

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

RA 25/2013 with MA 234/2013
in OA 256/2011

Major KG Thomas

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner/respondent : Mr. Sukhjinder Singh, Advocate
For respondents/petitioners: Mr Ankur Chhibber, Advocate

CORAM:

HON'BLE MR. JUSTICE PRAKASH TATIA, CHAIRPERSON.
HON'BLE LT. GEN.M.L.NAIDU, MEMBER.

Dated : 09.10.2013

ORDER

By Chairperson

1. This review petition has been filed by the Union of India seeking review of the order dated 19.12.2012 passed by this Tribunal in OA 256/2011.
2. The only contention of the review applicant is that the Tribunal has decided the OA 256/2011 relying upon certain admissions made by the review petitioner UOI itself in reply to OA and those admissions have been made erroneously and in ignorance to the Cabinet Note of the Ministry of Defence. A copy of which is placed on record at Annexure A-3 and also in ignorance of Special Army Instructions dated 09.12.1997, copy of which is placed at Annexure A-2.

3. According to the documents referred above, a decision was taken as a one-time measure, officers who become substantive Majors or equivalent before 01.01.1996 were granted the scale of Lieutenant Colonel or equivalent on completion of 21 years of commissioned service i.e. in their 22nd year, with rank pay of Major. As per the letter of the Govt. of India, Ministry of Defence dated 21.11.1997, the benefit of this upgradation was only to be given to those officers in the rank of Major who were in service on 01.01.1996.

4. In Para 8 of the review application, the petitioner submitted the clarifications rendered on 16.09.2011 by the Deptt. with regard to respondent's eligibility for applicability of provisions of Govt. of India, Ministry of Defence letter dated 21.11.1997 was bad in law and was based on non-availability of copy of Minute Sheet of the meeting of the Cabinet held on 20.11.1997/ It is submitted that since the petitioner of the OA was relieved from service w.e.f. 31.05.1988 i.e. prior to 01.01.1996, the provisions contained in Govt. of India Ministry of Defence letter of 21.11.1997 will not be applicable in petitioner's case for grant of scale of Lt. Col. (TS) and will be in contravention of Government's orders.

5. Learned counsel for respondent the applicant in OA 256/2011 submitted that the Tribunal in its final order dated 19.12.2012 relied upon written admission made in the counter affidavit filed by the respondents and rightly decided the OA and granted relief to the respondents. It is submitted that the

respondents have admitted all those facts consciously which avoids serious anomaly and discrimination between the post-retiree of 01.01.1996 and the pre-retiree of 01.01.1996 and such discrimination were found bad in law by the Tribunal in other case also and such anomaly is contrary to Govt's own decision dated 27.06.1998, copy of which is placed on record at Annexure P-9 as well as contrary to Annexure P-10. It is submitted that the employee is old and more than 80 years of age and if the order dated 19.12.2012 is set aside to deal with the issue of anomaly which will be created by the stand of the UOI, contrary to a settled position of law that such a cut-off date cannot be justified and then it will be a gross injustice to the petitioner of the OA 256/2011.

6. We considered the submissions of the learned counsels for both parties and perused the reasons given in order dated 19.12.2012 and also the relevant documents.

7. We are of the considered opinion that the Tribunal has decided OA 256/2011 according to the very specific admissions by the UOI in the counter affidavit and the scope of the review is limited and that is whether there is an error apparent on the face of the record or not. None of the contentions which have been raised before us today in the review, were raised before the Tribunal when OA 256/2011 was decided and nor those documents were produced and therefore, we are of considered opinion that the pleas taken by

the applicant UOI do not fall in the scope for review of the order 19.12.2012. Order can be reviewed only when error is apparent on the face of record and can be found without deep analysis of legal debatable issue. Hence, the review application No.25/2013 is dismissed. No order as to costs.

(PRAKASH TATIA)
Chairperson

(M.L.NAIDU)
Member

New Delhi
Dated the 9th October 2013

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