

Central Administrative Tribunal Principal Bench, New Delhi

R.A.No.122/2015 in O.A. No.4260/2013
R.A.No.123/2015 in O.A. No.4262/2013
R.A.No.124/2015 in O.A.No.4203/2013

Thursday, this the 10th day of September 2015

Hon'ble Mr. A.K. Bhardwaj, Member (J)

R.A.No.122/2015

Union of India & others through

1. The Secretary
Ministry of Defence,
South Block, New Delhi-11
2. The J.S. (T) & ACO
Govt. of India
Ministry of Defence
E Block, CAO/A-3(A)
New Delhi-11

..Review Applicants

(Mr. Manjeet Singh Reen, Advocate)

Versus

Mr. S K Koshal
Dy. Director General
S/o late Mr. M M Srivastav
Working at Office of the Addl Dte General of Quality Assurance
(Veh), Ministry of Defence
(DGQA), DHQ, PO
New Delhi

..Respondent

(Mr. Sanjeev Kaloty, Advocate)

R.A.No.123/2015

Union of India & others through

1. The Secretary
Ministry of Defence,
South Block, New Delhi-11
2. The J.S. (T) & ACO
Govt. of India
Ministry of Defence
E Block, CAO/A-3(A)
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 Working at Office of the Addl Dte General of Quality Assurance
 (Veh), Ministry of Defence
 (DGQA), DHQ, PO
 New Delhi

..Respondent

(Mr. Sanjeev Kaloty, Advocate)

R.A.No.124/2015

Union of India & others through

1. The Secretary
 Ministry of Defence,
 South Block, New Delhi-11
2. The J.S. (T) & ACO
 Govt. of India
 Ministry of Defence
 E Block, CAO/A-3(A)
 New Delhi-11

..Review Applicants

(Mr. Manjeet Singh Reen, Advocate)

Versus

Mr. A K Srivastav
 Dy. Director General
 S/o late Mr. M M Srivastav
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..Respondent

(Mr. Sanjeev Kaloty, Advocate)

O R D E R (ORAL)

The review applicants have sought review of the common Order dated 19.1.2015 passed by this Tribunal in O.A. Nos.4203/2013, 4260/2013 and OA 4262/2013 on the grounds:-

- i) While disposing of the aforementioned Original Applications, the Tribunal omitted to take note of O.M. F.No.18/26/2011-Estt (Pay-I) dated 6.2.2014.

ii) In **U.T. Chandigarh & others v. Gurcharan Singh & another** 2014 (1) SC SLJ 195, Hon'ble Supreme Court ruled that if any amount is paid to an employee due to mistake, the mistake must be rectified and the amount so paid must be recovered.

2. As far as the first ground is concerned, I find that even in O.M. dated 6.2.2014, relied upon by learned counsel for review applicants (original respondents), it has been provided that in such cases where the employees were not at fault and the recovery may cause extreme hardship, a lenient view should be taken. In paragraphs 3 and 4 of the O.M., it is specifically provided that in exceptional cases, the recovery may be waived. There is no thumb rule regarding the recovery of overpayment. Each case has to be dealt with reference to the facts involved therein.

3. As far as these Review Applications are concerned, in O.A.No.363/2012, the Order passed in which was upheld by the Hon'ble Court in Writ Petition (C) No.5555/2013, the Tribunal had viewed that in terms of law declared by the Apex Court in **Syed Abdul Qadir v. State of Bihar & others**, (2009) 1 SCC (L&S) 744, once the extra payment is made by the employer by applying wrong principle for calculating the pay and allowances, recovery should not be made. The Tribunal had found the case of applicant covered by the view taken in O.A. No.363/2012 finally upheld by the Hon'ble High Court in Writ Petition (C) No.5555/2013 (ibid). While disposing of the Original Applications, I followed the aforementioned Order of the Tribunal passed in O.A. No.363/2012, as upheld by the Hon'ble High Court of Delhi (supra).

4. It is *stare decisis* that after disposing of an issue by final order, the Courts/Tribunals become *functuous officio*. The only exception to the principle is Review Application, which may be entertained on limited grounds, viz. there is an error apparent on the face of record; production of some such material/documents not produced at the time of disposal of the proceedings despite all care and caution, or there is some other sufficient reason. In these Review Applications, I do not find any of the aforementioned yardsticks fulfilled. An application for review cannot be heard as an appeal in disguise.

5. Review Applications are found devoid of merit and are accordingly dismissed. No costs.

A copy of this Order be kept in all the related files.

(A.K. Bhardwaj)
Member (J)

September 10, 2015
/sunil/