

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

**R.A 227/2015
O.A 15/2012
M.A 2882/2015**

New Delhi this the 4th day of February, 2016

Hon'ble Shri A. K. Bhardwaj, Member (J)

Krishan Kumar Sinha
S/o. Late Sh. Bharteshwari Prasad
Aged 65 years
(Retired Manager-Cum Sales Man
C-Type Departmental Canteen,
Indian Council of Medical Search
Head Quarter, Ansari Nagar,
New Delhi-110 029.
R/o. A-43, Anoop Nagar, Near Jeevan Park,
Uttam Nagar,
New Delhi-110 059.

...Review Applicant

(Applicant in person)

Versus

1. Union of India,
Through The Secretary
Government of India,
Ministry of Health & Family Welfare,
Nirman Bhawan, New Delhi - 110 001.
2. Director General
Nominee of the Director General
Ex Officio Chairman
Departmental Canteen Managing Committee
Indian Council of Medical Search
Ansari Nagar, New Delhi-110 029.
3. Director of Canteens
Department of Personnel & AR
Govt. of India
Ministry of Personnel Public Grievances & Pension
Lok Nayak Bhawan
Khan Market, New Delhi-110 003.

4. The Secretary,
Department of Expenditure
Ministry of Finance, Govt. of India
North Block,
New Delhi-110 001.

...Respondents

(By Advocate: Mr. Deepank Yadav for ICMR & Mr. B. K. Berera)

O R D E R (O R A L)

A. K. Bhardwaj, Member (J)

M.A 2882/2015 :

The prayer in the M.A is for impleadment of the General Secretary of All India, Central Govt. Canteen Employees Association as applicant no. 1. The Association was not applicant in the Original Application. There is no procedure for impleadment of fresh parties in Review proceedings.

2. The M.A is devoid of merit and accordingly dismissed.

R.A 227/2015 :

3. Though in the Review Application, the applicant has raised several grounds, during the course of hearing he made a reference to the office order No. 47/95 dated 05.04.1995 passed by the Assistant Registrar, Supreme Court of India and submitted that since the Supreme Court Departmental Canteens have been taken on the strength of the Hon'ble Supreme Court of India with effect from 01.10.1991, the applicant should also be benefited by the same. As has been dealt with in the order under review, the

ICMR could have already taken a decision vide order No. 16/23/86-Admn.II (Vol.5) dated 19.05.1992 to the effect that the employee of Canteen may be extended all the benefits as available to other Central Government employees except GPF, Pension and Group Insurance Scheme. Once the applicant has availed the benefit of said O.M. and has not questioned the same, in terms of the provisions of the O.M. itself, he is not entitled to pension, GPF and GIS.

4. It is staire decisis that after disposal of the Original Proceedings, Courts/Tribunals becomes functus officio. The only exception to the principle is Review Application, which is maintainable only on limited grounds viz.

- (1) There is an error apparent on the face of record;
- (2) Production of certain documents, which could not be produced at the time of final adjudication despite due diligence; and
- (3) There is some other sufficient reason.

None of the yardsticks are satisfied by the applicant who appeared in person in the present case. The application for review cannot be entertained as an appeal in disguise. In **Union of India v. Tarit Ranjan Das**, 2004 SCC (L&S) 160, the Hon'ble Supreme Court ruled thus:

“13. The Tribunal passed the impugned order by reviewing the earlier order. A bare reading of the two orders shows that the order in review application was in complete variation and disregard of the earlier order and the strong as well as sound reasons contained therein whereby the original application was rejected. 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 order and rehearing of the matter to facilitate a change of opinion on merits. The Tribunal seems to have transgressed its jurisdiction in dealing with the review petition as if it was hearing an original application. This aspect has also not been noticed by the High Court.”

5. In **Kamlesh Verma Vs. Mayawati and others**, (2013) 8 SCC 320, the Hon’ble Supreme Court has provided both the negative and the affirmative *lis* where a review is maintainable or not maintainable. For the sake of clarity, we extract the relevant portion as under:-

“20. 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 "any other sufficient reason" has been interpreted in Chhajju Ram v. Neki, [AIR 1922 PC 112] and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius & Ors., [(1955) 1 SCR 520], to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in Union of India v. Sandur Manganese & Iron Ores Ltd. & Ors., [JT 2013 (8) SC 275].

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.”

6. The aforementioned view is also supported by the decision of the Hon'ble Supreme Court in **State of West Bengal and others v. Kamalsengupta and another**, (2008) 8 SCC 612.

7. It is also the procedure that normally the application for review should be filed through counsel who represented the parties in the Original proceedings. In the present case, the learned counsel who had represented the applicant has not associated himself with the present Review proceedings. Various grounds raised in para 5(a) of the R.A raised by the applicant do not fall within the purview of the Review Application. The R.A is devoid of any merit and is accordingly dismissed. No costs.

(A.K. Bhardwaj)
Member (J)

/Mbt/