

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

R.A.NO.258 OF 2015

(In OA No.224/2014)

&

R.A.NO.268 of 2015

(In OA No.693/2014)

New Delhi, this the 29th day of January, 2016

CORAM:

HON'BLE SHRI SHEKHAR AGARWAL, ADMINISTRATIVE MEMBER

AND

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

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In RA No.258/15:

Union Public Service Commission,
through its Chairman
Dholpur House, Shahjahan Road,
New Delhi -110001

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Petitioner

(By Advocate: Mr.Ravinder Aggarwal)

Vs.

1. Sh. Rajveer Singh Verma
S/o Sh. Bahadur Singh
R/o 100-K Sector-4,
Pushp Vihar,
New Delhi

2. Union of India, through its Secretary,
Ministry of Law & Justice,
Department of Legal Affairs,
Shastri Bhawan,
New Delhi

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Respondents

(By Advocate: Mr.Ajesh Luthra for R-1, & Mr.Rajesh Katyal for R-2)

In RA No.268/15:

Union Public Service Commission,
through its Chairman
Dholpur House, Shahjahan Road,
New Delhi -110001

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Petitioner

(By Advocate: Mr.Ravinder Aggarwal)

Vs.

1. Dr. R R J R Kasibhatla
Flat No.204 A, Dwarka, Apts.,
Sec-7, Plot No.21, Dwarka,
New Delhi.

2. Union of India, through its Secretary,
Ministry of Law & Justice,
Department of Legal Affairs,
Shastri Bhawan,
New Delhi

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Respondents

(By Advocate: Mr.Amit Kumar Mishra for R-1, & Mr.Rajesh Katyal for R-2)

ORDER**RAJ VIR SHARMA, MEMBER(J):**

We have perused the records of O.A.Nos. 224 and 693 of 2014, and of R.A.Nos.258 and 268 of 2015, and have heard Shri Ravindeer Aggarwal, the learned counsel appearing for the review petitioner-Union Public Service Commission (respondent no.1 in OA Nos.224 and 693 of 2014), and Shri Ajesh Luthra and Shri Amit Kumar Mishra, the learned counsel appearing for respondent no.1 (applicants in OA Nos.224 and 693 of 2014). We have also heard Shri Rajesh Katyal, the learned counsel appearing for the Ministry of Law & Justice, Department of Legal Affairs,

Government of India, New Delhi (respondent no.2 in OA Nos.224 and 693 of 2014 and RA Nos.258 & 268 of 2015).

2. In both R.A.Nos. 258 and 268 of 2014, the review petitioner-UPSC was respondent no.1 in OA Nos.224 and 693 of 2014 which were disposed of by the Tribunal, vide common order dated 25.2.2015. The order dated 25.2.2015 passed by the Tribunal is reproduced below:

“ 1. The issue and reliefs sought are identical in both these OAs and hence, at the request of the parties, both these matters were taken up together and accordingly common orders are being passed.

2. For purposes of pleadings, documents and arguments, OA No. 224/2014 has been taken as the lead OA in which the reliefs sought are as follows (similar relief has been sought in the other OA as well) :-

(a) direct the respondents not to exclude the applicant from consideration for appointment to the post of Additional Legal Advisor in the process initiated vide advertisement no. Issued in July-August 2013.

(b) In an event, the UPSC has already evolved a shortlisting criteria which is violative of Recruitment Rules and excludes or tends to exclude the applicant

(c) from consideration to the post, the same may kindly be quashed and set aside;

(d) The respondents be directed to further consider the candidature of the applicant for appointment to the post in question and if selected, he be appointed to the post, with all consequential benefits;

(e) Award costs of the proceedings, and

(f) Pass any other order/direction which this Honble Tribunal deem fit and proper in favour of the applicant and against the respondents in the facts and circumstances of the case.

3. The applicants are aggrieved by the action of the respondents, according to which they have been excluded from consideration for the post of Additional Legal Advisor, Department of Legal Affairs on the ground that they were not fully qualified in terms of the recruitment rules, although they had duly applied for the post in question. Based on short listing criteria, they were excluded from consideration by the respondent No.1. Since the applicants had been earlier provisionally allowed to appear in the interview, UPSC had

been directed to produce their results in a 'sealed cover' vide interim directions of the Tribunal dated 24.02.2014.

4. When the results of applicants were opened, it was appeared that applicants in OA Nos. 693/2014 and 224/2014 had been found selected in the interview. These two OAs were therefore required to be adjudicated. Applicants in OA Nos. 477/2014, OA 583/2014, OA 781/2014 and 801/2014, OA 818/2014 were not found fit to be selected and hence at that stage itself these OAs were dismissed by a common order on 16.09.2014.

5. OA Nos. was 693/2014 and 224/2014 were heard today. Mr. Ajesh Luthra, learned counsel argued for the applicants while Mr. J.B. Mudgil argued on behalf of respondent-UPSC in both the OAs, while Mr. Rajesh Katyal, learned counsel for respondent no.2 argued in OA No. 693/2014. During the arguments, it appeared that a short listing criteria was adopted by the UPSC in consonance with the provisions contained in the Notification that was issued for examination. According, to the short listing criteria none of those who had been short listed, succeeded in the interview. On the other hand, the applicants in these two OAs, who had not been short listed, were selected in the interview. **Mr. J.B. Mudgil, counsel for the respondent No.1 admitted that the present applicants in these two OAs fulfill all other requirements of the post, including educational qualification as per the Recruitment Rules.**

6. **Learned counsel for respondent No.2 Mr. Katyal stated that he would have no other arguments to make except to the extent that the applicants in the OAs are fit for consideration in terms of the recruitment rules for the post.**

7. In view of above, we are of the considered view that the applicants in these OAs are entitled to the relief claimed in para 8(a) and 8(c) of the relief sought in lead OA.

8. Learned counsel for respondent No.2 Mr. Katyal stated that he would have no other arguments to make except to the extent that the applicants in the OAs are fit for consideration in terms of the recruitment rules for the post.

9. In view of above, UPSC is directed to accordingly consider the candidature of the candidates for appointment to the post in question and send their recommendation for appointment with respect to the applicants in both these OAs for the said post. This shall be done within a period of four weeks from the date of receipt of a copy of this order. No costs.

10. Let a copy of this order be placed in each of the case files."

3. Being aggrieved by the Tribunal's order dated 25.2.2015, *ibid*, the review petitioner-UPSC filed W.P. (C) Nos. 3941 and 3947 of 2015 before the Hon'ble High Court of Delhi. The Hon'ble High Court disposed of the said two writ petitions by its order dated 8.9.2015, the relevant portion of which is reproduced below:

“Challenge in these writ petitions is to a common order passed by the Central Administrative Tribunal dated 25.02.2015. The tribunal was persuaded to decide two OAs which were filed bearing nos. 693/2014 & 224/2014. In view of the stand taken by the learned counsel appearing for the parties, Paras 5 and 6 of the order passed by the CAT reads as under :

“5. OA Nos. was 693/2014 and 224/2014 were heard today. Mr. Ajesh Luthra, learned counsel argued for the applicants while Mr. J. B. Mudgil argued on behalf of respondent – UPSC in both the OAs, while Mr. Rajesh Katyal, learned counsel for respondent No. 2 argued in OA No. 693/2014. During the arguments, it appeared that a short listing criteria was adopted by the UPSC in consonance with the provisions contained in the Notification that was issued for examination. According, to the short listing criteria none of those who had been short listed, succeeded in the interview. On the other hand, the applicants in these two OAs, who had not been short listed, were selected in the interview. Mr. J. B. Mudgil, counsel for the respondent No. 1 admitted that the present applicants in these two OAs fulfil all other requirements of the post, including educational qualification as per the Recruitment Rules.

6. Learned counsel for respondent No. 2 Mr. Katyal stated that he would have no other arguments to make except to the extent that the applicants in the OAs are fit for consideration in terms of the recruitment rules for the post.”

*2. Today in the writ petitions a diametrically opposite stand is sought to be taken by learned counsel for the petitioner based on the counter affidavit filed before the tribunal. Although we have heard the matter at some length, the present writ petitions are disposed of with the following **agreed** order:*

- (i) The writ petitions are dismissed as not pressed at this stage leaving all legal grounds open to the parties.*
- (ii) The petitioner may file an application seeking the review of the order dated*

25.02.2015. In case the review petition is filed within two weeks, the respondents would not raise the plea of limitation.

- (iii) The order passed by the tribunal would remain suspended till the application for review is heard.*
- (iv) Both the writ petitions are disposed of. The tribunal would endeavour to dispose of the review application within a period of one month.”*

Hence, the present R.As. have been filed by the review petitioner-UPSC (respondent no.1 in OA Nos. 224 and 693 of 2014) seeking review of the order dated 25.2.2015, *ibid.*.

4. Before proceeding to consider the claim of the review petitioner, we would like to refer to the following decisions of the Honøble Supreme Court regarding the scope of review, and power of review exercisable by judicial forums, including the Tribunal established under the Administrative Tribunals Act, 1985.

4.1 In **Ajit Kumar Rath v. State of Orissa and others**, (1999) 9 SCC 596, the Honøble Supreme Court has held that 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. Any other attempt, except an attempt to correct an apparent error, or an attempt not based on any ground set out in Order 47 of the Code of Civil Procedure, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment.

4.2 In **Union of India v. Tarit Ranjan Das**, 2004 SCC (L&S) 160, the Honøble Supreme Court has held that the scope for review is rather limited, and it is not permissible for the forum hearing the review application to act as an appellate court in respect of the original order, by a fresh order and rehearing the matter to facilitate a change of opinion on merits.

4.3 In **State of West Bengal and others v. Kamal Sengupta and another**, (2008) 2 SCC (L&S) 735, the Honøble Apex Court has scanned its various earlier judgments and summarized the following principles:

õ35. The principles which can be culled out from the above-noted judgments are:

- (i) The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/analogous to the power of a civil court under Section 114 read with Order 47 Rule 1 CPC.
- (ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 CPC.
- (iii) The expression õany other sufficient reasonö appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.
- (iv) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(f).
- (v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.
- (vi) A decision/order cannot be reviewed under Section 22(3)(f) on the basis of subsequent decision/judgment of a coordinate or larger Bench of the tribunal or of a superior court.
- (vii) While considering an application for review, the tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.

- (viii) Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court/tribunal earlier.

4.4 The Honøble Supreme Court, in **Kamlesh Verma vs. Mayawati & others**, 2013(8) SCC 320, has laid down the following contours with regard to maintainability, or otherwise, of review petition:

20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1 When the review will be maintainable:

- i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;
- ii) Mistake or error apparent on the face of the record;
- iii) Any other sufficient reason.

The words "any other sufficient reason" have been interpreted in *Chhajju Ram v. Neki* (AIR 1922 PC 122) and approved by this Court in *Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius* (AIR 1954 SC 526) to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in *Union of India vs. Sandur Manganese & Iron Ores Ltd.* (23013(8) SCC 337).

20.2 When the review will not be maintainable:

- i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.
- ii) Minor mistakes of inconsequential import.
- iii) Review proceedings cannot be equated with the original hearing of the case.
- iv) Review is not maintainable unless the material error, manifest on the face of the order,

undermines its soundness or results in miscarriage of justice.

- v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.
- vi) The mere possibility of two views on the subject cannot be a ground for review.
- vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.
- viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.
- ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negated.

5. Keeping the above enunciation of law in mind, we have to find out whether a case has been made out by the review petitioner-UPSC (respondent no.1 in OA Nos. 224 and 693 of 2014) for review of the order dated 25.2.2015 passed in OA Nos.224 and 693 of 2014.

6. In the R.As. the review petitioner-UPSC (respondent no.1 in OA Nos. 224 and 693 of 2014) has urged almost identical grounds in support of its prayer for reviewing the Tribunal's order dated 25.2.2015, *ibid.* However, for the sake of brevity, we reproduce below the grounds urged by the review petitioner-UPSC in RA No.268 of 2015:

A. Because the issues involved in OA No.224/2014 and OA No.693 of 2014 were entirely distinct and different and could not have been decided by way of common order.

B. Because the finding of fact given by this Tribunal that none of those who had been shortlisted succeeded in the

interview is not correct. It is submitted that in every recruitment the Commission also draws a Reserve List. If no candidate from the main list is appointed, the Reserve List comes into operation and candidates from the said list in the order of merit are recommended for appointment.

C. Because this Hon'ble Tribunal rightly did not find any fault with a shortlisting criteria adopted by the Commission. It is submitted that if the shortlisting criteria is valid, the applicant was not eligible to be appointed.

D. Because in the instant case since the applicant is not eligible to be considered, the Reserve List would come into operation, and the candidates selected in the Reserve List would have a vested right to be recommended for appointment.

E. Because without prejudice to the aforesaid, it is submitted that much less the shortlisting criteria, the applicant is not even meeting the minimum eligibility criteria as prescribed in the Recruitment Rules.

F. Because the admission by the Counsel that the applicant fulfills all other requirements of the posts is wrong and contrary to the specific stand pleaded by the Commission in its counter affidavit.

G. Because it is settled proposition of law that a statement of a counsel contrary to the specific pleadings of the parties is not binding on the party.

H. Because the moot question between the parties was as to whether the applicant had the requisite experience, and which issue has not been decided by this Hon'ble Tribunal."

It is contended by the review petitioner-UPSC (respondent no.1 in OA Nos. 224 and 693 of 2014) that non-consideration of the relevant pleadings and/or materials available on record amounts to an error apparent on the face of record. It is also contended by the review petitioner-UPSC (respondent no.1 in OA Nos. 224 and 693 of 2014) that the statement made by the learned counsel appearing for the respondent No.1-UPSC, during the course of hearing of both the OAs, that the applicants fulfilled all other requirements of the post, including educational qualification as per the Recruitment Rules,

being contrary to their specific pleadings, there is an error apparent on the face of the order dated 25.2.2015 which has been passed by the Tribunal on the basis of the said statement of the learned counsel appearing for UPSC, i.e., respondent no.1 in both the O.As.. Therefore, the order dated 25.2.2015, *ibid*, is liable to be reviewed.

7. In their counter replies, respondent no.1 in both the R.As. (applicants in OA Nos. 224 and 693 of 2014), besides reiterating more or less the same averments and contentions as in OA Nos. 224 and 693 of 2014, have pleaded that the R.As. are not maintainable either in fact or in law. It has also been submitted that they fulfilled the eligibility criteria as per the Recruitment Rules, and, hence, the statement made by the learned counsel appearing for respondent no.1-UPSC (review petitioner), during the course of hearing of OA Nos. 224 and 693 of 2014, that the applicants fulfilled all other requirements of the post, including educational qualification, as per the Recruitment Rules, was rightly accepted and appropriate reliefs were granted by the Tribunal to them. Therefore, there is no scope for review of the order dated 25.2.2015, *ibid*.

8. The review petitioner-UPSC has filed rejoinder replies controverting the stand taken by the respondents.

9. We have carefully perused the records of O.A.Nos. 224 and 693 of 2014. In its counter replies filed in OA Nos.224 and 693 of 2014, respondent no.1-UPSC (review petitioner) has stated that since 314

applications were received against two vacancies, the following criteria was fixed for shortlisting of candidates for being called to interview:

Criteria 1: EQ (A)(i) Raised to Ph.D in Law + EQ(A)(ii)

Criteria 2: EQ(A)(i) Raised to Post graduation in Law + EQ(A)(ii) Raised to 20 years.

On the basis of the above shortlisting criteria, applications of 32 candidates were considered, and interview letters were issued to 16 candidates who were, *prima facie*, found suitable. Accordingly, all other applications were rejected. It has also been specifically stated by respondent no.1-UPSC (review petitioner) that as per online applications submitted by the applicants (respondent no.1 in the R.As.), they did not fulfill the shortlisting criteria, and, therefore, their applications were not considered for shortlisting and were rejected. Thus, we have found that the statement made by the learned counsel appearing for respondent no.1-UPSC (review petitioner), during the course of hearing of OA Nos.224 and 693 of 2014, that the applicants (respondent no.1 in RAs) fulfilled all other requirements including the educational qualifications for selection, is contrary to the specific pleadings of respondent no.1-UPSC(review petitioner). The issue that arose for consideration of the Tribunal in O.A.Nos.224 and 693 of 2014 was as to whether the respondent no.1-UPSC (review petitioner) was justified in fixing the aforesaid shortlisting criteria, and, if so, whether the applicants (respondent no.1 in the R.As.) fulfilled the shortlisting criteria fixed by the respondent no.1-UPSC(review petitioner). Instead of deciding the said issue, the Tribunal acted on the said statement of the learned counsel

appearing for respondent no.1-UPSC (review petitioner) and directed respondent no.1-UPSC (review petitioner) to consider the candidatures of the applicants (respondent no.1 in RAs) and to send its recommendation for their appointment, vide its order dated 25.2.2015, *ibid*. Section 22(2) of the Administrative Tribunals Act, 1985, stipulates, *inter alia*, that every application made to it shall be decided on a perusal of documents and written representations and after hearing such oral arguments, as may be advanced. Therefore, as rightly contended by the review petitioner-UPSC (respondent no.1 in OA Nos. 224 and 693 of 2014), the non-consideration of the relevant pleadings/materials available on record, and acceptance of the aforesaid statement of the learned counsel appearing for respondent no.1-UPSC (review petitioner) by the Tribunal, while disposing of OA Nos.224 and 693 of 2014, vide its order dated 25.2.2015, *ibid*, amount to errors apparent on the face of record. Resultantly, there is material error, manifest on the face of the order, dated 25.2.2015, *ibid*, which undermines its soundness and results in miscarriage of justice.

10. In the light of our above discussions, we have no hesitation in holding that the order dated 25.2.2015, *ibid*, is liable to be reviewed/recalled. Accordingly, the order dated 25.2.2015 passed in OA Nos. 224 and 693 of 2014 is reviewed and recalled, and O.A.Nos.224 and 693 of 2014 are restored. In view of the submission made by respondent no.1-UPSC (review petitioner) that both the O.As. should not have been decided by the Tribunal by way of a common order, we direct that O. A. Nos.224 and 693 of 2014

should be heard and decided by the Tribunal independently. The O.As. be listed for fresh hearing before appropriate Bench as per roster.

11. In the result, both the R.As. are partly allowed to the extent indicated above. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SHEKHAR AGARWAL)
ADMINISTRATIVE MEMBER

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