CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

RA 138/16
(In OA No.1923/13)

New Delhi, this the 10th day of August, 2017

CORAM:
HONôBLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER
AND
HONôBLE MS.NITA CHOWDHURY, ADMINISTRATIVE MEMBER
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Delhi Metro Rail Corporation Ltd.,
Through its:
1. Managing Director,
Delhi Metro Rail Corporation,
Metro Bhawan, Barakhamba Road,
New Delhi.

2. The Addl.General Manager,
DMRC Ltd., Metro Bhawan,
Barakhamba Road,
New Delhi é é ..Respondents/Petitioners

(By Advocate: Shri V.S.R.Krishna)
Vs.
Mr.Rajender Singh,
S/o Shri Tooki Ram,
R/o H.No.88, Janta Flats,
GTB Enclave, Delhi -93 é é é Applicant/Opp.Party.
(By Advocate: Shri H.D.Sharma)
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ORDER

Per **Raj Vir Sharma, Member(J):**

We have perused the records of OA No.1923 of 2013 and of the present RA, and have heard Shri V.S.R.Krishna, the learned counsel

appearing for the respondent-review petitioners, and Shri H.D.Sharma, the learned counsel appearing for the applicant-opposite party.

2. The review petitioners were respondents in OA No.1923 of 2013. The present review application has been filed by them under Rule 17 of the Central Administrative Tribunal (Procedure) Rules, 1987 read with Section 22(3)(f) of the Administrative Tribunals Act, 1985, seeking review of the order dated 08.04.2016 passed by the Tribunal allowing OA No.1923 of 2013. The operative portion of the order dated 8.4.2016(ibid) is reproduced below:

> ñ9. In the light of our above discussions, we hold that as the applicantôs name appeared at sl.no.3 of the waiting list for SC candidates prepared by the respondents pursuant to the recruitment process initiated in 2009, and the main panel of 345 candidates, along with the waiting list, was valid up to 30.3.2012, he was entitled to be considered for selection and appointment to the post of Station Controller/Train Operator, when the six SC candidates, who were included in the list of 345 candidates, and were issued the offers of appointment, did not join the service, and that the impugned rejection of the claim of the applicant for consideration of his candidature for selection and appointment to the post of Station Controller/Train Operator against one of the six SC vacancies which remained unfilled on account of non-joining of the said six SC candidates, is unsustainable. Accordingly, we direct the respondents to consider the candidature of the applicant from the stage of his medical examination, and to issue him offer of appointment to the post of Station Controller/Train Operator, in the event of his being found medically fit, and after verification of his documents. Considering the facts and circumstances of the case, we make it clear that the applicant shall not be entitled to any service benefits with retrospective effect. The respondents shall comply with the direction contained in this order within three months from today.
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> 10. In the result, the O.A. is allowed to the extent indicated above. No costs.ò

3. Opposing the R.A., the applicant-respondent has filed a counter reply.

4. In **Ajit Kumar Rath v. State of Orissa and others,** (1999) 9 SCC 596, the Hon'ble Supreme Court has held that a review cannot be claimed or asked for merely for a fresh hearing, or arguments, or correction of an erroneous view taken earlier. That is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it. Any other attempt, except an attempt to correct an apparent error, or an attempt not based on any ground set out in Order 47 of the Code of Civil Procedure, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment.

5. In **Union of India v. Tarit Ranjan Das,** 2004 SCC (L&S) 160, the Hon'ble Supreme Court has held 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 court in respect of the original order, by a fresh order and rehearing the matter to facilitate a change of opinion on merits.

6. In **State of West Bengal and others v. Kamal Sengupta and another,** (2008) 2 SCC (L&S) 735, the Hon'ble Apex Court has scanned its various earlier judgments and summarized the following principles:

> ñ35. 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 CPC.

(ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 CPC.

(iii) The expression ñany other sufficient reasonò 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.ò

7. The Hon'ble Supreme Court, in **Kamlesh Verma vs. Mayawati & others,** 2013(8) SCC 320, has laid down the following contours with regard to maintainability, or otherwise, of review petition:

> ñ20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:
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> **20.1 When the review will be maintainable:**
>
> i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

ii) Mistake or error apparent on the face of the record;
iii) Any other sufficient reason.
The words ñany other sufficient reasonò have been interpreted in Chhajju Ram v. Neki (AIR 1922 PC 122) and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius (AIR 1954 SC 526) to mean ña reason sufficient on grounds at least analogous to those specified in the ruleò. The same principles have been reiterated in Union of India vs. Sandur Manganese & Iron Ores Ltd. (23013(8) SCC 337).

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.ò

8. Keeping the above enunciation of law in mind, let us consider the claim of the review petitioners and find out whether a case has been made out by them for reviewing the order dated 8.4.2016 (ibid) passed in OA No.1923 of 2013.

9. In support of their claim for review of the order dated 8.4.2016(ibid), the respondent-review petitioners have contended, inter alia, that they had taken a policy decision not to operate the waiting list of panel/shadow panel and, therefore, the Tribunalôs direction to operate the panel is not just and proper or legal. The Tribunalôs direction to issue appointment order to the applicant-respondent, who was no.3 in the waiting list for SC category candidates, is erroneous. As per the law laid down by the Honôble Supreme Court in **Shankarsan Dash Vs. Union of India,** (1991) 3 SCCC 47, they were not bound to fill up the posts which remained unfilled/vacant on account of non-joining of six SC candidates and, therefore, the applicant-respondent did not have a right to be appointed. After the selection process was over, the unfilled vacancies were carried forward to and filled up in the subsequent recruitment drive and, therefore, the currency of the panel/waiting list expired upon carrying forward to and filling up of the vacancies in the subsequent recruitment drive.

10. *Per contra*, the applicant-opposite party has contended, inter alia, that it was not in dispute that the total number of vacancies was 392, but panel was drawn up only for 345 vacancies and waiting list for different categories of candidates was prepared by the respondent-review petitioners.

The argument of the respondent-review petitioners about policy decision is an afterthought. The panel along with the waiting list was valid for two years. The decision in **Shankarsan Dash Vs. Union of India** (supra), being distinguishable on facts, is not applicable to the present case. The respondent-review petitioners by filing the present RA want to re-argue the matter, which, in law, is impermissible. The contentions raised by the respondent-review petitioners have already been overruled by the Tribunal, vide order dated 8.4.2016 (ibid). Therefore, the respondent-review petitioners have not at all made out a case for review.

11. After having given our thoughtful consideration to the facts and circumstances of the case, and the rival contentions, in the light of the principles of law laid down by the Hon'ble Supreme Court in the decisions referred to in paragraphs 4 to 7 of this order, we have found no case of review to have been made out by the respondent-review petitioners.

12. In view of the admitted position between the parties that the waiting list prepared along with the panel of 345 candidates as per the extant policy was valid till 30.3.2012, and that the new panel of selected candidates, pursuant to the subsequent recruitment drive, was made operational only in December 2012, the decision in **Shankarsan Dash Vs. Union of India** (supra) is not applicable to the present case.

13. In paragraph 7 of the order dated 8.4.2016(ibid), which is sought to be reviewed by the respondent-review petitioners, the Tribunal,

after considering the materials available on record, has observed/found as follows:

> ñ7. It is the case of the respondents that the waiting list/shadow panel was never operated by them, and that the unfilled vacancies were carried forward to be filled up through the subsequent recruitment process which was initiated by them in July 2010. It is the admitted case of the respondents that total 392 vacancies were sought to be filled up through the recruitment process initiated by them in the year 2009, and that a panel of 345 candidates belonging to different categories was prepared. The applicant has not challenged the decision of the respondents not to fill up all the 392 vacancies, and to carry forward the remaining 47 (out of 392) vacancies to be filled up through the subsequent recruitment process initiated by them in July 2010. It is the case of the applicant that when six SC candidates, who were included in the main panel of 345 candidates, and were issued the offers of appointment, did not join the service, the respondents ought to have considered him and five other SC candidates, who were included in the waiting list for SC candidates, for selection and appointment against the said six SC vacancies. It is, thus, contended by the applicant that he had a right to be considered for selection and appointment to the post of Station Controller/Train Operator against one of the said six SC vacancies, and non-consideration of his candidature by the respondents is bad, arbitrary, and illegal. The respondents have not specifically averred in their pleadings that the aforesaid six SC vacancies, along with 47 other unfilled vacancies, were carried forward to be filled up through the subsequent recruitment process initiated by them in July 2010. They have also not produced before this Tribunal any material to show that the said six SC vacancies were carried forward to be filled up through the subsequent recruitment process. They have also not assigned any reason, far less justifiable, cogent, and convincing reason, either in their order dated 27.2.2013, or in their counter reply, as to why they did not operate the shadow panel/waiting list, though six SC candidates, who were included in the main panel of 345 candidates, and were issued offers of appointment, did not join the service. They have also not produced before this Tribunal any decision taken by the competent authority not to operate the aforesaid waiting list. When it was decided by the respondents to fill up 345 vacancies (out of 392 vacancies), and when the main panel of 345 candidates, along with the shadow panel/waiting list, was valid up to 30.3.2012, and when six SC

> candidates from the main panel of 345 candidates did not join the service, the respondents could not have ignored the waiting list for SC candidates thus and thereby denying consideration of the cases of the SC candidates included in the waiting list for selection and appointment. It is the admitted position that pursuant to the fresh recruitment process initiated in July 2010, the new panel was prepared by the respondents in December 2012. Therefore, the respondents cannot be held to be justified in not considering the applicantôs candidature for selection and appointment when the aforesaid six SC candidates did not join the service, and the rejection of the applicantôs claim for considering his candidature for selection and appointment against one of the said six SC vacancies in the post of Station Controller/Train Operator is unsustainable. This view of ours is fortified by the decision of the Honôble High Court of Delhi in **Government of NCT of Delhi and others Vs. Naresh Kumar,** W.P. (C) No. 323 of 2012, decided on 14.8.2013.ò

From the above, it is clear that the respondent-review petitioners, in the Review Application, have more or less reiterated their old contentions which have been overruled by the Tribunal, vide order dated 8.4.2016(*ibid)*. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. The appreciation of evidence/materials on record, being fully within the domain of the appellate court, cannot be permitted to be advanced in the review petition. In a review petition, it is not open to the Tribunal to re-appreciate the evidence/materials and reach a different conclusion, even if that is possible. Conclusion arrived at on appreciation of evidence/materials and contentions of the parties, which were available on record, cannot be assailed in a review petition, unless it is shown that there is an error apparent on the face of record or for some other reason akin thereto. The review petitioners have not shown any material error, manifest on the face of the order, dated 8.4.2016(*ibid)*, which

undermines its soundness, or results in miscarriage of justice. If the review petitioners are not satisfied with the order dated 8.4.2016(*ibid)* passed by this Tribunal, remedy lies elsewhere. The scope of review is very limited. It is not permissible for the Tribunal to act as an appellate court.

14. In the light of our above discussions, we have no hesitation in holding that the respondent-review petitioners have not been able to make out a case for review of the order dated 8.4.2016 passed in OA No.1923 of 2013. Accordingly, the R.A. is dismissed. No costs.

(NITA CHOWDHURY)
ADMINISTRATIVE MEMBER

(RAJ VIR SHARMA)
JUDICIAL MEMBER

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