BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

R.P.No. 32/98 in OA.NO.1016/96
R.P.No. 35/98 in OA.NO.1017/96
R.P.No. 31/98 in OA.NO.1018/96
R.P.NO. 33/98 in OA.NO.1019/96
R.P.No. 34/98 in OA.NO.1221/96

Pronounced this the 8th day of October 1998

CORAM: Hon'ble Shri D.S.Baweja, Member (A)

Smt.Sunanda D.Malode & Ors.

By Advocate Shri D.V.Gangal ... Applicants

V/S.

Union of India & Ors. ... Respondents (Review Petitioners)

By Advocate Shri V.S.Masurkar

Tribunal's Order

Original Applications No. 1016/96, 1017/96, 1018/96, 1019/96 and 1221/96 have been disposed of by a common order dated 31.12.1997. Review Petitions No. 32/98, 35/98, 31/98, 33/98, 34/98 respectively have been filed by the respondents seeking the review of the order dated 31.12.1997. The Member who constituted the Single Member Bench and pronounced the order has since reitred. In view of this, another Bench has been constituted and therefore the Review Petitions were taken up for preliminary hearing. Heard the arguments of Shri D.V.Gangal, learned counsel for the applicants and Shri V.S.Masurkar, learned counsel for the respondents.

2. A copy of the order dated 31.12.1997 has been furnished to the respondents on 14.1.1998. However, the review petitions in all the cases have been filed on 27.4.1998. In terms of provisions of Rule 17 of

Central Administrative Tribunal (Procedure) Rules, 1987, the review petition is required to be filed within a period of 30 days of the order of which the review is sought. Keeping this in view, all the review petitions have been filed late. The respondents have filed Misc. Applications in all the review petitions making a prayer to condone the delay. The learned counsel for the applicants, during the hearing, strongly opposed the prayer of the respondents to condone the delay on the plea that the respondents have not explained the delay of two months which they have taken in seeking the legal opinion. The counsel for the respondents, on the other hand, submitted that the delay had taken place for consideration on various level with regard to the implementation of the order or filing of review petition. He contended that the delay had taken place due to the procedure to be followed in an administrative set up and a very strict view of delay should not be taken in respect of the dealings by the department as held by the Hon'ble Supreme Court in the case of The Special Tehsildar, Land Acquisition, Kerala vs. K.V.Ayisumma, JT 1996 (7) S.C. 204. Keeping in view what is held by the Supreme Court in this judgement and also the reasons advanced by the respondents in the Misc.Applications, I am inclined to condone the delay. The Misc. Applications are, therefore, allowed and the delay in filing the review petitions in all the OAs. is condoned.

3. The grounds on which the power of review can be exercised have been laid down by the Hon'ble Supreme Court through several judgements. In this connection, it would be appropriate to refer to some of the judgements. In the case of Aribam Tuleshwar Sharma vs. Aribam Pishak Sharma & Ors., AIR 1979 SC 1047, the Hon'ble Supreme Court has observed in Para 3 as under :-

> "... But there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all manner of errors committed by the sub-ordinate Court."

In the judgement of M/s. Thungabhadra Industries Ltd. vs. The Government of Andhra Pradesh, AIR 1964 SC 1372, their Lordships of Supreme Court have observed as under :-

> "There is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by "error apparent". A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. Where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out."

In the recent judgement in the case of K.A.Mohammed Ali vs. C.N.Prasannan, AIR 1995 SC 454, the Hon'ble Supreme Court has held that review proceedings are not by way of any appeal and review court may not act as appellate court. It is also held that error apparent on record means an error which strikes on looking at record and would not require mere any long drawn process of reasoning on points where there may be conceivably two opinions.

4. Keeping in view the parameters laid down by the Hon'ble Supreme Court within which the review peititon is admissible, I shall examine the contentions raised by the respondents as to whether the present review applications are sustainable. On careful consideration of the averments made in review peititons, it is noted that prayer for review of the order under reference centres on two grounds. The first ground is that irrespective of the dates of death, the relevant rules as prevailing at the time of consideration of the cases for compassionate appointments of the applicants would be applicable. In view of this, the cases of the applicants are to be governed by the rules laid down in Office Memorandum dated 30.6.1987. The counsel for respondents has cited a number of judgements during hearing to support this contention. The second ground is that the rules laid down in O.M. dated 30.6.1987 are nothing but reiteration of the rules laid down as per the O.M. dated 25.1.1978 which have been held as violative of Article 16(2) of the Constitution of India by the Hon'ble Supreme Court in the case of Auditor General of India & Ors. vs. G. Ananta Rajeswara Rao, (1994) 26 ATC 580. In view of this, the respondents contend that the O.M. dated

30.6.1987 does not have any legal validity. The averments made in the review petition neither bringout any mistake or error apparent on the record or any new material which has been discovered/subsequently and could not be brought on record at the time of passing of the order. The grounds advanced for seeking the review of the order make an effort to bring out that the order suffers from error of law and therefore the decision is erroneous. Though in the Review Petitions, no mention has been made but during the arguments, the learned counsel for the respondents repeatedly mentioned that the Bench has misinterpreted the judgement of the Hon'ble Supreme Court in the case of Auditor General of India & Ors.. The learned counsel for the respondents also/argued that if the order suffers from error of law, the Tribunal can review the order as is held by the Hon'ble Supreme Court in the case of Surjit Singh & Ors. vs. Union of India & Ors., JT 1997 (6) S.C. 32. I have carefully gone through this judgement. The Hon'ble Supreme Court has held that where there is a patent mistake brought to the notice of the Tribunal, the Tribunal is bound to correct the same. This observation of the Hon'ble Supreme Court is to be considered in the background/of the facts and circumstances of the case under reference. It is noted that in this case, the Tribunal's decision fell into error as the earlier decision of the Hon'ble Supreme Court with regard to the seniority criteria/had not been taken note of. In the present case, on going through the order, it is noted that the contentions raised by the respondents in the review petitions have been already considered by the Bench. After going through the various judgements cited by the either party and the arguments advanced, the Bench had come to the conclusion

that the case of the applicants in all the OAs. will be governed by the instructions as laid down as per O.M. dated 30.6.1987. It is also noted that the judgement of the Hon'ble Supreme Court in the case of Auditor General of India & Ors. had been also taken note of. In this background, the grounds advanced in the review petitions only strive to bring out that the order is erroneous and the review of the same is sought through the hearing of the matter again. The review petitions are therefore more of an appeal in disguise. As held by the Hon'ble Supreme Court in various judgements as referred to earlier, the power of review cannot be availed for correction of a decision which is stated as erroneous through rehearing of the matter. Considering all the facts and circumstances, I have no hesitation to hold that the present review petitions are in the nature of an appeal and not petitions for seeking review in the terms of the parameters laid down by the Hon'ble Supreme Court.

5. In the result of the above, I find no merit in the review petitions and the same are dismissed accordingly.

(D.S. BAWEJA)
MEMBER (A)

mrj.