

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CHANDIGARH BENCH**

...

**R.A. No. 060/00017/2017  
in  
O.A. No. 060/00868/2014****Dated: Chandigarh, this the 22<sup>nd</sup> day of March, 2017**

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**CORAM: HON'BLE MR. JUSTICE M.L. SULLAR, MEMBER (J) &  
HON'BLE MR. UDAY KUMAR VARMA, MEMBER (A)**

...

Suresh Kumar Pathania son of late Sh. Lekhraj Pathania, aged 62 years, retired Sanitary Supervisor, R/o House NO. 35, Block 2010, Sector 32-C, Chandigarh.

....APPLICANT

VERSUS

1. Union of India through the Secretary to Government of India, Ministry of Defence, New Delhi.
2. The Chief of Army Staff, Integrated HQ of Ministry of Defence (Army), New Delhi-110011.
3. The Station Commander, Station Headquarters, Chandimandir.
4. Principal Controller of Defence Accounts, Western Command, Chandimandir.

....RESPONDENTS

**ORDER (in circulation)****HON'BLE MR.UDAY KUMAR VARMA, MEMBER(A):-**

Original Applicant has filed this Review Application (RA) seeking review of our order dated 23.02.2017 (Annexure RA-1), whereby Original Application (OA) filed by him for grant of 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> financial upgradations under ACP/MACP and fixation of his pay in hierarchy was dismissed.

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2. We have perused the file of R.A. as well as of the O.A. and carefully considered the matter once again.

3. One of the grounds taken in the Review Application is that some important aspects including judgments relied upon at the time of hearing, on the claim of the applicant, have escaped notice of the Tribunal. Specific reference has been made to order passed by this Tribunal way back on 30.8.2004 in O.A. No. 278-CH-2004 titled **Raj Pal Vs. Union of India & Others** (Annexure A-15) which was upheld by the jurisdictional High Court in **CWP No. 7356-CAT-2005** decided on 23.5.2007 (Annexure A-16). This judgment was indeed considered at the time of writing order although not explicitly discussed in the body of the order. In our view, the above citation of the Tribunal is not applicable in this case. The fact is that in this case, it is not only that the post of applicant is isolated, there are more than one channels available for promotion for the post that the applicant is claiming equity with. This complication was not there in the matter before the Tribunal. Therefore, we had not considered it appropriate to apply the ratio of that order to the instant case.

4. The Review Applicant has also again raised the matter of one Tham Bahadur, who is junior to the applicant, but was promoted to the post of Sanitator Inspector. This aspect was also mentioned in our order and we have taken the view that primarily this issue has to be settled in the light of the rules made available to us during the course of hearing. The fact remains that the rules do not provide for any post of Sanitary Inspector and, therefore, promotion given to anybody else, apparently in the absence of rules, cannot be made a basis for claiming the same benefit. As has been made abundantly clear in the judgment, we have restricted ourselves to interpreting the applicant's case in the light of the recruitment rules. We have also further held that a distinction needs to

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be drawn between the normal promotion and grant of financial benefit like ACP/MACP. They are similar, but not identical, and in any situation like the one at hand, the claim of the applicant seeking parity with certain post namely Land Supervisor and claiming the promotional channel of the same, in our view, cannot be granted.

5. The review jurisdiction is a very limited one and the law in this regard is well settled. We find that in the garb of review application, the applicant has tried to reopen the entire matter. He has failed to point out any error in the face of the facts. All the important aspects of the matter were considered while passing order under review, thus the pleas raised are untenable. The review jurisdiction is neither in the nature of appeal nor for rehearing of the original lis. We find no ground to exercise review jurisdiction within the purview of Order 47 of the Code of Civil Procedure. Review jurisdiction is meant to rectify any error apparent on the face of record/order and not to start hearing all over again.


6. That the scope for review of order is limited, has been explicitly settled through large number of judgments of different Courts. In a detailed judgment in Civil Appeal No. 1694 of 2006 titled **State of West Bengal & Ors. Vs. Kamal Sengupta & Ors.** the Apex Court while passing the judgment on 16.6.2008 laid down the following guidelines:-

“(i) The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/analogous to the power of a Civil Court under Section 114 read with Order 47 Rule 1 of CPC.

(ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.

(iii) The expression “any other sufficient reason” appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.

(iv) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(f).



(v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.

(vi) A decision/order cannot be reviewed under Section 22 (3) (f) on the basis of subsequent decision/judgment of a coordinate or larger bench of the Tribunal or of a superior Court.

(vii) While considering an application for review, the Tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.

(viii) Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the Court/Tribunal earlier."

7. In **Ajit Kumar Rath Vs. State of Orissa** [ (1999) 9 SCC 596], it was held that matter cannot be heard on merit in review. Review can be done if some mistake of fact or error apparent on record is noticed. Further in **Meera Bhanja (Smt) Vs Nirmala Kumari Choudhury (Smt)** [(1995) 1 SCC 179] and in **Union of India Vs. Tarit Ranjan Das** [ (2004) SCC ( L & S) 160] it was held that review order cannot be in the nature of an appellate order and review proceedings are not by way of appeal. Lastly in **Kamlesh Verma Vs. Mayawati** [ (2014) 1 SCC ( L & S) 96] following principles laid down for review. When the review will not be maintainable:-

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error.

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(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negated.

8. Instant R.A., therefore, is misconceived and devoid of merit and is accordingly dismissed, by circulation.

**(UDAY KUMAR VARMA)**  
**MEMBER (A)**

**(JUSTICE M.S. SULLAR)**  
**MEMBER (J)**

**Dated: 22.03.2017**

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