

Central Administrative Tribunal
Principal Bench: New Delhi

RA No.133/2016

MA No.2115/2016

In

OA No.1438/2015

New Delhi, this the 29th day of July, 2016

Hon'ble Dr. B.K. Sinha, Member (A)
Hon'ble Sh. Raj Vir Sharma, Member (J)

1. Somnath Chakraborty
S/o Sh. Subir Chakraborty
R/o A-22, IGESI Hospital Campus,
Near Vivek Vihar Police Station,
Jhilmil Colony, Delhi – 110 095.
2. Basant Kumar s/o Sh. Puran Lal,
R/o F-306, Sudarshan Park,
Ramesh Nagar, H.O., Delhi – 110 015.
3. Kanhaiya Lal Malviya,
S/o Sh. Devi Prasad Malviya,
R/o 1/4472, Ram Nagar,
Lane No.08, Mandoli Road,
Shahdara, Delhi – 110 032.
4. Sudeep Kumar S/o Sh. Devender Kumar,
R/o Flat No.56, Taj Apartments,
Manav Chowk, Rohini, Sector 15,
Delhi – 110 089.
5. Manoj Kumar s/o Sh. Murari Lal,
R.o 61`9, Begawan Mohalla,
Darya Pur Kalan, Bawana,
Delhi – 110 039.
6. Sumi Chakraborty,
W/o Sh. Somnath Chakraborty,
R/o A-22, IGESI Hospital Campus,
Near Vivek Vihar Police Station,
Jhilmil Colony,
Delhi – 110 095. ...Review Applicants

Versus

1. Director (Medical) Delhi,
ESI Scheme Dispensary Complex,
Tilak Vihar, Delhi – 110 018.

2. Director General,
E.S.I. Corporation,
Panchdeep Bhawan,
Comrade Inderjeet Gupta (CIG) Marg,
New Delhi – 110 002.
3. Union of India through
Secretary,
Ministry of Health,
Nirman Bhawan,
New Delhi – 110 002. ...Respondents

ORDER (By Circulation)

By Dr. B.K. Sinha, Member (A):

The instant review application has been filed under Section 22 of the Central Administrative Tribunals (Procedure) Rules, 1987 for review of the Tribunal's order dated 22.04.2016 passed in OA No.1438/2015.

2. The applicants have pleaded a number of grounds for the review application to succeed e.g. all the case law cited have not been discussed; whether the order passed by the Tribunal is applicable in this case; whether the ESI is above the Union of India; whether the recommendations of 5th & 6th CPC and the revised report of the 6th CPC were implemented in ESI; why ESI is denied the benefits of revised 6th CPC report dated 30.11.1997 to its employees while they are implemented in all orders/judgments of this Tribunal in other cases; why Hon'ble High Court of Delhi has not stayed any order of the Tribunal in all such types of cases; whether

facts of the case and order of the Tribunal had been considered; and whether the order of the Tribunal is good as per law.

3. It would appear from the above that the scope of the review has been made fairly large and even larger than the Original Application whereas the scope of review is indeed limited. A case cannot be re-argued in the garb of review application. In this regard, the issue has been comprehensively dealt with by the Hon'ble Supreme Court in the case of ***State of West Bengal and Others versus Kamal Sengupta and Another*** [2008 (8) SCC 612], operative part whereof is extracted as under:-

"35. The principles which can be culled out from the above noted judgments are :

(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.”

4. In another landmark decision in case of **Kamlesh Verma versus Mayawati & Ors.**[2013 (8) SCC 320], the Hon’ble Supreme Court has laid down conditions when the review will not be maintainable, relevant portion whereof is being extracted hereunder for better elucidation:-

“20.2. 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 reheard and corrected but lies only for patent error.

(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 negatived.”

5. The Hon’ble Supreme Court in the afore judgments has laid down parameters of reviewing all the major issues involving review and arrived at the conclusion on the basis thereof. It has been specifically provided that an erroneous order/decision cannot be corrected under the guise of exercise of power of review. It further provides that while considering an application for review, the Tribunal must confine its adjudication to the materials available at the time of initial decision. Thus, there is a difference between review and appeal, and an appeal cannot be allowed in guise of a review.

6. We also take note of the fact that the power of the Tribunal in exercise of its review jurisdiction is confined to such cases only where an error is plain and apparent on the face of the order and the Tribunal cannot re-examine the issue as held by the Hon’ble Apex Court in ***Subhash versus State of Maharashtra & Another*** [2002 (4) SCT 608 (SC)].

7. From the above it clearly emerges that the applicants cannot be allowed to reargue the case or to use the tool of review application as an appeal. In the instant case, the applicants have attempted both by expanding the scope of the original application in review and by assailing the

legality of the decision of this Tribunal, which is not permitted within the scope of review.

8. In view of our above observations, we find no good ground to review the order and resultantly the instant review application stands dismissed. No costs.

(Raj Vir Sharma)
Member (J)

(Dr. B.K. Sinha)
Member (A)

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