

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

RA No. 215/2015 in
OA No. 4582/2011

Order Reserved on: 02.09.2015
Pronounced on: 09.09.2015

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. V.N. Gaur, Member (A)

1. Union of India through
Secretary,
Ministry of Defence,
Government of India,
South Block, New Delhi.
2. Engineer-in-Chief,
Engineer-in-Chief Branch,
Kashmir House, Army HQ,
Rajaji Marg, DHQ Post,
New Delhi-110011.

-Review Applicants

(By Advocate: Shri Satish Kumar)

Versus

1. Sh. P.K. Jain,
R/o A-204, Shree Ganesh Apartments,
Plot No.12-B, Sector-7, Dwarka,
Delhi-110075.
2. Union Public Service Commission,
Dholpur House,
Shahjahan Road,
New Delhi-110011.
(Through Secretary)
3. Sh. Alok Shukla,
MES No.471007
Working as Superintending Engineer,
Chief Engineer (AF), WAC, Palam,
Delhi Cantt-10.
4. Brig. (Retd.) K.K. Tikku,

DDG (Design)
C/o Engineer-in-Chief,
Engineer-in-Chief Branch,
Kashmir House, Army HQ,
Rajaji Marg, DHQ Post,
New Delhi-110011.

5. Brig. B.D. Pandey,
DDG (Design)
C/o Engineer-in-Chief,
Engineer-in-Chief Branch,
Kashmir House, Army HQ,
Rajaji Marg, DHQ Post,
New Delhi-110011.
6. Maj Gen [Retd.] Brajesh Kumar,
DGW
DDG (Design)
C/o Engineer-in-Chief,
Engineer-in-Chief Branch,
Kashmir House, Army HQ,
Rajaji Marg, DHQ Post,
New Delhi-110011.

-Review Respondents

(By Advocate: Sh. R.N.Singh)

ORDER

Hon'ble Shri V.N.Gaur, Member (A)

This Review Application has been filed by the respondents in OA-4582/2011 in which the order was passed by this Tribunal on 14.08.2013. The review applicant has taken the following grounds for review:

- "A. In para 12 of the aforesaid judgment, this Hon'ble Tribunal has given a finding that Ist ACR (for period 28-5-2007 to 31-3-2008) is vitiated because the ACR for the said period has not been initiated by the IO Initiating Officer within one month of his retirement. In this regard, it is submitted that it undisputed fact that the Initiating officer retired on 7-7-2008 and he initiated the ACR of the said period of the applicant on 20-7-2008, within one month of his retirement and he did so on 20.-7-2008. A true copy of Ist ACR (for period 28-5-2007 to 31-3-2008) is being annexed herein as ANNEXURE-RA1.

- B. Because Error in factual finding is one of the main ground of seeking review of the judgement.
- C. In para 11 of the aforesaid judgement, the Tribunal has given a finding that the Respondent No.1 i.e. Secretary, Ministry of Defence has not dealt with the representations of the applicant regarding his allegation of malafide on the part of Respondent No.5. The Ld. Tribunal has come to this conclusion on the basis of copy of some file notings filed by the applicant. In this regard, it is settled proposition of law that File Notings are only internal deliberations and do not give cause of action to file case. Even otherwise, in such cases, usual course of action on the part of the Hon'ble Tribunal would have been to remand to Respondent No.1 for fresh consideration."

2. With regard to the first ground ('A' above) taken by the review applicant that the ACR for the period 28.05.2007 to 31.03.2008 was initiated by the Initiating Officer within the stipulated time period, the order dated 14.08.2013 deals with this issue in para 12 (reproduced below) and gives reason for not accepting the same:

"12. Regarding the ACR form not being supplied to him in time, the respondents have submitted that from their side ACR form was sent to the applicant but he refused to receive it (Annexures at pages 1/B, 1/C, 1/D, 1/E & 1/F attached to the brief documents submitted on behalf of R-1 and R-2 on 31.10.2012). The applicant therefore cannot take a plea that he was not supplied with the ACR form. However, the records produced by the applicant indicate that the 1st ACR was written much later than the permissible period as the ACR claimed to have been written by the IO on 20.08.2008 was reviewed on 17.08.2009 after the review of the ACR for the period 25.07.2008 to 31.03.2009 on 03.08.2009. The form used for writing the ACR by R-5 is also not the prescribed form for SE. Without going into the merit of the grading given by R-5 in that ACR, we are of the view that this ACR suffers from legal infirmity inasmuch as the same was not written within one month from the date of the premature retirement of R-5 and, therefore, it will be void ab initio. We also find that the representation submitted by the applicant has been disposed of by R-1 without discussing the specific points mentioned in that representation, as can be seen from the copy of the note-sheet obtained by him through RTI and filed with the OA. The letter communicating the decision of R-1, however, is quite elaborate, even though there is no co-relation between the discussion made on file and the reply given."

3. The review applicants have stated that they are ready to produce original record to prove the fact that the Initiating Officer had initiated the ACR of the applicant within one month of his retirement and, in support, have attached a copy of the first ACR as annexure RA-1 to the review application. Though this is not the stage to adduce fresh evidence, a perusal of this document only confirms the finding in the order dated 14.08.2013 that “the ACR claimed to have been written by the IO on 20.08.2008 was reviewed on 17.08.2009 after the review of the ACR for the period 25.07.2008 to 31.03.2009 on 03.08.2009. The form used for writing the ACR by R-5 is also not the prescribed form for SE.” There is no explanation of the delay of more than a year in reviewing and accepting the ACR, that too, after the review of the ACR for the next year, or the use of wrong form of the ACR.

4. With regard to the reliance on the copy of noting in the relevant file (ground C above), as mentioned in para 11 of the order dated 14.08.2013, it is noted that in the OA the review applicants did not file or produce the observation of, or the order passed by Defence Secretary dealing with the allegation of malafide made by the applicant. We agree that file notings reflect only the process of internal discussion and the outcome of that discussion can be determined only through the order passed pursuant to such discussion. Here we are not concerned with the views expressed by

the individual officers or the outcome of the discussion, but with the process itself i.e. whether a 'discussion' took place at all at the level of the Defence secretary dealing with the allegation of malafide. Even now no document has been filed to prove the contrary. Therefore there is no basis to consider that plea of the review applicant.

5. Thus we do not find anything new in this review petition that had not been stated before or which has not been taken note of in the order dated 14.08.2013. The review applicants have failed to point out any error that is apparent on the face of that order.

6. The power of review of its own order by this Tribunal emanates from Section 22(3)(f) of the Administrative Tribunals Act. In ***Ajit Kumar Rath v. State of Orissa and Others***, (1999) 9 SCC 596 the Hon'ble Apex Court held that "power of review available to the Tribunal under Section 22 (3)(f) is not absolute and is the same as given to a Court under Section 114 read with Order 47 Rule 1 of CPC."

7. Order XLVII, Rule (1) of Code of Civil Procedure reads as below:-

"(1) Any person considering himself aggrieved,—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from 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 decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.”

8. In ***Sow Chandra Kanta and another v. Sheik Habib***, AIR 1975 SC 1500 the Hon’ble Supreme Court had held:

“Once an order refusing special leave has been passed by this Court, a review thereof must be subject to the rules of the Supreme Court Rules, 1966, and cannot be lightly entertained. Review proceeding does not amount to a re-hearing. A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. Even if the order refusing special leave was capable of a different course, review of the earlier order is not permissible because such an order has the normal feature of finality. [933 F-G; 934 B] Observation : It is neither fairness to the Court which decided nor awareness of the precious public time lost what with a huge back-log of dockets waiting in the queue for disposal, for counsel 'to issue easy certificates for entertainment of review and fight over again the same battle which has been fought and lost.”

9. In ***Union of India v. Tarit Ranjan Das***, (2004) SCC (L&S) 160 the Hon’ble Apex Court held that the scope of review is rather 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 order and rehearing of the matter to facilitate a change of opinion on merits.

10. The power to review its own decision by the Tribunal can be invoked only when there was an error apparent on the face of the order passed by this Tribunal. The review applicants have not been

able to establish any such error in the order dated 14.08.2013. It is trite that by way of a review application the review applicants cannot ask for a re-hearing of the matter which has already been disposed of and the Tribunal has become *functus officio* in the matter.

11. RA is accordingly dismissed.

(V.N. Gaur)
Member (A)

(V. Ajay Kumar)
Member (J)

‘sd’