CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

R.A.NO.176 OF 2015
(In OA No.2046 of 2015)
New Delhi, this the 21st day of September,, 2015
CORAM:
HON'BLE SHRI SUDHIR KUMAR, ADMINISTRATIVE MEMBER
&
HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER
.....

1. Tsewang Dorjey
   S/o Sh. Tsering Mutup

2. Devender Kumar
   S/o Sh. Sarda Ram

3. Sameer Kumar
   S/o Sh. Gurbaksh Singh

4. Mukesh Kumar
   S/o sh. Kishore Lal

5. Stanzin Dolma
   S/o Sh. Tsering Norboo

6. Chand Sagar Murmu
   S/o Sh.Lakair Ram

7. Namgail Angmo
   S/o sh. Skarma Dorjay

8. Rinchen Angmo
   S/o Sh.Sonam Gailson
9. Phustsog Dolma
   S/o Sonam Richen

10. Hukum Chand
    S/o Sh. Ram Chander ..... Applicants

All working as I.P. /Mazdoor in 8 Mtn. , Dou, Div. Ord C/56 APO

(By Advocate: Mr.L.R.Khatana for Mr.Sudhir Naagar)

VERSUS

1. Union of India, Ministry Police,
Through its Secretary, South Block,
New Delh.

2. The Adjutant General
Shakha Sena Mukhyala
Addl. Dt. General Manpower
MOD Army, New Delhi.

3. The Commanding Officer
8m Mtn. DOU Divn Ord. Unit
C/o 56 APO .....Respondent- Authorities

4. Angrej Singh (T.NO. 604)
S/o Sh. Ajit Singh

5. Pawan Kumar (T.No. 626)
s/Sh. Bishan Das.

6. Bilal Ahamed (T.No. 628)
S/o sh. Gulam Nabi Bhat

7. Imtais Ahmed Sheikh (T.No. 642)
Sh. Gulam Nabi Sheikh

8. Abdul Rashid Teeli (T. No. 651)
S/o Gulam Mohd. Telli.

9. Gulam Hasan Telli (T. No. 653)
S/o sh. Abdul Gani Telli

10. Mir Abdul Rehman (T.No. 688)
S/o Gulam Rasool Mir

11. Subhash Chander (T.No. 688)
S/o Sh. Chaman
12. Javed Ahmed Lone (T.No. 703)
S/o Sh. Gulam Mohd. Lone
13. Abdul Rashid Bhat (T.No. 713)
S/o Gulam Hasan Bhat

14. Imtias Ahmed Bhat (T.No.724)
S/o Sh. Modh. Yousuf Bhat
15. Surender Kumar (T.No 728)
S/o sh. Raj Kumar

16. Sikander Ali (T.No.732)
S/o sh. Gulam Mehddi

All (4) to (16) working as I.P. in 8 Mtn. DOU,
Div. Ord. Unit C/o 56 APO ..... Private Respondents.

ORDER

Raj Vir Sharma, Member(J):

The review petitioners were applicants in OA No.2046 of 2015. This review application is 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 29.5.2015 passed by the Tribunal rejecting O.A.No. 2046 of 2015, with the following observation:

> ñ2. It would appear from the relief that subject matter of the present OA is to quash and set aside the order dated 4.9.2013 passed by the Tribunal in OA No.739/2013, which legally cannot be accepted. In view of the order passed in OA No.739/2013, the present OA is not fit for consideration and the same is rejected. MA No.1876/2015 does not survive with the passing of this order.ò

2. In support of their claim for reviewing the order dated 29.5.2015(*ibid),* the review petitioners have urged that the view taken by the Tribunal that the reliefs sought in the O.A. cannot be granted is contrary to the law laid down by the Hon'ble Supreme Court in **K.Ajit Babu & others v. Union of India & others,** (1997) 6 SCC 473, and **Gopabandhu Biswal v. Krishna Chandra Mohanti & others,** (1998) SCC (L&S) 1147. There were other reliefs also which were claimed in the O.A., apart from the one

seeking quashing and setting aside of the order passed by the Tribunal in OA No.739 of 2013. Although on 29.5.2015 the proxy counsel requested the Tribunal to pass over the matter due to engagement of the counsel for the applicants before the Hon'ble High Court of Delhi, the Tribunal did not accede to the said request and passed the order dated 29.5.2015(ibid) rejecting the O.A. as being not maintainable. Therefore, the applicants were not given a fair opportunity of making their submissions before the Tribunal as to the maintainability of the O.A.

3. On 15.9.2015, the R.A. was taken up for hearing, when Mr.L.R.Khatana for Mr.Sudhir Nagar, learned counsel appearing for the applicant, was heard by us. In support of the contentions of the applicants raised in the R.A., Mr. L.R.Khatana, learned counsel, invited our attention to paragraphs 4,5 and 6 of the judgment in **K.Ajit Babu's case** (supra), paragraph 11 of the judgment in **Gopabandhu Biswal's case** (supra), and paragraphs 9,11 and 17 of the order dated 17.3.2010 passed by the Full Bench of the Tribunal in **Shri Harishwar Dayal, etc. V. Union of India, etc.,** OA No.2459 of 2008 and other connected O.As. Mr.L.R.Khatana, learned counsel, also relied on the decision of the Hon'ble Supreme Court in **M.Shankaraiah and another v. State of Karnataka and others,** 1993 Supp.(4) SCC 596.

4. The facts of **K.Ajit Babu's** case (supra) were that the establishment of the Chief Controller of Imports and Exports was divided into four separate zones, viz., eastern, western, southern, and northern,

and the employees of each of the said zones had combined seniority list. The appeal before the Hon'ble Supreme Court concerned the appellants working in the western zone, which comprised the establishments at Bombay, Ahmedabad, Gandhidam, Rajkot, Bhopal and Goa. Each of the zone had posts of Lower Division Clerk, Upper Division Clerk, Section Head, Controller, etc.. The LDC was the lowest category. Promotions were made from the post of LDC to the post of UDC, from the post of UDC to the post of Licensing Assistant, from the post of Licensing Assistant to the post of Section Head. From the post of Section Head, the employees were eligible to be promoted to the post of Controller. The seniority lists were maintained cadre-wise. The promotion to the post of UDC was made on the basis of seniority roll, whereas promotions to Licensing Assistant, Section Head and Controller were made on the basis of selection, i.e., seniority-cum-merit. The appellants were initially appointed as LDCs. In due course, they were promoted as UDCs, Licensing Assistants, Section Heads and Controllers. As Controllers, they were promoted on ad-hoc basis. They were working in the western zone, which was headed by the Joint Chief Controller of Imports and Exports. Subsequently, it was found that some of the officers, who were promoted and were transferred to new offices, were reluctant to join in the new place of posting and as such, since the year 1978 a policy was adopted for seeking options as to whether they were ready to go on transfer in case they were promoted, or they would like to stay at the place of present posting forgoing their promotions. The officers who had

given their options to go out to new place of posting in case of promotion, were given promotions in preference to the claims of their seniors. In the year 1983, one PS John and others, who were affected by the seniority list published on 13.10.81 and were working at Ahmedabad, filed a Civil Application No. 1533/83 before the Hon'ble Gujarat High Court, making a grievance that the respondents never asked for their options for going to the new place of posting in case of their promotions. The said application was transferred to the Ahmedabd Bench of the Central Administrative Tribunal, where it was numbered as Transfer Application No. 263/86. The Tribunal, by its judgment dated August 14, 1987, held that the promotion made on the basis of options without resorting to the recruitment rules in terms of quota laid down and the procedure for filling it up was valid as long as it was ad hoc, and such ad hoc promotions did not deprive seniority of those who had not given their options for going out to the new place of posting. The Tribunal was further of the view that the employers were free to allow the juniors who had given their options to continue to enjoy promotion on ad hoc basis, but the orders conferring regular promotions to such promotees could not be upheld in so far as it affected the seniority of those who had not given their options. The officers, who had not given their options, had the right to promotions in their own turn of seniority. In view of this decision rendered by the Central Administrative Tribunal, the respondents prepared and circulated four draft seniority lists inviting objections, if any. Subsequently, a number of

review petitions were filed for reviewing the judgment given by the Tribunal in T.A. No. 263/86, but the said review petitions were rejected. After the review petitions were rejected, the appellants filed an application under Section 19 of the Administrative Tribunals Act, 1985, before the Central Administrative Tribunal, Ahmedabad Bench. Relying upon its Full Bench decision in **Jhon Lucas and others vs. Additional Chief Mechanical Engineer,** dated 2.11.87, the Tribunal held that the persons, who were not parties to a decision, but were affected by the decision of the Tribunal, were not entitled to file an application under Section 19 of the Act, but could only file a review petition seeking review of the decision adversely affecting them. Consequently, the appellants' application was rejected summarily. Being aggrieved, the appellants approached the Hon'ble Supreme Court. In paragraph 4 of the judgment, the Hon'ble Supreme Court observed thus:

> ñ4. As stated earlier, the appellant has challenged the impugned seniority list prepared on the basis of the decision rendered by the Central Administrative Tribunal, Ahmedabad, on Transfer Application No.263 of 1986 dated 14.8.1987, by means of an application under Section 19 of the Act wherein there was no prayer for setting aside the judgment dated 14.8.1987 of the Administrative Tribunal.....ò

In paragraph 5 of the judgment, the Hon'ble Supreme Court held as follows:

> ñ5. The Tribunal rejected the application of the appellant merely on the ground that the appellant was seeking setting aside of the judgment rendered by the Central Administrative Tribunal, Ahmedabad, in the case of P.S. John (supra) in T.A. No.263/86. It is here that the Tribunal apparently fell in error. No doubt the decision of the tribunal in

> the case P.S. John was against the appellant but the application filed by the appellant under Section 19 of the Act has to be dealt with in accordance with law.ò

In paragraph 6 of the judgment, the Honble Supreme Court further held thus:

> ñ.....In the present case, what we find is that tribunal rejected the application of the appellants thinking that appellants are seeking setting aside of the decision of the tribunal in Transfer Application No. 263 of 1986. This view taken by the Tribunal was not correct. The application of the appellant was required to be decided in accordance with law.ò

5. In **Gopabandhu Biswal's case** (supra), appellant-Gopabandhu Biswal was an Assistant Commandant in the Orissa Military Police. The Tribunal, by its order dated 24.12.1991, allowed TA No.1 of 1989 filed by him and gave a direction to the official respondents therein that his case should be considered for promotion to Indian Police Service with effect from 1.1.1977 in respect of each year beginning therefrom till January 1980. The State of Orissa and two others (respondents in TA No1/89) filed S.L.P (C) No. 7479 of 7479 of 1992 challenging the Tribunalôs order dated 24.12.1991 passed in T.A.No.1/89. By its order, dated 3.8.1992, the Honôble Supreme Court dismissed the said SLP. In July 1993, one and a half years after the Tribunal's decision of 24th of December, 1991, respondents 1 and 2 in T.A No.1/89, who were in the Orissa Police Service, filed an application before the Tribunal, which was subsequently converted into a review petition and numbered as R.A.No. 16 of 1993. These two respondents contended that the decision of the Tribunal in T.A.No.1/89 to the effect that the cadres of Deputy Superintendents of Police in Orissa Police Service, and of Assistant Commandants in the Orissa Military Police constituted a single cadre in the

Orissa Police Service till 4.11.1980 was incorrect, and that on a proper examination and interpretation of all relevant documents and Governments Orders in this connection, it should be held that Deputy Superintendents of Police in Orissa Police Service, and Assistant Commandants in Orissa Military Police never constituted a single cadre at any time. They contended that the two cadres have always been separate, and that Assistant Commandants in the Orissa Military Police were not eligible for promotion to Indian Police Service. A similar Review Application No. 18 of 1993 was filed by two others who were direct recruits to the cadre of Indian Police Service. At around the same time, O.A. Nos. 276, 277 and 278 of 1993 were filed by three applicants, who were, at the material time, Assistant Commandants in the Orissa Military Police, praying for granting them the benefit of the decision of the Tribunal in T.A.No.1/89 for the purpose of promotion to the Indian Police Service. These review petitions as well as original applications were considered together by the Tribunal. The Tribunal, by its order dated 24th of June, 1994, reviewed its earlier judgment dated 24.12.1991 passed in T.A.No. 1/89 on the ground of there being error apparent on the face of record. The Tribunal held that the two cadres of Deputy Superintendent of Police in Orissa Police Service, and Assistant Commandant in Orissa Military Police, were separate cadres from inception, and that Assistant Commandants were not eligible for promotion to the Indian Police Service, The Tribunal thereupon dismissed T.A.No. 1/89. It also dismissed the three pending applications bearing O.A. Nos. 276, 277

and 278 of 1993. The appeals were filed against the Tribunalôs order dated 24.6.1994 passed in the two review petitions as well as the three O.As. On the facts and in the circumstances of the case, the Honôble Supreme Court observed that the Tribunalôs judgment dated 24.12.1991 in T.A.No. 1/89 could not be reopened after the special leave petition against that judgment had been dismissed. The only remedy for a person who wanted to challenge that judgment was to file a separate application before the Tribunal in his own case and persuade the Tribunal either to refer the question to a larger Bench or, if the Tribunal preferred to follow its earlier decision, to file an appeal from the Tribunal's judgment and have the Tribunal's judgement set aside in appeal, but review was not an available remedy. The Honôble Supreme Court held that the Tribunal was not entitled to, and ought not to have entertained the review applications once the special leave petition from the main order had been dismissed. As regards O.A.Nos. 276, 277 and 278 of 1993, the Honôble Supreme Court held that in view of the fact that the Tribunal's judgment in review applications could not be sustained, the Tribunal would be required to examine these three applications filed before it on merit and dispose them of in accordance with law. In deciding these applications, the Tribunal could not ignore its earlier judgment. If the Tribunal decided to follow its earlier judgment, the respondents in these applications could file petitions for leave to appeal, if they so desired; and any other person aggrieved might also, with the leave of the Court, apply for special leave to file an appeal. In the event of the Tribunal coming to a

conclusion that its earlier judgment required reconsideration, the Tribunal could refer the question to a larger Bench. In either case, the persons aggrieved could apply and intervene to put forward their point of view. Accordingly, the Hon'ble Supreme Court allowed the appeals, set aside the order of the Tribunal in review applications, and remanded O.A. Nos. 276, 277 and 278 of 1993 for fresh consideration by the Tribunal in accordance with law.

6. In **Shri Harishawar Dayal's case** (supra), the genesis of the O.As. lay in the order dated 22.7.2005 passed by the Hyderabad Bench of the Tribunal in OA No.933 of 2003(**S.K.Jain v. Union of India and others)**, whereby and whereunder the respondents were directed to conduct review DPC for considering the name of the applicant for promotion to the rank of Superintending Engineer against the vacancies of the year 1999-2000 and 2000-2001 and to pass appropriate orders within the stipulated period. The order dated 22.7.2005 passed by the Hyderabad Bench was upheld by the Hon'ble Andhra Pradesh High Court. The SLP filed against the judgment of the Hon'ble High Court of Andhra Pradesh was dismissed by the Hon'ble Supreme Court. Thus, the Tribunal's order dated 22.7.2005 (ibid) attained finality. The applicants in **Shri Harishawar Dayal's case** (supra) were aggrieved by the decision of the DPC/respondents in the wake of the directions of the Hyderabad Bench of the Tribunal in **S.K.Jain's case** (supra), which culminated in placement of name of S.K.Jain [4th respondent in **Shri Harishwar Dayal's case (supra)]** in the panel of officers for

promotion to the post of Superintending Engineer. It is, thus, clear that in **Shri Harishwar Dayal's case** (supra), the applicants had not challenged the order dated 22.7.2005 passed by the Hyderabad Bench in OA No.933 of 2003, but had challenged the decision of the DPC/respondents placing the applicant-S.K.Jain [4th respondent in **Shri Harishwar Dayal's case (supra)]** in the panel of officers for promotion to the post of Superintending Engineer against the vacancies of the year 1999-2000. However, considering the facts and circumstances of the case, and relying on the decisions of the Hon'ble Supreme Court in **K.Ajit Babu's case** (supra) and **Gopabandhu Biswal's case** (supra), the Full Bench of the Tribunal held that the Tribunal could consider the O.As.

7. In **Gopabandhu Biswal's case** (supra), the Hon'ble Supreme Court, followed its earlier decision in **K.Ajit Babu's** case (supra), and held that the Tribunal's judgment dated 24.12.1991 in T.A.No. 1/89 could not be reopened after the special leave petition against that judgment had been dismissed. While so holding, their Lordships observed that the only remedy for a person who wanted to challenge that judgment was to file a separate application before the Tribunal in his own case and persuade the Tribunal either to refer the question to a larger Bench or, if the Tribunal preferred to follow its earlier decision, to file an appeal from the Tribunal's judgment and have the Tribunal's judgement set aside in appeal, but review was not an available remedy. In our considered view, what the Hon'ble Supreme Court observed in **Gopabandhu Biswal's case** (supra) is that a person can file an

O.A. under Section 19 of the Administrative Tribunals Act, 1985, calling in question the order passed by the Tribunal in an earlier O.A. There was no observation made by the Hon'ble Supreme Court that such a person can straightaway make an application under Section 19 of the Administrative Tribunals Act, 1985, without there being any cause of action for him to make the application. Section 19(1) of the Administrative Tribunals Act, 1985, stipulates that a person aggrieved by an order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance. As per the Explanation below sub-section 19(1), 'order' means an order made (a) by the Government or a local or other authority within the territory of India or under the control of the Government of India or by any corporation or society owned or controlled by the Government; or (b) by an officer, committee or other body or agency of the Government or a local or other authority or corporation or society referred to in clause (a). It is, thus, clear that an order passed by the Tribunal on an application made to it under Section 19 of the Administrative Tribunals Act, 1985, can by no stretch of imagination be construed to be an 'order' within the meaning of Section 19(1) of the Administrative Tribunals Act, 1985. In **D.C.S.Negi v. Union of India & others,** SLP (Civil)/C.C.No.3709 of 2011, decided on 7.3.2011, the Hon'ble Supreme Court has held that the Tribunal cannot abdicate its duty to act in accordance with the statute under which it is established. In our considered view, as per the observation made by the Hon'ble Supreme Court in **Gopabandhu**

Biswal's case (supra), a person can make an application under Section 19 of the Administrative Tribunals Act, 1985, if he feels aggrieved by any order made by the Government or any of the authority, or officer, or other person competent to pass such order, while implementing the order/direction issued by the Tribunal in a previous application made to it under Section 19 of the Administrative Tribunals Act, 1985. This view of ours is fortified by the decision of the Hon'ble Supreme Court in **K.Ajit Babu's case** (supra), which has also been followed by their Lordships in **Gopabandhu Biswal's case** (supra). In view of this, **Gopabandhu Biswal's case** (supra), besides being distinguishable on facts, is of no help to the case of the review applicants.

8. On a perusal of the judgment of the Hon'ble Apex Court in **K.Ajit Babu's** case (supra), and the order of the Tribunal in **Shri Harishwar Dayal's case** (supra), we find that the applicant/applicants before the Tribunal had not sought the relief of quashing and setting aside of the orders passed by the Tribunal in previous Original Applications made to it under Section 19 of the Administrative Tribunals Act, 1985. Therefore, the decision of the Hon'ble Supreme Court in **K.Ajit Babu'case** (supra) and the decision of the Full Bench of the Tribunal in **Shri Harishwar Dayal's case** (supra), besides being distinguishable on facts, are also of no help to the case of the review applicants.

9. In **M.Shankaraiah's case** (supra), the Hon'ble Supreme Court observed thus:

ñ18. Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the Court should not be prejudicial to anyone. Rule of stare decisis is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bends before justice. Entire concept of writ jurisdiction exercised by the higher courts is founded on equity and fairness. If the Court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification, depending on if it is of fact or law. But the root from which the power flows is the anxiety to avoid injustice. It is either statutory or inherent. The latter is available where the mistake is of the Court. In Administrative Law the scope is still wider. Technicalities apart if the Court is satisfied of the injustice then it is its constitutional and legal obligation to set it right by recalling its order. Here as explained, the Bench of which one of us (Sahai, J.) was a member did commit an error in placing all the stipendiary graduates in the scale of First Division Assistants due to Stateôs failure to bring correct facts on record. But that obviously cannot stand in the way of the Court correcting its mistake. Such inequitable consequences as have surfaced now due to vague affidavit filed by the State cannot be permitted to continue.

19. Review literally and even judicially means re-examination or re-consideration. Basic philosophy inherent in it is the universal acceptance of human fallibility. Yet in the realm of law the courts and even the statutes lean strongly in favour of finality of decision legally and properly made. Exceptions both statutorily and judicially have been carved out to correct accidental mistakes or miscarriage of justice. Even when there was no statutory provision and no rules were framed by the highest court indicating the circumstances in which it could rectify its order the courts culled out such power to avoid abuse of process or miscarriage of justice. In Raja Prithwi Chand Lal Choudhury v. Sukharaj Rai, the Court observed that even though no rules had been framed permitting the highest Court to review its order yet it was available on the limited and narrow ground developed by the Privy Council and the House of Lords. The Court approved the principle laid down by the Privy Council in Rajender Narain Rae v. Bijai Govind Sigh that

an order made by the Court was finally and could not be altered:

> ñ....nevertheless, if by misprision in embodying the judgments, by errors have been introduced, these Courts possess, by Common law, the same power which the Courts of record and statute have of rectifying the mistakes which have crept in....The House of Lords exercises a similar power of rectifying mistakes made in drawing up its own judgments, and this Court must possess the same authority. The Lords have however gone a step further, and have corrected mistakes introduced through inadvertence in the details of judgments; or have supplied manifest defects in order to enable the decrees to be enforced, or have added explanatory matter, or have reconciled inconsistencies.ò

Basis for exercise of the power was stated in the same decision as under:

> ñIt is impossible to doubt that the indulgence extended in such case is mainly owing to the natural desire prevailing to prevent irremediable injustice being done by a Court of last resort, where by some accident, without any blame, the party has not been heard and an order has been inadvertently made as if the party had been heard.ò

Rectification of an order thus stems from the fundamental principle that justice is above all. It is exercised to remove the error and not for disturbing finality. When the Constitution was framed the substantive power to rectify or recall the order passed by this Court was specifically provided by Article 137 of the Constitution. Our Constitution ï makers who had the practical wisdom to visualise the efficacy of such provision expressly conferred the substantive power to review any judgment or order by Article 137 of the Constitution. And clause (c) of Article 145 permitted this Court to frame rules as to the conditions subject to which any judgment or order may be reviewed. In exercise of this power Order XL had been framed empowering this Court to review an order in civil proceedings on grounds analogous to Order XLVII Rule 1 of the Civil Procedure Code. The expression, ófor any other sufficient reasonô in the clause has been given an expanded meaning and a decree or order passed under misapprehension of true state of circumstances has been held to be sufficient ground to exercise the power. Apart from Order XL Rule 1 of the Supreme Court Rules this Court has the inherent power to make such orders as may be necessary in the interest of justice or to prevent the abuse of process of Court. The Court is thus not

precluded from recalling or reviewing its own order if it is satisfied that it is necessary to do so for sake of justice.ò

10. In **Meera Bhanja (Smt.) v. Nirmala Kumari Choudhury (Smt.),** 1995(1) SCC 170, the Hon'ble Supreme Court has held that an error apparent on the face of record must be such an error which must strike one on mere looking at the record. An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evidence and if it can be established, it has to be established by lengthy and complicated arguments, such an error cannot be cured in a review proceedings.

11. 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.

12. 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.

13. 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 various earlier judgments and summarized the principles laid down therein which read thus:

> 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

14. 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:
>
> **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

15. The other contention of Mr.L.R.Khatana, learned counsel appearing for the review applicants, is that apart from the relief of quashing and setting aside of the order dated 4.9.2013 passed in OA No.739 of 2013, the review applicants had also prayed for other relief and, therefore, the Tribunal committed an error apparent on the face of record in rejecting OA No.2406 of 2015 in limine as being not maintainable. The other relief, which was sought by the review applicants in OA No.2406 of 2015, was as follows:

> ñB. Direct the respondent no.1 to 3 to implement the transfer/movement orders qua the applicants and the private respondents as per their own seniority, without being influenced by the order dated 4.9.2013 issued in OA No.739/2013 and by the contempt proceedings pending in CP No. 579/2013 pending before this Hon'ble Tribunal.ò

A plain reading of the above makes it clear that the review applicants had sought the said relief as a consequential to the relief (A) which reads thus:

> ñA. Quash and set aside the order dated 4.9.2013 issued in OA No.739/2013 by this Hon'ble Court to the extent it directs the respondents no.1 to 3 to implement the transfer orders of the private respondents (applicants therein) as expeditiously as possible as the said order has been passed without taking into consideration the

applicantsô case and their seniority over the private respondents.ò

When the Tribunal found that O.A. was not maintainable in respect of the main relief, the question of considering the grant, or otherwise, of the other relief, which was consequential to the main relief, did not arise, and accordingly, the entire O.A. was rejected in limine. In view of this, we do not find any substance in the contention of Mr.L.R.Khatana, learned counsel that there was an error apparent on the face of the record in rejecting the O.A. in limine

16. The last contention of Mr.L.R.Khatana, learned counsel, is that although on 29.5.2015 the proxy counsel requested the Tribunal to pass over the matter due to engagement of the counsel for the applicants before the Hon'ble High Court of Delhi, the Tribunal did not accede to the said request, and passed the order dated 29.5.2015(ibid) rejecting the O.A.as being not maintainable and therefore, the applicants having not been given a fair opportunity to make their submissions before the Tribunal as to the maintainability of the O.A., the order dated 29.5.2015 (ibid) is liable to be reviewed/recalled. The order dated 29.5.2015 (ibid) does not whisper about any request to have been made on 29.5.2015 by any learned counsel on behalf of the learned counsel appearing for the applicants to pass over the matter when it was taken up on 29.5.2015 for considering the question of admission. It was the responsibility of the learned counsel appearing for the applicants either to appear before the Tribunal and make his submissions, or to instruct any learned counsel to make a request, on his behalf, to the

Tribunal to pass over the matter when it was taken up for consideration. The contention of Mr.L.R.Khatana, learned counsel, being based on no material whatsoever, we are unable to accept the same. Under Section 19(3) of the Administrative Tribunals Act, 1985, the Tribunal can summarily reject an application after recording its reasons, if it is not satisfied that the application is a fit case for adjudication or trial by it. The Tribunal, by its order dated 29.5.2015 (ibid), rejected the O.A. as it sought to quash and set aside the Tribunalôs order dated 4.9.2013 passed in OA No.739/2013. In the above view of the matter, we do not find any substance in the contention of Mr.L.R.Khatana, learned counsel, that as the applicants were not given a fair opportunity of making submissions as to maintainability of the O.A., there was an error apparent on the face of the order dated 29.5.2015(ibid).

17. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. In the instant case, the review applicants have not been able to show that there is an error apparent on the face of the record. The review applicants have also not been able to show any material error, manifest on the face of the order, dated 29.5.2015(*ibid)*, which undermines its soundness, or results in miscarriage of justice. If the review applicants are not satisfied with the order dated 29.5.2015 passed by the Tribunal in OA No.2046 of 2015, remedy lies elsewhere. The scope of review is very limited. It is not permissible for the Tribunal to act as an appellate court.

18. However, considering the facts and circumstances leading to filing of OA No. 2046 of 2015, we would like to observe here that rejection of OA No.2046 of 2015 will not be a bar for the review applicants to file a properly constituted O.A in accordance with the provisions of the Administrative Tribunals Act, 1985, if at all they are aggrieved by any order made or decision taken by the official respondents in relation to their transfer/movement from the present place of posting.

19. In the light of above discussions, we hold that the review applicants have not been able to make out a prima facie case for reviewing the order dated 29.5.2015 passed in OA No.2046 of 2015, and that the R.A. deserves to be rejected at the stage of admission.

20. Accordingly, the R.A. is rejected.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SUDHIR KUMAR)
ADMINISTRATIVE MEMBER

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