

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

**R.A. No.137/2016
In O.A. No.1964/2015
with
O.A. No. 1967/2015
O.A. No.4443/2014**

New Delhi this the 23rd day of August, 2016

**HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)
HON'BLE MR. K.N. SHRIVASTAVA, MEMBER (A)**

(1) OA No.1964/2015

Atul Sood, No.D/3013, PIS No.16900058
 Age 47 years Designation: Inspector (Group-B)
 Posting at: Incharge Lock Up Tis Hazari Courts, Delhi
 Unit 3rd Bn. DAP Delhi Police S/o Shri Sansar Chand Sood
 R/o 251-E, MIG Flats, Rajouri Garden,
 New Delhi-110027.Applicant

(2) OA No.1967/2015

Rajesh Shukla No.D/656, PIS No.16970164
 Age 41 years Designation: Sub-Inspector (Group-C)
 Posting at EOW (Crime Branch) Mandir Marg, New Delhi
 S/o Late Shri Uma Shankar Shukla
 R/o 1787, 3rd Floor, Pratap Street, Chuna Mandi,
 Paharganj, New Delhi-110055.Applicant

(3) OA No.4443/2014

Ritu Raj, Age 47 years Designation: Inspector, Delhi Police,
 No.D/3976, PIS No.16990001
 S/o Late Shri Kapil Dev Narayan
 R/o EC-32, Top Floor, Inderpuri, New Delhi.

Presently posted as: Inspector, Unit 3rd Bn. DAP,
 Delhi Police, Vikas Puri,
 New Delhi.Applicant

Versus

1. Delhi Police
 Through Commissioner of Police,
 Police Headquarter, I.P. Estate, New Delhi.
2. Govt. of NCT of Delhi through Chief Secretary,

Players Building,I.P. Estate,
New Delhi.Respondents

ORDER BY CIRCULATION

Justice M. S. Sullar, Member (J)

Tersely, the facts and material, relevant for deciding the instant Review Application (RA) and emanating from the record is that, in the wake of surprise check of Saket Market on 11.03.2013 and Sarojini Nagar Market on 07.10.2013, the applicants did not implement the directions given by the senior officers to take adequate anti-terrorist measures to prevent any terrorist strike or any untoward incident in their respective areas. It revealed that huge encroachments were made by rehri, patriwalas and vendors and there was no control of local police in preventing and removing the encroachments in the markets of their respective jurisdictions. Thus the applicants were stated to have committed the misconduct in performance of their official duties. Consequently, the impugned show cause notices dated 14.10.2013, for imposing minor penalties, were issued to review applicants, Shri Atul Sood (in OA No.1964/2015) & Shri Rajesh Shukla (in OA No.1967/2015) and dated 17.06.2013 to Shri Ritu Raj (in OA No.4443/2014) in this regard.

2. In pursuance thereof, the review applicants filed their replies, denying the allegations contained therein and indicating the steps taken by them, in performance of their official duty, to prevent and remove the encroachment etc.

3. Taking into consideration the serious allegations and the fact that the replies filed by the review applicants, in all the three OAs, were found to be not satisfactory, so their conduct was Censured, vide the impugned orders dated 21.01.2014 (in OA No.1964/2015), dated 07.01.2014 (in OA No.1967/2015) and dated 17.06.2013 (in OA No.4443/2014) respectively by the competent authority.

4. The appeals filed by review applicants Atul Sood and Rajesh Shukla against the order of the Disciplinary Authority were dismissed by the Appellate Authorities vide impugned orders dated 26.12.2014. Likewise, the appeal filed by review applicant Ritu Raj was also dismissed vide impugned order dated 6.01.2014 passed by the Appellate Authority.

5. Dissatisfied thereby, the review applicants filed the OAs.

6. After having completed all the codal formalities and after having duly considered all the issues raised therein, the OAs were dismissed, vide a detailed order dated 05.04.2016, by this Tribunal, which, in substance, is as under:-

“21. A plain and meaningful reading of the provisions/scheme of the Act reveals that under the standing orders and circulars, it was mandatory for the SHO and local police to take effective steps to prevent/remove encroachments from street/public places and to take effective appropriate legal action to prosecute the violators and offenders.

22. Therefore, mere registration of Calendera (Kalandra) under the Act and IPC without any other further steps to prosecute the violators, and drawing yellow strip along with tehbazaris, removing the iron stands, strengthening the public address system etc. projected in their respective replies by the applicants, appear to be a mere eye-wash and speculative. Such lame excuses cannot possibly be termed as effective steps taken under the Act, bye-laws and circulars in order to maintain law and order in their respective areas as urged on behalf of the applicants.

23. On the contrary, the arguments of the learned counsel for respondents that Delhi being the capital of India, is a sensitive area and since Sarojini Nagar & Saket markets are, in fact, thickly populated areas, and prone to terrorist attacks, so the SHOs are required to be more vigilant to maintain law and order and to remove encroachments in

their respective areas, have considerable force. In fact, the applicants were required to be more vigilant. They were required to prosecute the violators, in which they have utterly failed despite specific directions and guidelines issued by their superior officers.

24. It is proved from the records that during the course of inspection by the senior police officers, raised platforms for Tehbazari, huge encroachments in the market were found which were clearly attributable to inaction on the part of the applicants. The explanations put forth by the applicants are far from truth, speculative and inadequate. Thus, if the legal provision, facts and materials as discussed hereinabove, are put and perused together, then the conclusion is inescapable and irresistible that applicants have miserably failed to act promptly to remove and prevent the encroachments, and thus have failed in the discharge of their official duties. The Disciplinary as well as Appellate Authorities have recorded cogent reasons and examined the matter in the right perspective. We do not find any illegality, irregularity or any perversity in the impugned orders. As such, no interference is warranted by this Tribunal.

25. No other point, worth consideration, has been urged or pressed by learned counsel for the parties.

26. In the light of the aforesaid reasons and thus seen from any angle, there is no merit and instant OAs deserve to be and are hereby dismissed as such in the obtaining circumstance of the cases. No costs".

7. Now the review applicants have filed the present RA bearing No.137/20016, for reviewing the indicated order, mainly on the grounds, which have already been considered and negated while deciding the main OAs, by this Tribunal.

8. The main ground urged for seeking review of our order dated 05.04.2016 is that the Joint Commissioner of Police, acting as an Appellate Authority, in identical cases of Inspectors Atma Ram and Naresh Kumar vide (Annexure P-1) and (Annexure P-2) respectively has set aside the punishment of Censure awarded to them by the Disciplinary Authority and has only advised them to be diligent in the discharge of their duties. These orders of Joint Commissioner of Police cannot entitle the review applicants to seek review of our order dated 05.04.2016.

9. What cannot possibly be disputed here is that the earlier order can only be reviewed if the case squarely falls within the legal ambit of review and not otherwise. Order 47 Rule 1 CPC read with Section 22(3)(f) of the Administrative Tribunals Act, 1985 regulates the provisions of review of the orders. According to the said provision, a review will lie only when there is discovery of any new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by the review applicant seeking the review at the time when the order was passed **or made on account of some mistake or error apparent on the face of the record.** It is now well settled principle of law that the scope for review is rather limited and it is not permissible for the forum hearing the review application to act as an Appellate Authority in respect of the original order by a fresh and re-hearing of the matter to facilitate a change of opinion on merits. The reliance in this regard can be placed on the judgments of the Hon'ble Supreme Court in cases of ***Parson Devi and Others vs. Sumitri Devi and Others (1997) 8 SCC 715, Ajit Kumar Rath Vs. State of Orissa (1999) 9 SCC 596, Union of India Vs. Tarit Ranjan Das (2003) 11 SCC 658 and Gopal Singh Vs. State Cadre Forest Officers' Association & Others (2007) 9 SCC 369.***

10. An identical question came up to be decided by Hon'ble Apex Court in case ***State of West Bengal and Others Vs. Kamal Sengupta and Another (2008) 8 SCC 612.*** Having

interpreted the scope of review and considering the catena of previous judgments mentioned therein, the following principles were culled out to review the orders:-

- “(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”.

11. Meaning thereby, the original order can only be reviewed if case strictly falls within the domain of Order 47 Rule 1 CPC read with Section 22(3)(f) of the Administrative Tribunals Act,

1985 and not otherwise. In the instant RA, the review applicants have not pointed out any error on the face of record warranting a review of the order dated 05.04.2016 (Annexure-P). Moreover, all the issues now sought to be pleaded, were subject matter of the OAs and have already been adjudicated upon by the Tribunal.

12. Moreover, the mere fact that Joint Commissioner of Police while setting aside the punishment orders of Censure, has only advised Inspectors Atma Singh and Naresh Kumar to be more diligent in discharge of their duties by way of orders (Annexure P-1) and (Annexure P-2), *ipso facto*, cannot be a ground, much less a cogent one, to seek review of the order dated 05.04.2016 for the reasons discussed hereinabove, particularly when all the points raised in the main OAs were duly considered and negated by us in our order under review.

13. Be that as it may, the *sine qua non* for seeking review is to point out any apparent error on the face of the record. The review applicants have miserably failed to do so.

14. For the reasons, as there is no merit in it, the RA is dismissed in circulation. No order as to costs.

(K.N. SHRIVASTAVA)
MEMBER (A)
23.08.2016

(JUSTICE M.S. SULLAR)
MEMBER (J)
23.08.2016

Rekesh