

**Central Administrative Tribunal
Principal Bench, New Delhi**

RA No. 61/2014
and
RA No. 76/2014 in
OA No.1288/2009

Pronounced on: 10.08.2016

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

RA No. 61/2014

1. Sh. K.K.Tiwari,
S/o Shri D.N.Tiwari,
R/o E-105, Nanak Pura,
South Moti Bagh,
New Delhi.
2. Sh. Vijai Pratap Singh,
S/o A.P.Singh
R/o Flat No.310, Gaurs Residency,
Chander Nagar,
Ghaziabad, UP-201011.

-Applicants

(By Advocate: Sh. C.Hari Shankar, senior counsel with
Sh. S.K.Gupta)

-Versus-

1. Union of India through
Secretary,
Ministry of Defence,
South Block,
New Delhi.
2. Joint Secretary (T) & CAO,
Ministry of Defence,
E Block,
New Delhi-110011.
3. Sandeep Singh,
S/o Shri B.P. Singh,
R/o S-2, 4/327, Vaishali,
Ghaziabad, U.P.

4. Raghbir Singh,
S/o Shri Mehar Chand,
R/o B-121, Hari Nagar,
New Delhi-110064.
5. Shiv Prasad,
S/o late Shri Ram Prasad,
R/o H-11, Shakarpur,
New Delhi-110092.

-Respondents.

(By Advocate: Ms. Jyoti Singh, senior counsel with
Sh. Sameer Sharma)

RA No. 76/2014

1. Union of India through
Secretary,
Ministry of Defence,
South Block,
New Delhi.
2. Joint Secretary (T) & CAO,
Ministry of Defence,
E Block,
New Delhi-110011.

-Applicants

(By Advocate: Ms. Jyoti Singh, senior counsel with
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-Versus-

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S/o late Shri Ram Prasad,
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New Delhi-110092.

-Respondents.

(By Advocate: Sh. C.Hari Shankar, senior counsel with
Sh. S.K.Gupta)

O R D E R**Mr. V.N. Gaur, Member (A):**

In this order we are dealing with the review applications no. 61/2014 and 76/2014 filed in respect of order dated 18.02.2014 in OA No.1288/2009. Since the RAs have been filed on more or less common grounds, at the request of learned counsel for the parties the arguments were heard together and being disposed of through this common order.

2. **RA No.61/2014** has been filed by Sh. K.K.Tiwari and Sh. Bijai Pratap Singh, Section Officers appointed under promotion quota in the Ministry of Defence in terms of Armed Forces Headquarters Civil Service Rules (the Rules), 2001.

3. The learned senior counsel for the review applicants submitted that the matter in OA 1288/2009 had already been heard in detail by this Tribunal when it dismissed the OA on 23.12.2009. When the matter was challenged before the Hon'ble High Court of Delhi in WP (C) no.7538/2010 the case was dismissed in limine on 10.11.2010. On filing the review petition no.246/2011, the Hon'ble High Court recalled its earlier order and allowed the review applicants to raise the averment made in para 11 of the rejoinder filed in the OA before the Tribunal by moving a review petition by order dated 04.08.2011. The applicants in the OA then filed RA

No.314/2011 which was allowed by the Tribunal on 05.12.2012 restoring the OA to its original position and, that is how, the matter was heard once again and disposed of vide order dated 18.02.2014. However, while passing this order, the Tribunal went beyond the mandate given by the Hon'ble High Court in the order dated 04.08.2011. The Tribunal re-adjudicated those issues also on which the Tribunal already had recorded its finding in the order dated 23.12.2009 and therefore, it violated the law as laid down in **K. Ajit Babu & others Vs. UOI & others**, 1998 (1) SLJ SC 85. It also ignored the fact that re-fixation of seniority in compliance of the order dated 18.02.2014 the seniority of the review applicants will also be affected and therefore any order affecting the review applicants could not have been passed without hearing them. The review applicants were promoted by diverting the unfilled direct recruitment vacancies in accordance with the Rules of 2001. The re-appointments cannot be challenged without challenging the Rules, which was not the prayer in the OA. Further the matter regarding the inter-se seniority of promotees from seniority quota and LDCE is the subject matter of OA No. 2145/2011 **Shri Mohinder Singh 7 Ors. and UOI & Ors.** The order dated 18.02.2014 by ante-dating seniority of the applicants in the OA decided on a matter that was not the issue before it. Relying on **State of Uttaranchal and anr. Vs. Dinesh Kumar Sharma**, CA No.5573/2006 the learned counsel submitted that the original

applicants could not have been given seniority even before they appeared in the LDCE.

4. Learned counsel appearing on behalf of respondents no. 3, 4 & 5 in RA No.61/2014 (applicants no.1,2& 3 in OA) raised the preliminary objection that the review applicants had no *locus standi* in OA-1288/2009. The claim of the review applicants is based on the seniority list dated 14.05.2012 which was prepared by the official respondents after giving illegal promotions on 07.04.2011 with retrospective effect. The applicants had filed the OA in 2009 and at that time the review applicants had not even been promoted on regular basis. Therefore, they have no right to question the counting of approved service of the LDCE quota appointees w.e.f. 2002-03. Further, since the issue of their seniority vis-à-vis LDCE promotees is already under challenge in **Mohinder Singh** (supra), the review applicants cannot shift that dispute to the present OA through this review application. The learned counsel also submitted that in the order dated 18.02.2014 there was no reference to the seniority of the LDCE appointees vis-a-vis the promotee officers. The word "seniority" used in the order can only be interpreted to mean the inter-se-seniority among the LDCE candidates, which cannot be de-linked from the date of appointment. The applicants in OA have neither challenged the Rules of 1968, which were operative till 25.05.2001 nor any regular

promotions made thereunder within the respective quota for promotion or direct recruitment. Review applicant no.1 is trying to confuse the matter and mislead this Tribunal by bringing in the issue of his temporary promotion to the grade of ACSO (now SO) made on 31.03.1998 under old Rules, 1968, which is irrelevant in the present OA. The temporary promotion/seniority of review applicant no.1 and other similarly placed persons, which was against direct recruit quota, has already been set aside by the Hon'ble Supreme Court vide judgment dated 19.02.2008 in Civil Appeal No.1384/2008 titled **AFHQ/ISOs SOs (DP) Association & ors. Vs. UOI & ors.** The promotion of review applicant no.1 made on 31.03.1998 was temporary and till further orders subject to provisions of Note 2 of the Third Schedule of the Rules of 1968 and subject to implementation of this Tribunal's judgment dated 20.11.1992 in TA No.356/85 in C.W. No.3/78 (**MG Bansal & Ors. Vs. Union of India & Ors.**). After the judgment of Hon'ble Supreme Court dated 19.02.2008 the official respondents have implemented the judgment and the review applicant no.1 did not find place in the select list prepared under the Rules of 1968 for the period up to 25.05.2001 and the matter has attained finality. The review applicants are, therefore, debarred by principle of estoppel from re-agitating the issue of promotion/seniority under Rules of 1968 in this OA. The review applicant no.2 was initially promoted as Section Officer (SO) on ad hoc basis under Rule 7 (8) of the Rules of

2001 purely as a stop gap arrangement vide order dated 28.04.2003 stipulating that he will have no claim for appointment to the post of SO on regular basis nor will his service rendered as SO under Rule 7 (8) reckon for seniority. Being quite junior the review applicant no.2 could not find place in any of the seniority list drawn upto the vacancy years 2007-08. Thus, he has no basis to contend that his seniority is being adversely affected by order dated 18.02.2014. The learned counsel further relied on **Gopabandhu Biswal vs. Krishna Chandra Mohanty**, 1998 STPL 4792 SC and **State of Haryana vs. M.P. Mohala**, 2007 STPL 1568 SC to emphasise on the limits of the jurisdiction of the Tribunal in a review proceeding.

5. In **RA No.76/2014** the review applicant, the official respondents in the OA 1288/2009, has mentioned in detail the background of the case once again besides raising a few grounds in support of the prayer for review. After reiterating the grounds raised by the learned senior counsel in RA 61/2014, the learned counsel added that a perusal of OA No.1288/2009 would show that no relief was claimed by the applicants in the OA with regard to the seniority while the order dated 18.02.2014 has referred to the seniority of the applicants in the OA. Learned counsel further submitted that the respondents did not hold back the vacancies for the year 2001 deliberately from the LDCE to be conducted by the UPSC, and once it could not be filled up the respondents were within their rights to

fill those vacancies through promotion quota as per the Rules of 2001. He also made a reference to the practical difficulty in implementing the order dated 18.02.2014 as it may lead to conducting of fresh LDCE for 12 years starting 2002-03.

6. We have heard the learned counsel for the parties in the two RAs and perused the record. On behalf of the review applicants in the two OAs the following grounds have been raised:

(a) the seniority was never the prayer of the applicants in OA No.1288/2009 which has been granted to them by order dated 18.02.2014;

(b) The seniority of the review applicants cannot be altered without challenging the Rules of 2001 under which they were appointed.

(c) the issues relating to approved service that had been adjudicated in the order dated 23.12.2009, the Tribunal was barred from reopening the same in order dated 18.02.2014;

(d) the Hon'ble High Court had remanded the matter with a very limited mandate.

(e) As the relief granted by the Tribunal in the order dated 18.02.2014 seriously affected the rights of the review applicants, such relief could not have been given without hearing the review applicants.

(f) The applicants in the OA cannot be given approved service benefit prior to their appearing in the LDCE. It will violate the law laid down by Hon'ble Supreme Court in **State of Uttaranchal and anr. Vs. Dinesh Kumar Sharma**, CA No.5573/2006 decided on 4.12.2006.)

(g) He also made a reference to the practical difficulty in implementing the order dated 18.02.2014 as it may lead to conducting of fresh LDCE for 12 years starting 2002-03.

7. We have considered the submissions and find that the mandate of law to this Tribunal in review jurisdiction is limited to examining whether there was any error apparent on the face of the record or any fresh facts have been brought on record that would be material while considering the issues which were part of OA-1288/2009.

8. 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."

9. 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."

10. 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.

11. In **Gopabandhu Biswal** and **M.P. Mohla** (supra) the same principles have been re-stated. We will therefore confine ourselves to the submissions relating to any alleged error on the face of record.

12. According to the review applicant the use of word “seniority” in the order was an error as the seniority of the review applicants will be affected by the order dated 18.02.2014 but they were not a party in the case. That was also not the prayer in the OA. A perusal of the order dated 18.02.2014 would reveal that the dispute raised in OA No.1288/2009 was with regard to the year from which the approved service of the applicants would be counted. The applicants were LDCE appointees against the statutory quota reserved for them under the Rules of 2001. There was no reference anywhere in that order to the appointees under the promotion or direct recruitment quotas. The scope of word “seniority” in this background would obviously be confined to inter se seniority of the LDCE appointees and cannot be applied to the inter se seniority with reference to the appointees of other modes. By giving it a wider connotation, the review applicants are trying to find an artificial

error to justify a review of that order. The grounds (a) and (b) therefore have no merit.

13. Again the submission that the question of approved service for the purpose of NFS has been adjudicated in the order dated 23.12.2009 and hence the Tribunal could not have reopened it, is absolutely illogical. In effect the proposition is that the Tribunal has to consider the “submission pleaded and urged at the oral hearing” by the applicants, as ordered by the High Court in the judgment dated 04.08.2011, but it cannot deviate from the findings already arrived at by it in the order dated 23.12.2009. Obviously, such an interpretation will lead to absurd consequences making the review permitted by the High Court an infructuous exercise. It may be added that this Tribunal following the order in review petition no.246/2011 in WP (C) No.7538/2010, allowed the RA and directed it to be listed under “Ready for hearing matters” for final arguments without any restriction on the scope. The parties were also allowed to file additional documents in support of their arguments, if they so liked. The arguments in the OA covered the entire gamut of grounds taken by the applicants and there was no objection from the respondents. We do not, therefore, subscribe to the view that the order dated 18.02.2014 has gone beyond the mandate of the Hon’ble High Court of Delhi in RA No.246/2011. The grounds (c) and (d) also have no force.

14. The argument that the review applicants were necessary parties in the OA is also without substance since, as pointed out by the learned counsel for the respondents in the RA 61/2014, the review applicants do not have any *locus standi* in the matter. It is not in dispute that the review applicant no.1 was promoted as SO by order dated 06.08.2009 against the vacancy year 2006-07 and the name of review applicant no.2 did not figure in the seniority lists drawn upto the year 2007-08. Their claim for seniority emanates from the seniority list drawn in 2012 on the basis of their retrospective promotion in 2011 against diverted vacancies of the years 2002-03 and 2003-04. When the OA was filed in 2009 the review applicants were indisputably junior to the applicants and not even remotely connected with the question of ante-dating of approved service or seniority of the applicants. The review applicants, therefore, have no *locus standi* in the OA. Further, the matter of seniority between the seniority mode promotes and LDCE promotees is stated to be the subject matter of Mohinder Singh (supra) but the order under review nowhere touches on the issue. Consequently, the ground (e) also has to be rejected.

15. In the ground (f) the reliance on **Dinesh Kumar** (supra) at this stage is misplaced as the Tribunal cannot consider the matter on merits having become *functus officio* after delivering the order dated 18.02.2014. We also do not want to venture into the speculative

stand of the review applicants in RA No.76/2014 taken in ground (g) that “it would be highly improbable for the UPSC to re-conduct the LDCEs for the last 12 years”. It is for the respondents to decide the course of action for implementing the order of this Tribunal whether by conducting fresh LDCE for 12 years or by redrawing the year-wise panels on the basis of existing merit list available with the UPSC or any other option available to the official respondents. In any case it cannot be a ground for review. The remaining grounds of the review applicants are nothing but supporting arguments of the stand taken by the official respondents in the OA and an effort to re-argue the case. From the above discussion, it can be seen that the review applicants in RAs have not been able to establish any error apparent on the face of the record.

16. Both the RAs are, therefore, found to be devoid of merit and are dismissed as such.

(V.N. Gaur)
Member (A)

(V. Ajay Kumar)
Member (J)

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