

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH****R.A. No.100/224/2016 and MA No. 3013/2016 In
O.A. No.100/4600/2015****Reserved On:10.01.2017
Pronounced On:13.01.2017****HON'BLE MS. NITA CHOWDHURY, MEMBER (A)**

Rohit Sarawat
 SI (Ex.) in Delhi Police,
 PIS No.16090173
 Aged about 31 years
 S/o Retd. Insp. Surender Kumar Sand
 R/o Quarter No.225, Type-II,
 PC Ashok Vihar, New Delhi. .Review Applicant

(By Advocate: Shri Anil Singal)

Versus

1. Govt. of NCT of Delhi
Through Commissioner of Police,
PHQ, IP Estate, New Delhi.
2. Deputy Commissioner of Police,
General Administration,
PHQ, IP Estate, New Delhi. ...Respondents

(By Advocate: Shri K.M. Singh)

ORDER

As is evident from the record, that the Original Application (OA) bearing No.4600/2015 filed by review applicant, Rohit Sarawat was dismissed, vide detailed order dated 27.09.2016. The order reads as under:-

"2. The brief background of these connected cases is that both Shri Ajab Khan, Head Constable (applicant No.2 in OA No. 461/2016) who is father of Ct. Mohd. Irshad (applicant No.1 in the same OA), and Shri Rohit Sarawat(applicant in OA No.4600/15), SI(Ex.) had created some unpleasantness between themselves being neighbours in the Govt. colony. The matter came up before the Commissioner of Police, Delhi and he took a decision vide order dated 11.11.2013 that "instead of cancelling, both be shifted out of the present locality and their new accommodation should be at least 6 kms apart". Both of them approached this Tribunal in OA No.3680/2013 and OA No. 3574/2013 and this Tribunal disposed of the matter on 01.09.2015, directing that the Commissioner may go ahead and implement his decision. Thereafter, the impugned orders dated 07.10.2015

(Annexure-A) was issued and Shri Ajab Khan was allotted Govt. Quarter No. 54-B (Ground Floor), Type-II, 3 OA No.4600/2015 with OA No.461/16 PC Model Town and Quarter No.B-9 (Ground Floor), Type-II, PS Sarai Rohilla to Shri Rohit Sarawat.

3. The present OAs are filed seeking quashing and setting aside of the orders dated 07.10.2015. Vide interim order dated 17.12.2015, this Tribunal stayed implementation of the said order in OA No. 4600/2015.

4. Proxy counsel for Shri Anil Singal, counsel for applicant appears on behalf of the applicant in OA No.4600/2015 and requested for adjournment in the matter. None appeared on behalf of the applicant in OA No.461/2015. However, learned counsel for the respondents stated that as a result of the stay in OA No. 4600/2015, the department is not able to utilize the quarters, which have been allotted to them, nor are the quarters being vacated by the applicants in both OAs, which is causing loss to the department. Moreover, it is also seen that in OA No.4600/2015 none has appeared on behalf of the applicant on 04.01.2006, 18.04.2016, 31.05.2016 and represented by proxy counsel on 16.03.2016. Similarly, in OA No.461/2016, learned counsel for applicant has not appeared on 31.05.2016 and 15.09.2016. Therefore, the matter was taken up for final disposal today. Needless to add, the interim relief granted is operating in the applicants' favour.

5. This Tribunal vide order dated 01.09.2015 in OA No.3680/2013 with OA No.3574/2013 gave direction to the Commissioner of Police to implement his order dated 11.11.2013. In the earlier OAs, the applicants had approached this Tribunal to allow them to continue in their existing residence and after considering their prayers, the Tribunal gave a specific finding that the Commissioner of Police may implement his order. The grounds cited by the applicants are not substantive and do not allege violation of any law/rule by the Commissioner of Police while passing the order dated 07.10.2015. Therefore, in my view these litigations are absolutely frivolous and only an attempt to continue staying in the old quarters. Accordingly, both these OAs are dismissed and the applicants are imposed cost of Rs.10,000/- (Rupees Ten Thousand only) each to be paid to the respondents, within a period of thirty days from the date of receipt of a certified copy of this order".

2. A perusal of the Review Application (RA) would reveal that review applicant has raised the following grounds in the RA:-

"(1) That the applicant filed the aforesaid OA 4600/2015 through his counsel Anil Singal, Advocate.

(2) That the Division Bench of this Hon'ble Tribunal was pleased to direct the respondents to maintain the status quo regarding possession of the quarter vide order dated 17.12.2015.

(3) That the Division Bench comprising Hon'ble Shri V. Ajay Kumar, Member (J) and Hon'ble Mr. P.K. Basu, Member (A) vide order dated 25.11.2014 in OA Nos. 2210/2014, 2809/2008, 458/2009 and 695/2013 directed as under:-

"All the matters of Shri Anil Singal, Counsel may be listed before a Bench where Hon'ble Mr. P.K. Basu, Member is not a Member".

(4) That Hon'ble Mr. P.K. Basu, Member (A) vide order dated 28.07.2016 even recused himself to hear the RA No.218/2014 where the OA was

decided by the Hon'ble Shri P.K. Basu, Member (A) himself whereas the RA was required to be heard by the same bench that passed the original order.

(5) That on 27.09.2016 OA filed through Anil Singal, Advocate was listed before the SB of Hon'ble Shri K.N. Srivastava in Court No.6 as last item No.32.

(6) That the SB in Court No.6 did not assemble and the matters of SB of Court No.6 were also directed to be taken up by the SB of Hon'ble P.K. Basu, Member (A) in Court No.5. However, the Registry failed to delete the Item No.32.

(7) That Hon'ble Shri P.K. Basu, Member (A) for the reasons best known to himself pleased to hear and dismiss the OA 4600/2015 with cost of Rs.10,000/- vide order dated 27.09.2016 whereas the matter was not supposed to be placed before the Hon'ble Shri P.K., Basu, Member (A) for hearing at all.

(8) That the judgment dated 27.09.2016 is contrary to order dated 25.11.2014 in OA No.2809/2008 with connected OAs whereby it was directed that all the matters (sic) of Anil Singal, Advocate be listed before a Bench in which Shri P.K. Basu is not a Member.

(9) That OA No.4600/2015 was listed before the Division Bench vide order dated 17.12.2015 was pleased to (sic) grant interim order directing to maintain the status quo possession of quarter by the applicant.

(10) That the OA No.4600/2015 was required to be listed before Division Bench for hearing since the Single Bench cannot pass any order nullifying the order dated 17.12.2015 passed by the Division Bench.

(11) That the judgment is also contrary to order dated 17.12.2015 in OA No.4600/2015 passed by the Division Bench since the same cannot be overturned by Single Bench.

(12) That the applicant seeks recalling and review of the order dated 27.09.2016 and restoration of status quo ante and matter be directed to be placed before a Division Bench where Shri P.K. Basu, Member (A) is not a Member".

3. The respondents have pleaded that the RA is not maintainable as the same has not been filed indicating any apparent error on the face of the record. Two interconnected OAs were decided by a common order as both were interrelated to one another. The review applicant in OA 4600/2015 did not appear on 04.01.2016, 18.04.2016, 31.05.2016 and was represented by proxy counsel on 16.03.2016. Even on 31.05.2016, the case was adjourned at the request of the proxy counsel of the applicant. Again on 27.09.2016, the proxy counsel for the applicant sought adjournment. They have also

averred that since review applicant was intentionally avoiding the arguments in the OA as he was enjoying interim relief and hence he is debarred from seeking review of the judgment passed in both the OAs by a common order as the issues were interrelated.

4. It was also pleaded that on 27.09.2016 the said OA was listed in Court No.6 as Item No.32. But due to administrative reason, a notice was given by the Registrar that all the matters listed before Court No.6 be taken up by Court No.5. That is how the case was taken up for hearing on 27.09.2016. Hence, they prayed for dismissal of the RA.

5. Heard the learned counsel for the parties and gone through the record.

6. Further, learned counsel for the applicant, Shri Anil Singal, Advocate for review applicant again appeared on 11.01.2017 at 03.50 PM in my Chamber and handed over copy of order passed in a separate RA No.218/2014 in OA No.749/2014 on 28.07.2016 unrelated to the OA's subject in this RA, which reads as under:-

“List before another bench, where one of us, viz. Hon’ble Mr. P.K. Basu, Member (A), is not a Member on 04.08.2016”, dated 28.07.2016.

He has also handed over a copy of order passed in OA No.2210/2014, OA No.2809/2008 with OA No.458/2009 and OA No.695/2013 whereby Hon’ble Mr. P.K. Basu, Member (A) has recused himself from hearing the matters of Shri Anil Singal, Advocate.

7. The Review applicant states that Mr. P.K. Basu, Member (A) has himself desired that all the matters of Shri Anil Singal, Advocate be listed before another Bench of which he is not a Member. Specific mention was made of OAs No.2210/2014, 2809/2008 with 458/2009 and 695/2013. On this request, the Hon'ble Chairman had ordered that all the above mentioned OAs be listed before a Bench of Hon'ble Mr. V. Ajay Kumar, Member (J) and Hon'ble Mr. V.N. Gaur, Member (A).

8. If a particular Bench was not available on a particular day and in administrative exigency, the matters of that Court were listed before another Court, it should not be held that Hon'ble Member (A), Mr. P.K. Basu has intentionally heard the matter finally and disposed it of. Further, simply because in some other matters, Hon'ble Member (A) Mr. P.K. Basu has recused himself, cannot be taken to mean that he is debarred from hearing matters in which a particular counsel represents some litigant. Moreover, proxy counsel was there for Shri Anil Singal, Advocate and only thereafter order was passed. Since stay was continuing in favour of the applicant, that's why he has raised all the frivolous points in this RA. All the points now pleaded in the RA, have already been duly considered and adjudicated upon in the main OA.

9. What cannot possibly be disputed here is, that 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. 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.***

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 as explained by Hon'ble Apex Court in the indicated judgments and not otherwise. As indicated hereinabove, all the issues now raised by the review applicant have already been considered and decided in the main judgment (Annexure R-1) by this Tribunal. Moreover, the review applicant has not pointed out any other error apparent on the face of record warranting a review of the order dated 27.09.2016 (Annexure R-1).

12. In the light of the aforesaid reasons, having perused the record, I find that there is no apparent error on the face of

record to entertain the present Review Application, which is hereby dismissed. As the RA has been dismissed, therefore, MA also stands dismissed. No costs.

(NITA CHOWDHURY)
MEMBER (A)

Rakesh