

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO: 622/94

DATE OF DECISION: 7th Dec., 94

Shri P.K. Sidharthan _____ Applicant.

Shri P.A. Prabhakaran. _____ Advocate for
Applicant.

Versus

Union of India and others _____ Respondents.

Shri R.K. Shetty. _____ Advocate for
Respondent(s)

CORAM

Hon'ble Shri B.N. Bahadur, Member (A)

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

- (1) To be referred to the Reporter or not? No.
- (2) Whether it needs to be circulated to Mr.
other Benches of the Tribunal?
- (3) Library. YES

P.K.801
S.L.JAIN
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO: 622/94

the 7th day of December 1999.

CORAM: Hon'ble Shri B.N.Bahadur Member(A)

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

P.K.Sidharthan
C/o GE (NW) Karanja
PO: NAD Karanja, Dist.Raigad.Applicant.

By Advocate Shri P.A.Prabhakar.

V/s

1. Union of India through
The Secretary
Ministry of Defence
South Block, New Delhi.
2. Engineer-in-Chief
Army Headquarters
Kashmir House
DHQ PO New Delhi.
3. Chief Engineer
Head quarters,
Southern Command Engineers'
Branch, Pune.
4. Commander Works Engineers
Naval Works
Dr. Homi Bhabha Road
Navy Nagar, Colaba,
Bombay.

....Respondents

By Advocate Shri R.K.Shetty.

O R D E R

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

This is an application under Section 19 of the
Administrative Tribunals Act 1985, seeking the relief- a
direction to the respondents to grant the applicant promotion to
the post of Mech./Ref. HS I with retrospective effect from
16.10.1984 alongwith consequential benefits and cost of the
application.

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2. There is no dispute between the parties in respect of the fact that the applicant is presently working in the Formation of Garrison Engineer (NW) Karanja, as Mech./Ref. HS II, under the Ministry of Defence, passed Trade Test for Mech./Ref. HS I in March 1988 alongwith other candidates and fully qualified for the promotion to Mech./Ref.HS I as per GE Karanji Spr. Part II order No. 19/18/88 dated 24.6.1988. Out of 16 promotional vacancies of Mech./Ref. HSI, 15 Ref./Mech. HS II were promoted to Ref./Mech. HS I and the other one vacancy was reserved for one Mr.F.A.Panlekar, who has not even passed the trade test for Mech./Ref. HS I. The said Mr. F.A. Panlekar was at the material time working as skilled Mech./Ref. The reason for reserving the post for Mr. F.A.Panlekar is that he has filed an OA in CAT, New Bombay Bench against the department.. It was also stated that "If the Court decision comes in favour of the department, the application of Shri P.K.Sidharthan, Ref./Mech. HS II will be considered on the basis of his seniority" vide exhibit "B" dated 15.2.1990. Alongwith the applicant 15 candidates passed the trade test for Mech./Ref. HS I in the month of March 1988. All 15 candidates were promoted to the post of Mech./Ref. Hsi with retrospective effect from 16.10.1984. OA filed by Mr.F.A.Panlekar was decided by CAT New Bombay Bench and he was promoted to the Grade of Mech./Ref. HS II. The applicant requested to consider his case for promotion vide his letter dated 7.9.1993 which was replied by Garrison Engineer (NW) Karanja stating that there is no vacancy in the category of Ref./Mech. HS I for promotion. The applicant sent a notice dated 14.2.1994 through his advocate and

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called upon the respondents to consider promotion of the applicant with retrospective effect from 16.10.1984. It was replied by letter dated 19.4.1994 stating that "No employee who is junior to the applicant has been promoted except Mr.A.N.Handre, who is promoted against the vacancy of reserved category of SC and the promotion of the applicant will be considered in the next DPC.

3. The grievance of the applicant is that one vacancy of Mech./Ref. HS I was reserved for one Mr. F.A. Panlekar who has not even passed the trade test for Mech./Ref. HSI and working as Skilled Mech./Ref. and to the grade of Mech./Ref. HS II. While reserving the said vacancy it was stated that if the Court decision comes in favour of the department, the application of Shri P.K. Sidharthan Mech/Ref. HS II will be considered on the basis of his seniority vide letter dated 15.2.1990. Even after the decision of the OA filed by Mr. F.A.Panlekar the applicant was not considered for promotion on the other hand it is stated that there is no vacancy in the category of Ref./Mech. HS I.

4.....The respondents stated that the letter dated 15.2.1990 has been wrongly issued by Respondent No.4 and a clarification to that effect has already been sent to the applicant's Advocate by letter No 1776/4007/EIB dated 19.4.1994 Annexure R1. None of the applicants juniors have been promoted to the post of Mech./Ref. HSI before the applicant, as can be clearly seen from the seniority list marked as Exhibit R2 and R3. Since no post of Mech./Ref. HSI was ever reserved for Shri F.A.Panlekar as

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alleged by the applicant, the entire cause of action and grievance of the applicant is misconceived and the application deserves to be dismissed. Due to implementation of three grade structure providing promotional avenue to Industrial Personnel from Skilled category to Highly Skilled category Grade II and from Highly Skilled Category Grade II to Highly Skilled grade I in various trades, 16 vacancies of Mech./Ref. Highly Skilled Grade I were identified on the basis of benchmark provided and 16 senior most Mech./Ref. Highly Skilled grade were promoted during 1989 and 1992, the promotion being effective from 16.10.1984 (Annexure A3). The promotion to Industrial Personnel being on seniority basis subject to passing of Trade test for Mech./Ref. HS Grade I, the applicant being far junior did not come up within first 16 to secure the promotion. Shri F.A.Panlekar was promoted to the post of Ref./Mech. Highly skilled grade II during 1986. Subsequently this promotion order was cancelled on account of he being absent. On re-joining duty Shri PA.Panlekar filed OA 284/88 against the cancellation of the promotion. On 29.7.1988 the Tribunal directed that any promotion which the respondent may order for HS Grade I post will be subject to the outcome of the OA 284/88 and the prayer for keeping one post of Mech./Ref. HS Grade I vacant till the decision of this OA was rejected. Shri F.A.Panlekar was promoted to the post of Mech./Ref. Highly Skilled category with effect from 23.10.1985 in compliance with the judgement dated 4.8.1993 of this Tribunal and he has not been promoted to the post of Mech./Ref. HS I. No DPC held for promotion to Mech./Ref. HS I subsequent to the order issued

during 1989 and 1992 as there is no vacancy of Mech./Ref. HS I in the year 1988. One post of Mech./Ref. HS I is filled up from the candidate of SC category. The applicant being junior could not be promoted and can be considered only against future vacancies of Mech./Ref. HS I which may occur. The reservation in the matter of promotion for SC/ST is statutory rule and it has been accordingly provided. Hence prayed for dismissal of OA alongwith costs.

5. It is true that in response to the letter dated 27.12.1989 the respondents replied as under:

Reference your letter No.1204/IND/350/E1B dated 27 Dec'89.

The post of senior Mech(Refg) has been kept reserve for Shri P.A. Panlekar due to the reason that the individual has filed a Court case in CAT New Bombay against the department. As soon as the Court case is finalised the promotion order will be issued in case Shri F.A. Panlekar wins the Court case i.e. the decision comes in his favour.

If the Court decision comes in favour of the department the application of Shri P.K. Sidharthan, Ref. Mech HS II will be considered on the basis of his seniority. Please inform the individual suitably.

6. Order passed in OA 284/88 F.A.Panlekar V/s Union of India and others is on record. On perusal of the same it is clear that the applicant's case was for promotion to Highly skilled grade II from Highly skilled grade III. Thus there was no question involved for promotion to Highly skilled grade I. Thus it was a mis-statement of fact which was later on corrected in reply to the applicant's Advocate's notice.

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7. The second attack is on ground of promotion of a SC candidate to the post of Highly skilled Grade I. We do not find any merit in it in view of the judgement reported in 1997(2) SC SLJ 44 K. Manikraj V/s Union of India which lays down the proposition that even in case of upgradation and consequent to it promotion reservation policy is applicable.

8. It is true that applicant was wrongly replied earlier and wrongly informed about non-applicability of reservation policy but by these acts the respondents are not estopped to do a legal act which they were legally bound to do. The principle of estoppel is not applicable in such a case for the reason that in view of the wrong information the applicant has not done anything in consequence of it and there is no estoppel against law.

9. No junior to the applicant is promoted to the post of Highly Skilled grade I.

10. In the result, we do not find any merit in the OA. It is liable to be dismissed and is dismissed accordingly with no order as to costs.

SLJ
(S.L.JAIN)
Member (J)

NS

B.N.BAHAUDIN

7/7/99
(B.N.BAHADUR)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH: MUMBAI

REVIEW APPLICATION NO. 57/1999
IN
ORIGINAL APPLICATION NO. 622/94

THIS THE 03rd DAY OF JANUARY, 2005

CORAM: HON'BLE SHRI A.K. AGARWAL. VICE CHAIRMAN
HON'BLE SHRI MUZAFFAR HUSAIN .. MEMBER (J)

Shri P.K. Sidharthan,
Co GE (NW) Karanja,
PO. NAD Karanja,
DST Raigad, PIN 400 704 ... Applicant

By Advocate Shri P.A. Prabhakaran.

Versus

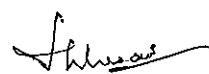
1. Union of India through the Secretary, Ministry of Defence, South Block, New Delhi-110 001.
2. Engineer-in-Chief, Army Headquarters, Kashmir House, DHQ PO New Delhi.
3. Chief Engineer Headquarters, Southern Command, engineers Branch, Pune.
4. Commander Works Engineers Naval Works, Dr. Homo Bhabha Road, Navy Nagar, Colaba, Mumbai-400 005. ... Respondents

By Advocate Shri R.R. Shetty.

O R D E R
Hon'ble Shri Muzaffar Husain. Member (J)

The original applicant has filed this petition to review the judgment and order dated 07.12.1999 passed in OA 622/94.

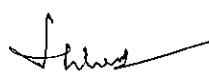
2. The petitioner stated that the Tribunal allowed MP 404/99 in OA 622/94 and the OA was tagged with OA 417/95 (R.V. Raut & Ors. Union of India & Ors). The



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OA was finally heard on 25.8.1999 and the order was pronounced on 07.12.1999. It is also stated that there are numerous factual errors in the order. In any case the order was passed independent of order in OA 417/95 by itself is irregular and contrary to the order passed in MP 404/99. It is further stated that the order pronounced on 07.12.1999 was late by 104 days instead of 21 days provided by Rule 105 of CAT Rules of Practice and thus due to the efflux of time between hearing and pronouncement of the order, substantial error has crept in the order.

3. The petitioner has also pointed out the factual error as follows. The actual posts available even assuming that nine posts of Master craftsmen had to be adjusted against the 31 upgraded / restructured HS-I posts, for promotions on 16.10.94 would have been 22 or 23. These seven plus nine posts of HS-I denied by the respondents to the applicants was the actual bone of contention in OA 417/95 and indirectly OA 622/94 too. The restriction limiting the filling up of the HS-I posts to only 15 instead of 23 at least has been the cause of grievance of the applicants in both the OAs. The exhaustive and elaborate arguments in this regard including the respondents inconsistent stand of percentage of restructuring applied to working strength or sanctioned strength relevant to both the OAs have been given a go by in the order. The applicant



submitted that errors on the core issue vis-a-vis facts narrated in the OA 417/95 applicable to the applicant in OA 622/94. The arguments and legal submissions thereon have to be reappreciated as the link has been lost by the efflux of time.

4. The petitioner prayed that the order be reviewed and recalled and reissue as common order in OA 622/94 and OA 417/95 at the earliest.

5. We have heard learned counsel for the parties and perused the material placed on record.

6. The applicant in this review petition has sought the joint hearing in the present OA (OA 622/94) as well as OA 417/95 filed by Shri R.V. Raut. According to the applicant's own admission, these OAs were heard together on 25.8.99 and order was reserved. However, this Tribunal had first dismissed the present OA (OA 622/94) and thereafter delivered the judgment in OA 417/95 filed by one Shri R.V. Raut and allowed the OA. The applicant is trying to make out a case in the present OA that the alleged error in the judgment in the present OA has occurred on account of delay. This fact is not established on record because the judgment in the present OA was first delivered on 07th December, 99, whereas the judgment in OA 417/95 was delivered on 28th January, 2000, much later than the judgment in the present OA. Therefore, contention of the applicant that

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substantial error has been crept in due to delay between hearing and pronouncement of order, cannot be allowed to sustain.

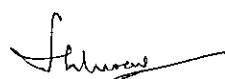
7. The second point argued by the learned counsel for the review petitioner is that MP 404/99 was allowed and the present OA and OA 417/95 were tagged together. Decision in both the OA has been pronounced separately and since the applicants in both the OAs had a common cause and the decision in OA 417/95 would have been automatically applicable to the applicant in OA 622/94 also. On perusal of the record it transpires that in MP 404/99 the prayer of the applicant in para 2 of the MP reads as under:

"OA 417/95 Shri R.V. Raut & Ors Vs. Union of India still in S.D. list involves identical issue as in this O.A., Both the OAs may be taken up for hearing together."

The Tribunal allowed this MP and passed the order as under:

"Place this OA for final hearing on 22.7.99. Registry directed to place OA 417/95 along with this OA on 22.7.99. Issue notice to both the parties in OA 417/95."

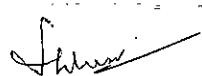
It also appears from the record that OA 622/94 was heard by the Tribunal along with OA 417/95 on 25.8.99 and the order was reserved. Then OA 622/94 was dismissed on 07.12.99 and the OA 417/95 was allowed by a separate



order passed on 20th January, 2000. The respondents filed Writ Petition No.1116/2000 (Union of India Vs. R.V. Raut & Ors) challenging the order of the Tribunal passed in OA 417/95 and Hon'ble High Court upheld the order of the Tribunal and dismissed the Writ Petition by order dated 08.3.2004. Therefore, OA 622/94 cannot be reheard and decided along with OA 417/95.

8. The Tribunal heard OA 622/94 along with OA 417/95 together but the OAs were disposed of by separate orders. The Tribunal dealt with the matter according to the contentions raised in the pleadings and dismissed OA 622/94. thus there is no error apparent on the face of record to review the order dated 07.12.99 passed in OA 622/94.

9. So far as the factual aspect narrated in para.6 of the review petition, the Tribunal cannot reappreciate or reassess the fact and law for recalling earlier order passed on merit. The Tribunal cannot examine the matter as if it is an OA, which is not the scope of the review. Thus, there appears no mistake or error apparent on the face of record as provided under Rule 1 Order 47 CPC. The alleged errors or law and fact as stated by petitioner in his review petition is not at all error of law or fact, but a simple prayer to take a different view than the view taken by the Tribunal in the order dated 07.12.99.



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10. The scope of judicial review under Section 22(3)(f) of the Administrative Tribunals Act 1985 is very limited. It restricts only to the grounds mentioned under Order 47 Rule 1 CPC. It precludes the reassessment of fact and law for recalling earlier order passed on merit, unless there is a discovery of new and important matter or evidence which after exercise of due diligence was not within his knowledge or could not be brought by him at the time when the judgement was made, or on account of some error apparent on the face of the record or for any sufficient reason. The Hon'ble Apex Court in Ajit Kumar Rath V/s. State of Orissa & Ors 1999 (9) Supreme 321 has held:

"Section 22(3)(f) indicate that the power of review available to the Tribunal is the same as has been given to a court under Section 114 read with Order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of a person on the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it. It may be pointed out that the expression "any other sufficient reason" used in Order 47 Rule 1 means a reason sufficiently analogous to those specified in the rule. Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47 Rule 1 would amount to an abuse of the liberty given

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to the Tribunal under the Act to review its judgement."

IN Union of India Vs. Tarit Ranjan Das 2004 (1) SCSLJ 47 the Apex Court held -

Administrative Tribunals Act, 1985 - Section 22 - Review - Held the scope of review is very limited and it is not permissible for the forum hearing the review application to act as an appellate authority in respect of the original order by a fresh and rehearing the matter to facilitate a change of opinion on merits.

11. In our view there is no mistake or error apparent on the face of record. There is no discovery of facts within the meaning of Rule 1 Order 47. In the result, the review petition is dismissed. No order as to costs.

No.CAT/MUM/JUDL/OA/622/94/

Date :

Copy to:

1. Shri P.A.Prabhakaran, counsel for the applicant.
2. Shri R.R.Shetty, counsel for the respondents.

Section Officer.

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Order/Judgement delivered to
to Applicant, rejoice (s)
on 10-1-05