

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH****R.A. No.185/2016 In  
O.A. No.1881/1997****New Delhi this the 9th day of September, 2016****HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)  
HON'BLE MR. V.N. GAUR, MEMBER (A)**Ct. Surender Pal, S/o. Sh. Daya Nand,  
R/o Village & P.O. Nizampur,  
P. S. Sultanpur,  
Delhi.

..Review Applicant

Versus

1. The Chief Secretary,  
Govt. of NCT of Delhi,  
Old Secretariat, Delhi.
  2. The Commissioner of Police  
Delhi Police Head Quarters  
I.P. Estate, New Delhi.
  3. The Additional Commissioner of Police,  
Delhi Police Head Quarters,  
I.P. Estate, New Delhi.
  4. The Additional Deputy Commissioner of Police,  
Police Control Room, I.P. Estate,  
New Delhi.
- ....Respondents

**ORDER BY CIRCULATION****Justice M. S. Sullar, Member (J)**

The pith and substance of the facts and material, relevant for deciding the instant Review Application (RA) and exposted from the record, is that, review applicant was working as a Ct. in Delhi Police and was a habitual absentee and remained absent on 43 previous occasions. He was also marked absent vide DD No.9-B dated 24.05.1993. He again

remained absent w.e.f. 24.05.1993 till the date of his dismissal. Thus he was stated to have repeatedly committed grave misconduct while performing his official duty.

2. As a consequence thereof, departmental enquiry was initiated and Enquiry Officer (EO) was appointed. Agreeing with the findings of the EO, a penalty of dismissal from service was imposed on the review applicant by the Disciplinary Authority. Thereafter, he filed OA bearing No.1225/1996 which was dismissed. Dissatisfied thereby, he filed OA No.1881/1997, by means of which he was reinstated w.e.f 17.09.1993.

3. Subsequently, Delhi Police filed Writ Petition Civil in the Hon'ble High Court of Delhi which was accepted by means of order dated 04.09.2009 and the order passed by the Tribunal was set aside and matter was remitted back to the Tribunal to consider the other issues that the respondents may choose to raise. Instead of pursuing the matter, the review applicant had withdrawn the said OA. However, liberty was granted to him to prefer his remedy before the Departmental Authorities. Later on, applicant was again awarded the punishment of dismissal by the competent authority.

4. Having completed all the codal formalities and after having duly considered all the issues raised therein, the OA was dismissed, by a detailed order dated 20.07.2016, by this Tribunal, which, in substance, is as under:-

"33. Therefore, taking into consideration the material and evidence on record and the legal position, as discussed herein above, we are of

the considered opinion that the EO has correctly evaluated the evidence. Thereafter, the DA has rightly imposed the punishment of dismissal from service, which too was upheld by the Appellate Authority by recording cogent reasons and examined the matter in the right perspective. We do not find any illegality, irregularity or any perversity in the impugned orders. Hence, no interference is warranted in this case by this Tribunal.

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

35. In the light of the aforesaid reasons and thus seen from any angle, there is no merit and hence the instant OA deserves to be and is hereby dismissed as such, in the obtaining circumstances of the case. However, the parties are left to bear their own costs”.

5. Now the review applicant has filed the present RA bearing No.185/2016, for reviewing the indicated order, mainly on the grounds, which have already been considered and negated while deciding the main OA, by this Tribunal.

6. The main ground pressed into service by the Review Applicant to review the order is that, in all fairness, the respondents, if not satisfied with the services of the review applicant, could have asked him to seek voluntary retirement instead of imposing a harsh punishment of dismissal from service. In this regard, perusal of the records would show that he repeatedly remained absent from duty and even on some occasions, a lenient view in the matter of awarding punishment was taken, still applicant did not improve and remained wilfully and unauthorizedly absent from his duty. Therefore, the Disciplinary Authority has rightly imposed the penalty of dismissal from service on the review applicant. It is now well settled by the Hon'ble Apex Court in the case of ***U.O.I. & Others Vs. Bishamber Das Dogra (2009) 13 SCC 102*** that in case of misconduct of grave nature or indiscipline, even in absence of statutory rules, **the authority**

**may take into consideration the indisputable past conduct/service record of the employee for adding the weight to the decision of imposing the punishment, if the facts of the case so require.** It was also held that habitual absenteeism means, gross violation of discipline. Therefore, it cannot possibly be disputed that wilful absence from duty by a Government servant, is a serious misconduct. Above all, all the issues relatable to the disproportionality of awarding of sentence have already been considered and negated in the main judgment dated 20.07.2016 (Annexure-1) by this Tribunal. Hence, no ground to review the order is made out, which is *sine qua non* for seeking review of the order.

7. Sequelly, it is now well settled principle of law 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 ***Parsion 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.***

8. 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”.

9. 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 applicant has not pointed out any error apparent on the face of record warranting a review of the order dated 20.07.2016 (Annexure-1). Moreover, the issues now sought to be urged, were subject matter of the OA and have already been adjudicated upon by the Tribunal.

10. In the light of the aforesaid reasons, as there is no apparent error on the face of record, so no ground, much less cogent is made out to entertain the present Review Application, which is hereby dismissed by circulation, in the obtaining circumstances of the case.

**(V.N. GAUR)**  
**MEMBER (A)**

**(JUSTICE M.S. SULLAR)**  
**MEMBER (J)**  
**09.09.2016**

Rakesh