M.P. 933/94 seeking review of aforesaid orders passed in M.P. 158/94 and M.P. 445/94. Accordingly Tribunal vide its order dated 9.12.94 passed the following order.


The respondents were directed to furnish the documents Sr. No.(i), (ii), (vii), (viii) and (ix) to the applicant for which there is no objection. Regarding other documents the respondents are directed to furnish/produce the documents at the time of final hearing.


The learned counsel for the applicant stated that the respondents have not claimed any privilege to the documents, however production of documents such as CR and ACR dossier for the perusal of the applicant is hereby rejected. He also draws our attention to certain decisions of the Tribunal stating that it is permissible to show the CR and ACR files to the applicant. We are not inclined to go into the merits of it at this stage. He also states that after filing the D.A. all the persons kept in the panel have been promoted and therefore, the promotions made thereunder should be made subject to the outcome of the O.A., such a

contention cannot be sustained. However, in the facts and circumstance of the case, any appointment hereafter made i.e. from today, will be subject to the outcome of this O.A.

Keep the case in Sine- die list.

Copy of the order be given to the parties.


(M.R. Kolhatkar)
Member (A)


(B.S. Hegde)
Member (J)

NS

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Review Petition No. 27/95 in
Original Application No. 617/93

U.K.N. Kutty

... Petitioner

V/s.

Dept. of Atomic Energy and Ors.

... Respondents.

CORAM: Hon'ble Shri B.S. Hegde, Member (J)

Hon'ble Shri M.R. Kolhatkar, Member (A)

Tribunal's order on Review Petition by circulation

¶ Per Shri B.S. Hegde, Member (J) ¶

Dated: 21.2.95

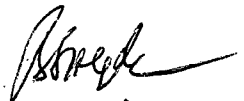
Applicant has filed Review Petition seeking review of the order dated 2.1.95 in O.A. 617/93. The O.A. has not been disposed of, only the M.Ps filed by the applicant have been disposed of. The applicant has filed three M.Ps, M.P. 158/94, M.P. 445/94 and M.P. 933/94. As a matter of fact M.P. 158/94 and M.P. 445/94 have already been disposed of by the Tribunal on 22.7.94. Despite the same the applicant has filed M.P. 933/94 seeking review of the order passed by the Tribunal in M.P. 158/94 and M.P. 445/94. Having heard the arguments of both the sides the respondents were given direction to furnish the documents Serial No. (i), (ii), (vii), (viii) and (ix). Regarding other documents the respondents were directed to furnish/produce the same at the time of final hearing. The contention of the applicant is that the records sought for inspection by him is relevant and crucial. After considering the contention of the parties, the Tribunal had rejected the prayer made by the applicant and therefore it is not open to him to agitate the matter by filing the Review Petition when the O.A. itself is pending for hearing

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2. We have considered various submissions made by the applicant. However the discretionary power have been used while disposing of the M.P. and it is not open to the applicant to file Review Petition seeking Review of the order passed by the Tribunal. The relevant judgements cited by the applicant will be taken into account at the time of final hearing. In the circumstances, we are of the view that there is no substance in the Review Petition and the same is liable to be dismissed. Accordingly the Review Petition is dismissed.



(M.R. Kolhatkar)
Member (A)



(B.S. Hegde)
Member (J)

NS

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

R.P.No. 38/99 in OA.NO. 617/93

Dated this the 2nd day of November 1999.

CORAM : Hon'ble Shri D.S.Baweja, Member (A)

Hon'ble Shri S.L.Jain, Member (J)

U.K.N.Kutty

... Applicant

V/S.

Dept. of Atomic Energy & Ors.

... Respondents

O R D E R

{Per: Shri D.S.Baweja, Member (A)}

This Review Application has been filed seeking review of order dated 24.8.1999 passed in M.P.No.158/94 in OA.NO.617/93.


2. This Review Application is being disposed of by Circulation.

3. As held by Hon'ble Supreme Court in the case of Aribam Tuleshwar Sharma vs. Aribam Pishak Sharma, AIR 1979 SC 1047, the power of review may be exercised on discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made. It may be exercised where some mistake or error apparent on the fact of the record is found. It may also be exercised on any analogous ground. But it may not be exercised

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on the ground that the decision was erroneous on merits.

4. Keeping in view the law laid down by the Hon'ble Supreme Court, we have carefully gone through the averments made in the review application making out a case for review of the order dated 24.8.1999. The applicant has pointed out some mistakes, errors and omissions in the order. The mistake with regard to name of the counsel is of only technical nature and does not call for any review of the order. As regards the omissions pointed out, the contention of the applicant is not tenable as in the order dated 20.7.1999 referring to the earlier order dated 2.1.1995, the pending issue on which the Bench did not pass ^{any} ~~any~~ order was taken up for arguments. As regards the errors brought out, we find that the submissions made by the applicant are nothing but what he had already brought out at the time of hearing of the M.P. Order dated 24.8.1999 has already gone into these submissions. The applicant has not brought out any new facts but has reiterated his earlier submissions seeking a review of the order as if it is erroneous on merits and the matter should be re-heard and fresh findings recorded. This is not the scope of the review application. The present review application is more of an appeal in disguise than a review application. As held by Hon'ble Supreme Court, such a review application is not maintainable.



5. In the result, we find no merit in the review application and the same is dismissed. No order as to costs.

S.L. Jain
(S.L.JAIN)

MEMBER (J)

D.S. Baweja
(D.S.BAWEJA)

MEMBER (A)

mrj.

dd 21/1/99
order/Judgement despatched
to Applicant/Respondent (s)
on ~~25/1/99~~

25/1/99

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:617/93

DATE OF DECISION: 28th November 2001

Shri U.K.N.Kutty Applicant.

Shri R.C. Kotiankar Advocate for
Applicant.

Verses

Union of India and others Respondents.

Shri B. Ranganathan Advocate for
Respondents

CORAM

Hon'ble Shri S.L.Jain, Member(J)

Hon'ble Smt.Shanta Shastry, Member(A)

(1) To be referred to the Reporter or not? *yes*

(2) Whether it needs to be circulated to *No*
other Benches of the Tribunal?

(3) Library. *yes*

S.L.Jain
(S.L.Jain)
Member(J)

NS

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.617 OF 1993

the 28th day of NOVEMBER 2001

CORAM: Hon'ble Shri S.L. Jain, Member (J)

Hon'ble Smt. Shanta Shastri, Member (A)

U.K.N.Kutty,
Deputy Establishment Officer,
Bhaba Atomic Research Centre,
Trombay, Bombay 400 089

(By Advocate Shri R.C.Kotiankar) - Applicant

VERSUS

1. Union of India
through Secretary to Govt.of India,
Department of Atomic Energy,
Anushakti Bhavan,Bombay.
2. Dr.P.K.Iyengar,
Chairman, Atomic Energy Commission,
Department of Atomic Energy,
Anushakti Bhavan, C.S.M., Marg,
Bombay - 400 039.
3. Additional Secretary to Govt.of India,
Department of Atomic Energy,
Anushakti Bhavan, C.S.M.Marg,
Bombay 400 039.
4. Shri S.Thriambaknath,
Administrative Officer,
Tarapur Atomic Power Station,
Boisar, Tarapur, Maharashtra.
5. Shri S.Krishnan,
Deputy Establishment Officer,
Bhaba Atomic Research Centre,
Tombay, Bombay 400 089.
6. Shri Stephen Balasubramaniam C.
Administrative Officer,
Indira Gandhi Centre for Atomic Research,
Kalpakkam - 603 102.
Tamil Nadu.

(By Advocate Shri B.Ranganathan) - Respondents

P.S.M. -
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ORDER

Per Shri S.L.Jain, Member (J) -

This is an application under Section 19 of the Administrative Tribunals Act, 1985 to quash or set aside the DPC proceedings held on 6.9.1991 and 18.4.1993 for selection to the post of Chief Administrative officer in DAE with a direction to the respondents to review DPC to consider the case of the applicant for promotion to the post of Chief Administrative Officer w.e.f. the date of promotion of his junior as Chief Administrative officer and fix the seniority of the applicant in the cadre of C.A.O. appropriately as the consequential benefits of promotion.

2. The applicant was working as Deputy Establishment Officer (Class I Gazetted) in the scale of pay of Rs.3000-4500 in BARC (Trombay) a constituent unit of DAE. The next promotion is of the post of Administrative Officer III/Deputy Establishment Officer in the pay scale of Rs.3700-5000. As per promotion norms the applicant was due for promotion to the said post of CAO in 1989. The post was classified as 'non-selection' post. The respondents changed the method of selection i.e. "selection on the basis of interview" by inserting a rule in the form of a postscript in the Recruitment Rules published vide DAE's notification No.20/1/5/86-CC-45 dated April 30, 1991 (Exhibit-B). The respondents thereafter convened DPC on 8th September, 1991 the applicant appeared in the said DPC but could not be selected. Thereafter, the respondents held another DPC on 18th April, 1993 to the said post of DAE but again promotion was denied to the applicant while in both the DPCs junior to the applicant were promoted.

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3. The grievance of the applicant is that the respondents deliberately delayed holding of DPC with a motive to change the method of selection, so as to facilitate selection of officers according to their whims and fancies. The changed mode of selection opens floodgate to unfairness, favouritism, supersession etc. as such bad in law.

4. In DPC held on 8th September, 1991 during the interview only one question was put to him by Dr.P.K.Iyengar, the Chairman - Respondent no.2 - while working as Private Secretary to DAE to which officer you were attached to? Before he could answer, the Chairman himself answered with a pause - "you were with Panchappa, I remember".

5. During the interview held on 18.4.1993 the Additional Secretary - Respondent no.3 asked "which post you consider more difficult Private Secretary or other senior post? The Additional Secretary concluded by saying "Private Secretary" - sarcastically Private Secretary to Panchappa? After this only question and answer by the DPC, the interview was over.

6. The applicant complains that while he was working as Private Secretary to the then Additional Secretary Shri Panchappa, the then Chairman, AEC (Dr.H.N.Sethna) had instructed the Additional Secretary Shri Panchappa to conduct an enquiry into the complaint relating to the appointment of a close relative of Dr.P.K.Iyengar the then Director, BARC (Ku.Kunakumbujam) which involved relaxation of recruitment norms

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and some manipulation on the part of the then Chairman of Selection Committee (Late Dr.C.Ambassakaran) to favour Dr.P.K.Iyengar. As such Dr.P.K.Iyengar was unhappy with the enquiry and its outcome and had developed personal prejudice against the applicant for his official role in the said enquiry as Private Secretary to the then Additional Secretary. As such, the applicant claims the said cause for his non-selection in both the DPCs.

7. The applicant claims unblemished record. The fall in ACRs if any, were never communicated to him. His ACR for the period 1.4.92 to 31.3.93 was not taken into consideration by the DPC. Selection was made without laying down a set standard to adjudge the performance of the candidate during interview. The record of the interview are not kept. The applicant was in seniority list at Serial No.2. DPCs were not held every year, the vacancies were clubbed, the number of vacancies were not notified to the candidates. No reasons are recorded for non-selection. Hence this OA for the above said reliefs.

8. The Tribunal has passed the order dated 2.1.2001 which is as under -

"Whether the applicant has claimed the relief based on single cause of action, if not so, what is its effect'

9. The case was listed for hearing on this question on 25.1.2001. The applicant filed Writ Petition No.4043/2000 which was decided on 14.8.2000 with the following order:-

"Rejected as interlocutory"

Tribunal is directed to dispose of the Original Application filed by the petitioner expeditiously and in any event within a period of three months."

10. Regarding the grievance in respect of DPC held on 6.9.1991 the applicant stated in Para 4 (ii) that he chose not to submit representation against his non-selection and supersession as aforesaid with a view to avoid confrontation with higher ups and harassment and prejudice against him during subsequent selection.

11. The particulars of the OA against which this application is made is as under:-

"Order No.EO/4/13/90-CCS/305 dated April,20, 1990 issued by the Director, Department of Atomic Energy containing list of officers selected during DPC meeting held on 18.4.1993 for promotion to the post of Chief Administrative officer in the pay scale of Rs.3700-5000 in Department of Atomic Energy. Hereto annexed and marked as Exhibit 'A' is a copy of the impugned order dated 20.4.1993."

12. Though the applicant has claimed the relief in respect of D.P.C held on 6.9.1991 but his pleadings as stated above makes it clear that he has waived his right, not challenged the said order in para 1 of the OA, as the OA is filed on 28th June 1993, the claim suffers from delay and latches and also barred by limitation. As such no relief can be provided to the applicant in respect of D.P.C. held on 6.9.1991 on account of waviver, barred by limitation, delay and latches and the order being not challenged.

Rule 10 of CAT (Procedure) Rules 1987 is as under:

An application shall be based upon a single cause of action and may seek one or more reliefs provided that they are consequential to one another.

13. The supersession of the applicant in two D.P.Cs i.e. 6.9.1991 and 18.4.1993 does not relate to single cause of action, as such the reliefs sought in respect of both the D.P.Cs infringes Rule 10 of CAT (Procedure) Rules 1987 and the OA is liable to be dismissed on this ground also.

14. The claim of the applicant is resisted by the respondent on the ground of limitation (dealt here in before in para 10 to 12 of this order). It is stated that Atomic Energy Commission evolves the policies which are to be implemented by the Department of Atomic Energy (DAE), under the Government of India (Allocation of Business) Rules 1961, the Department of Atomic Energy has been empowered to take suitable actions on all matters relating to the personnel under the control of Department. The promotion is within the discretion of the Competent Authority and no Government servant can say that he has a legal right to be promoted. He has only a right to be considered for promotion. In a selection procedure the governing principle is to find the best person out of the eligible officers within the Zone of consideration.

15. It is stated that a centralised Administrative Cadre of the department was constituted by the O.M.No.7(39)74 (Admn.) dated 23.12.1974 and right from the very beginning appointment to the post of Chief Administrative Officer (Rs.1500-2000 revised Rs.3700-5000 after the Fourth Pay Commission's recommendation) was made by selection based on merit by DPC (R/2 & R/3). Since the Recruitment Rules for the post of Chief Administrative Officer had not been notified earlier, Recruitment Rules were

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framed later following prescribed procedure and notified in the Gazette vide Notification No.20/1/5/86/CCS/451 dated 30.4.1991 (R - 4). As such the grievance that the "Non selection" mode has been changed to "selection" is devoid of merit. ^{There is} The vacancy existed since 1989-90 is denied with an averment that the DPC met on 28.12.1989 and selected officer mentioned as R/5 and till S.No.6 were promoted vide Office Order dated 25.6.1991 (R/6) during the validity period of the panel. The D.P.C. held on 6.9.1991 selected the officers mentioned in R-8 and promoted subject to outcome of OA 1089/91 filed by Shri P.K. Vijayakrishnan before CAT Calcutta. Thereafter D.P.C. was convened on 18.4.1993. The D.P.Cs are held at Regular intervals which interalia include availability of vacancies vis-vis operation of the existing panel.

16. The D.P.C. followed para 6.3 1(ii) of D.O.P.T's O.M. dated 10.4.1989 (R -9) in selection. The contentions against Respondent No. 2 and 3 are totally false and not relevant. The D.P.C. in order to make a fair assesment was constituted of senior officers in the level of Joint Secretary and above of Government of India with an expert from out side the Department who is also of the level of Joint Secretary. The D.P.C. in order to make a fair assesment of the candidates including the applicant, put a number of questions to the candidates with a duration of not less than 15 minutes for each candidate and arrived at a fair and equitable assesment of the candidates. The allegations levelled by the applicant against the DPC members/Chairman are denied. The applicant failed to file any representation.

PLH / -

17. The allegations regarding CR grading, during last 2 -3 years were lowered down at the instance of the respondent No.2 is in bad taste and there is no iota of Truth in it as Respondent No.2 is neither the Reporting / Reviewing / Counter signing officer for the applicant. Hence prayed for dismissal of the OA alongwith costs.

18. The grievance of the applicant is mentioned in para 6 and 17 of

this order. It is true that Respondent No.2 Dr. P.K. Iyengar has not filed his own affidavit denying the said allegations levelled against him. But it is the farfetched inference drawn by the applicant when the enquiry was handed over to Shri Panchappa to whom he was working as Private Secretary, hence there could not be any grievance against the applicant. It must have been against the Additional Secretary Shri Panchappa.

19. We have perused the DPC of the year 18.4.1993. After perusal of the same we are of the considered opinion that seniority and interview marks were 30, qualification marks were 20 and CRs marks were 50 we would not like to comment on the marks fixed by the DPC.

20 It is worth mentioning that the DPC can lay down its own procedure but the meeting/ minutes of the meeting must disclose that what were the grounds to consider the employees up to the bench mark and what were the grounds to reject the employees as not having attained the bench mark.

21. After perusal of the DPC proceedings we are of the considered opinion that the committee has not given separate marks as they decided and allotted 30 marks for seniority and interview, 20 marks for qualification and 50 marks for CRs.

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Further no reason has been appended ^{for} not having ^{been} selecting ^{ed} the applicant. This error ^{on} is not only in respect of the applicant but it is in respect of ^{also} the persons who have been selected. We are aware of the fact that this Tribunal cannot sit as an Appellate Authority or Reviewing Authority over the decision of the DPC, but suffice to state that the omission which we have pointed out in the DPC meeting clearly makes out a case that the reason for their conclusion being absent, their decision can only be said to be arbitrary as such liable to be quashed and set aside.

22. In the result the OA deserves to be partly allowed and is partly allowed. The DPC held on 18.4.1993 is quashed and set aside. The persons empanelled vide the said DPC dated 18.4.1993 shall continue to hold the post till the result of Review DPC. The respondents are ordered to hold review DPC as on 18.4.1993, consider the name of all the candidates coming within the zone of consideration keeping in view the vacancies alongwith the applicant. If the applicant is found fit he be empanelled alongwith other officials found fit. This exercise be completed within a period of four months from the date of receipt of copy of this order. No order to as costs.

Shanta

(Smt. Shanta Shastri)
Member(A)

S.L. Jain
(S.L.Jain)
Member(J)

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