CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.2702/2003

New Delhi this the 12th day of April, 2005.

HON'BLE MR. V.K. MAJOTRA, VICE-CHAIRMAN (A)
HON'BLE MR. SHANKER RAJU, MEMBER (J)

Smt. Rukhsana Shaheen Khan,
Block 11, Flat C,
Hudco Place, Andrews Ganj,
New Delhi-110049. -Applicant

(By Advocate Shri Arun Bhardwaj)

-Versus-

1. Union of India through
Secretary, Ministry of Defence,
South Block, New Delhi.

2. Secretary, (Defence Finance),
South Block, New Delhi.

3. Controller General of Defence Accounts,
West Block 5, R.K. Puram,
New Delhi.

4. Secretary, UPSC,
Dholpur House,
Shahjahan Road,
New Delhi.

5. Shri K. Kumaraswamy,
Former Controller General of Defence Accounts,
To be served through Controller General of
Defence Accounts, West Block 5, R.K. Puram,
New Delhi.

6. Shri N. Gopalan,
Former Controller General of Defence Accounts,
To be served through Controller General of
Defence Accounts, West Block 5, R.K. Puram,
New Delhi.

7. Sh. Shiva Subramanium,
Former FADS,
Through Secretary Defence Finance,
Ministry of Defence, South Block,
New Delhi.

8. Sh. T.P. Mandal,
Principal Controller of Defence Accounts,
Ordinary Factory,

Calcutta, W. Bengal. -Respondents

(By Advocates Shri M.M. Sudan, Mrs. B.Rana with Abhilasha Dewas and Shri J.B. Mudgil)

ORDER

Mr. Shanker Raju, Hon'ble Member (J):

On 17.3.2005 when the arguing counsel were present Shri Arun Bhardwaj, learned counsel of applicant was heard and the matter was listed as part heard on 18.3.2005. On that date Shri Bhaskar Bhardwaj, proxy counsel for Shri Arun Bhardwaj appeared for applicant and the learned counsel for respondents addressed their arguments whereas Shri Bhaskar Bhardwaj stated that no rejoinder is required ad in that conspectus after perusal of the record produced by respondents and hearing the counsel OA was dismissed with the reasons to follow. This order was signed on the same date.

2. Later on Shri Arun Bhardwaj appeared on 21.3.2005 when neither reasons were recorded nor reasoned order was signed with a request that on 18.3.2005 due to compelling circumstances he could not attend the proceedings and stated that there are few decisions which would alter materially the outcome of the case and has a bearing, are to be cited and requested the matter to be listed 'for being spoken to'.

3. The matter was listed on 22.3.2005 as 'being spoken to' as well as on 24.3.2005, on that date on the issue whether re-hearing is permissible where on conclusion of the arguments OA was dismissed is permissible or not?

4. Shri Arun Bhardwaj stated by referring to order 20 of the CPC, 1908 to contend that after hearing the case the Court shall pronounce judgment in the open Court and when a written judgment is pronounced it is sufficient if the operative part is read but where the judgment is

pronounced by dictation in the open court transcription of that judgment after making such correction be signed by the Judge. In the above conspectus it is stated that only after reasons are recorded and that order is signed, it attains finality before that it cannot be termed as an order.

5. A reference has been made to the order passed by a Division Bench consisting of Hon'ble Chairman in OA-1422/2004 whereby by an order dated 21.3.2005 after the order was pronounced before signature the matter was listed for re-hearing. Shri Bhardwaj has relied upon a decision in RA-124/2003 dated 29.7.2004 in **Union of India v. Faqrudeen** to contend that RA was allowed in a case where OA was disposed of without notice.

6. Shri Bhardwaj stated that in **Vinod Kumar Singh v. Banaras Hindu University**, AIR 1988 SC 371 as an exception in peculiar circumstances even a judgment pronounced in open court can be altered or modified, though power is to be exercised sparingly with adequate reasons if it is not signed. Referring to the order signed on 18.3.2005 it is stated that an order passed by the Tribunal would not attain finality even if the operative part is dictated unless reasons are recorded only then it partake the character of an order after finality of the OA. As such, nothing precluded the court to alter it in the exceptional circumstances.

7. Exceptional circumstances now stated by the learned counsel for applicant is that whereas apart from downgrading of the ACR other grounds of malafide etc. were also raised and the Full Bench decision in **A.K. Dawar v. Union of India**, OA No.555/2001 decided by a Full Bench of this Tribunal on 14.4.2004 taken into consideration the decision of the High Court in **J.S. Garg v. Union of India**, 2002 (65) DRJ 607 (FB) has been stayed by the Apex Court as also a decision of the High Court in CWP No.1386/2002 in **Union of India v. R.K. Anand**. This, according to applicant, would facilitate proper adjudication of the case and as this fact

was not apprised to the Tribunal on the date of hearing of the case, to prevent miscarriage of justice, order passed has to be recalled with an opportunity to the learned counsel to submit his contentions.

8. On the other hand, learned counsel Shri M.M. Sudan, appearing for respondents vehemently opposed the contentions and at the outset stated that once the OA has been dismissed with reasons to follow, irrespective of reasons the operative part having been ruled out and the order signed attains finality to the order and the Tribunal becomes functus officio to interfere otherwise in accordance with rules like review etc.

9. Learned counsel states that Rules 102 to 105 of the Central Administrative Tribunal (Procedure) Rules, 1993 defines a final decision of the Tribunal in an OA as an order and it is obligatory upon the Bench to state clearly and in precise terms the last para of the order and the order is to be pronounced immediately after the hearing is concluded. In this background it is stated that reading of the operative portion of the order shall be deemed to be pronouncement of the order.

10. With the above matrix of the rules learned counsel cites a decision of the Apex Court consisting of three Judges in **Surendera Singh & Others v. State of U.P.**, AIR 1964 SC 194 where after hearing the counsel the judgment was reserved, two Judges signed it but before it could have been delivered two Judges retired and one died the Apex Court ruled that final operative act of formal declaration in the open court that the intention of making it the operative decision of the Court constitutes judgment and to that moment the judgment is delivered the Judges have right to change their mind but once the operative portion is pronounced once becomes functus officio.

11. Shri Sudan has further relied upon the decision in **Zahira Habibulla H. Sheikh and Another vs. State of Gujarat and others,** (2004) 4 SCC

158, to contend that an order where the reasons were to be subsequently given the practice is deprecated.

12. Mrs. B. Rana appearing for UPSC has brought to our notice the decision of the Andhra Pradesh High court in **P.M. Murthy vs. G.Sathya**, AIR 1976 (AP) 400, to contend that after the case has been heard and dictation to shorthand writer is given the same would be a pronouncement.

13. We have carefully considered the contentions of the rival parties on this issue and perused the material on record.

14. Under Order 47 Rules 1 & 2 of the CPC as well as Section 22(3)(f) of the Administrative Tribunals Act, a remedy of review is available to a party when an order issued by the Tribunal suffers from an error apparent on the face of the record or even after exercise of due diligence any material has not been produced though available, by the contending party. Beyond this, there is no scope for exercise of power of review. Apex Court's decision, though cited, is not considered and the order passed by the Tribunal is per incuriam constitutes a valid ground of review in the light of the decision of the Apex Court in **K.G. Derasari vs. Union of India**, 2002 SCC (L&S) 756, the power of review can also be exercised if happenings were wrongly recorded in the judgment by way of review but the scope would not be enlarged when the grounds are good, were not considered. This has been held by the Apex Court in **Shanker A. Mondel vs. State of Bihar,** 2003(2) SC (SLJ) 35. The doctrine of functus officio has also applicability on the Tribunal. If an order is passed settling the controversy to finality, the court looses its jurisdiction except by a review or extension of time sought or a contempt, no other procedure can be resorted to or methodology adopted to reopen the matter.

15. Rule 105(c) of the Rules ibid allows the Tribunal to read the operative portion of the order in the open court which is deemed to be a

pronouncement of the order. Unlike CPC, the Tribunal has no provision in a judgment as contained in the Order 20 of the CPC.

16. It is equally settled hat unless an order is signed the same does not attain finality to the judgment and it can be recorded suo moto to prevent miscarriage of justice or to act in the interest of justice. In the above conspectus, the decision in **Vinod Kumar (supra)** has dealt with an issue where the judgment was dictated in the open court giving direction to the University to admit the petitioner. A reference to **Surendra Singh's (supra)** was also made and the following observations have been made:

> "7. But, while the Court has undoubted power to alter or modify a judgment, delivered but not signed, such power should be exercised judicially, sparingly and for adequate reasons. When a judgment is pronounced in open court, parties act on the basis that it is the judgment of the Court and that the signing is a formality to follow.
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> 8. We have extensively extracted from what Bose J. spoke in this judgment to impress upon everyone that pronouncement of a judgment in court whether immediately after the hearing or after reserving the same to be delivered later should ordinarily be considered as the final act of the court with reference to the case. Bose J. emphasized the feature that as soon as the judgment is delivered that becomes the operative pronouncement of the court. That would mean that the judgment to be operative does not await signing thereof by the court. There may be exeptions to the rule, for instance, soon after the judgment is dictated in open court, a feature which had not been placed for consideration of the court is brought to its notice by counsel of any of the parties or the court discovers some ne facts from the record. In such a case the court may give direction that the judgment which has just been delivered would not be effective and the case shall be further heard. There may also be case – though their number would be few and far between – where when the judgment is placed for signature the court notices a feature which should have been taken into account. In such a situation the matter may be placed for further consideration upon notice to the parties. If the judgment delivered is intended not to be operative, good reasons should be given.
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> 9. Ordinarily judgment is not delivered till the hearing is complete by listening to submissions of counsel and perusal of records and a definite view is reached by the court in regard to the conclusion. Once that stage is reached and the court pronounces the judgment, the same should not be reopened unless there be some exceptional circumstance or

a review is asked for and is granted. When the judgment is pronounced, parties present in the court know the conclusion in the matter and often on the basis of such pronouncement, they proceed to conduct their affairs. If what is pronounced in court is not acted upon, certainly litigants would be prejudiced. Confidence of the litigants in the judicial process would be shaken. A judgment pronounced in open court should be acted upon unless there be some exceptional feature and if there be any such, the same should appear from the record of the case. In the instant matter, we find that there is no material at all to show as to what led the Division Bench which had pronounced the judgment in open court not to authenticate the same by signing it. In such a situation the judgment delivered has to be taken as final and the writ petition should not have been placed for fresh hearing. The subsequent order dismissing the writ petition was not available to be made once it is held that the writ petition stood disposed of by the judgment of the Division Bench on 28-7-1986."

17. If one has regard to the above, in the public interest to generate faith in the judicial process and confidence of the litigants in judicial process an order pronounced in the court after hearing the counsel and when the ultimate result is announced and only reasons are to be recorded and that order has been signed by the Bench the only formality which is left to be completed is to record reasons and sign that order but the result thereof cannot be altered. Once the matter has been heard and a conclusion arrived at by the Bench is to dismiss it and this order has been signed would not only amount to judgment but also delivery of the operative part and it is a complete order which cannot be altered or modified. By signing the orders the court becomes functus officio. The distinguishing features in **Vinod Kumar's** case were that though the order was pronounced in the open court but was not signed and conveyed to the parties in their presence, the court has no power to act contrary even if there are compelling circumstances and exceptional features. For all practical purposes except that due process of law available under the Act and the Rules of the Tribunal, the court has become functus officio.

18. In Surendra Singh's case (Supra), which is rendered by a Larger Coram, though considered in Vinod Kumar's case (supra), the following observations have been made:

> "In our opinion, a judgment within the meaning of these sections is the final decision of the court intimated to the parties and to the world at large by formal "pronouncement" or "delivery" in open court. It is a judicial act which must be performed in a judicial way. Small irregularities in the manner of pronouncement or the mode of delivery do not matter but the substance of the thing must be there: that can neither be blurred nor left to interference and conjecture nor can it be vague. All he rest – the manner in which it is to be recorded, the way in which it is to be authenticated, the signing and the sealing, all the rules designed to secure certainly about its content and matter – can be cured; but not the hard core, namely the formal intimation of the decision and its contents formally declared in a judicial way in open court. The exact way in which this is done does not mater. In some courts the judgment is delivered crally or read out in some only the operative portion is pronounced, in some the judgment is merely signed after giving notice to the parties and laying the draft on the table for a given number of days for inspection.
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> An important point therefore arises. It is evident that the decision which is so pronounced or intimated must be a declaration of the mind of the court as it is at the time of pronouncement. We lay no stress on the mode or manner of delivery, as that is not of the essence, except court. But however it is done it must be an expression of the mind of the court at the time of delivery. We say this because that is the first judicial act touching the judgment which the court performs after the hearing. Everything else up till then is done out of court and is not intended to be the operative act which sets all the consequences which follow on the judgment in motion. Judges may, and often do, discuss the mater among themselves and reach a tentative conclusion. That is not their judgment. They may write and exchange drafts. Those are not the judgments either, however, heavily and often they may have been signed. The final operative act is that which is formally declared in open court with the intention of making it the operative decision of the court. That is what constitutes the "judgment".
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> Now up to the moment the judgment is delivered Judges have the right to change their mind. There is a sort of locus poenitentiae, and indeed last minute alternations sometimes do occur. Therefore, however much a draft judgment may have been signed beforehand, it is nothing but a draft till formally delivered as the judgment of the court. Only then does it crystallisc into a full fledged judgment and become operative. It follows that the Judge who "delivers" the judgment, or causes it to be delivered by a brother Judge, must be in existence as a member of the court at the

> moment of delivery so that he can, if necessary, stop delivery and say that he has changed his mind. There is no need for him to be physically present in court but he must be in existence as a member of the court and be in a position to stop delivery and effect an alteration should there be any last minute change of mind on his part. If he hands in a draft and sings it and indicates that he intends that to be the final expository of his views it can be assumed that those are still his views at the moment of delivery if he is alive and in a position to change his mind but takes no steps to arrest delivery. But one cannot assume that he would not have changed his mind if he is no longer in a position to do so. A Judge's responsibility is heavy and when a main's life and liberty hang upon his decision nothing can be left to chance or doubt or conjecture; also a question of public policy is involved. As we have indicated, it is frequently the practice to send a draft, sometimes a singed draft, to a brother Judge who also heard the case. This may be merely for his information, or for consideration and criticism. The mere signing of the draft does not necessarily indicate a closed mind. We feel it would be against public policy to leave the door open for an investigation whether a draft sent by a Judge was intended to embody his final and unalterable opinion or was only intended to be a tentative draft sent with an unwritten understanding that he is free to change his mind should fresh light drawn upon him before the delivery of judgment."

19. If one has regard to the above though judgment is not provided under the Administrative Tribunals Act, 1985, yet on the same analogy an order is a final decision of the court and a formal pronouncement or delivery in the open court of the operative part, the rest of the things done i.e. the manner in which order is to be recorded, the way of authentication, signing though can be cured, but the hard core, the intimation of the decision in a judicial way in open court constitutes not only the delivery but also declaration of the mind of the court at the time of pronouncement and would constitute a judgment. After signing it locus poenitentive does not have any application. It may be that once an order is reserved before it is pronounced as operative part is read therein the matter can be listed for being spoken to, to seek some clarification but once the intent and final outcome is spontaneous this locus poenitentiae would not be available there cannot be a change of mind for whatever reasons. It is also settled that on delivery of a judgment it becomes an operative pronouncement of

the court though there may be defects in the mode of subsequent authentication.

20. The underlying object behind the principle of attainment of finality of a litigation on pronouncement of the oral order is to uphold the majesty of law and to rule out any pressure, coercion, allurement and other extraneous considerations to the Court to abuse its discretionary powers to act in favour of the party. Once a conscious decision is taken after hearing the parties and perusal of the record would demonstrate the framework of the mind and intent of the Court and on well conceived decision arrived at on hearing the parties. By signing that order the court severe all relation with the case and in case of any miscarriage of justice on account of error apparent and discovery of material, rehearing is not the solution and the only remedy is by way of review which, as per the settled law cannot be resorted for re-examination or re-agitation of the matter.

21. If an order is to be recalled it would open Pandora Box and the finality of a case would in perpetuity, the judicial conscience, repute and the faith deposed by the general public would be lost. The justice should not only be done but appears to have been done. The judiciary of this country is an independent part of the Constitution of India and has an important duty to discharge. The doctrine of estoppel or acquiescence though not to be applied but as a moral responsibility and duty towards Constitution in order which has attained finality, cannot be re-opened otherwise than due process of law.

22. In Zahira Habibulla H. Sheikh (supra) though the Apex Court has deprecated the orders which are passed spontaneous but reasons are recorded later on, yet in the field of administrative law when the stakes are not so emergent for resort on immediate basis to the appellate court, the procedure adopted by the Tribunal would be distinguishable.

23. In the result, for the foregoing reasons, we are satisfied that the request of applicant to re-argue the matter cannot be countenanced in law and the same is accordingly dismissed. However any due process adopted by applicant would not be impeded by this order. No costs.

(Shanker Raju)
Member (J)

(V.K. Majotra)
Vice-Chairman(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.2702/2003

New Delhi this the 18th day of March, 2005.

HON'BLE MR. V.K. MAJOTRA, VICE-CHAIRMAN (A)
HON'BLE MR. SHANKER RAJU, MEMBER (J)

Smt. Rukhsana Shaheen Khan,
Block 11, Flat C,
Hudco Place, Andrews Ganj,
New Delhi-110049. -Applicant

(By Advocate Shri Bhaskar Bhardwaj)

-Versus-

1. Union of India,
through Secretary,
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South Block,
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2. Secretary, [Defence Finance],
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3. Controller General of Defence Accounts,
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Calcutta,
W. Bengal. -Respondents

(By Advocates Shri M.M. Sudan (R-1&2), Mrs. B.Rana with Ms. Abhilasha Dewan (R-4), Sh. J.B. Mudgil (R-5,6&7 and Shri Anil Grover (R-8))

O R D E R (ORAL)

Mr. Shanker Raju, Hon'ble Member (J):

Applicant in this OA has challenged respondents' order dated 6.11.2002, whereby promotions have been made on the post of Principal Controller of Accounts. A review DPC has been sought for consideration of promotion by treating the uncommunicated gradings in the ACR below the prescribed bench mark.

2. Applicant was appointed in Indian Defence Accounts Service and was promoted as Deputy Controller of Defence Accounts and on grant of selection grade was further promoted as Controller of Defence Accounts. In the ACR for the year 1995-96 adverse remarks have been communicated. On representation for expunction the grading remained as average. As per the seniority list applicant stood at serial No.17. By an order dated 6.11.2002 in the wake of DPC certain persons were promoted to the next higher grade, which has resulted in the present OA.

3. Learned counsel for applicant Shri Bhaskar Bhardwaj relying upon the decision of the Apex Court in **U.P. Jal Nigam & Ors. v. Prabhat Chandra Jain**, 1996 (33) ATC 217, contended that any adverse entry or grading in the ACR which falls below the bench mark is a downgrading which has necessarily to be communicated to a person and as this has not been done denial of promotion to applicant is illegal. The decision of the Principal Bench in **A.V. Gupta v. Union of India**, OA No.976/2004 decided on 20.12.2004 has been relied on to substantiate the plea.

4. On the other hand, respondents' counsel Shri M.M. Sudan produced the ACR folder of applicant and referred to a Full Bench decision of the Tribunal in OA-555/2001 **A.K. Dawar v. Union of India** decided on 16.4.2004 to contend that only when there is a downgrading in the ACR, grading below bench mark need not be communicated or treated as adverse. By referring to the ACRs of applicant it is stated that ACRs under consideration with the UPSC were from the year 1996 till 2001 as for the period 1.4.96 to 30.9.96 as applicant remained on leave and had not worked under any reporting officer for three months no ACR was written. Whereas ACR grading for the period from 1.4.96 to 31.3.97 was 'Good' and for the years 1998-1999, 1999-2000 and 2000-2001 the gradings were 'Good', 'Very Good' and 'Good' respectively. In this view of the matter it is stated that ignoring the grading on the basis of the decision of the Tribunal (supra), yet applicant does not make the grade as for a Group 'A' post the bench mark is 'Very Good'.

5. On careful consideration of the rival contentions and on perusal of the ACR Folder we are of the considered view that whereas for a Group 'A' post bench mark was 'Very Good', applicant has not attained that bench mark. There is no downgrading in the ACR till the period 2000-2001. Even ignoring the ACR grading for the year 2000-2001, yet applicant has failed to achieve 'Very Good' grading, which is the bench mark. Moreover, the decision of the Tribunal in **A.V. Gupta** (supra) has to give way to the decision of the Full Bench which is binding and as per this what is to be communicated is when there is a downgrading in the ACR but not the grading of the remarks as compared to the bench mark. In this view of the matter, as rightly pointed out by Mrs. B. Rana, learned counsel appearing for the UPSC and private respondent in the matter of DPC unless mala fides are shown or there is violation of the rules Tribunal in a

judicial review cannot act as an appellate authority to re-assess the findings arrived at by the expert persons constituting DPC, as per the decisions of the Apex Court in **Nutan Arvind v. Union of India**, 1996 (2) SCC 488 and **Anil Katiyar v. Union of India**, 1997 (1) SLR 153. In this view of the matter as the OA is found bereft of merit, it is dismissed. No costs.

S. Raju

(Shanker Raju)
Member (J)

V.K. Majotra

(V.K. Majotra)
Vice-Chairman(A)

'San.'