

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

R.A.NO.235 OF 2016
(In OA No.3349/14)

New Delhi, this the 27th day of October, 2016

CORAM:

**HONBLE SHRI P.K.BASU, ADMINISTRATIVE MEMBER
AND
HONBLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER**

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1. Anju Sharma, Staff Nurse,
Aged about 47 years,
Daughter of Mr.Mange Ram,
Resident of House no.9, Block E-2,
Street no.1, Shastri Nagar,
Near Metro Station, Delhi 110052
Date of Appointment/working as Staff Nurse in erstwhile Municipal Corporation of Delhi since: 07.05.1992
Presently posted at: G.C.J. AVPH, Karampura, North Delhi Municipal Corporation,
Delhi

2. Ritu Khurana, Staff Nurse,
Aged about 46 years,
Wife of Mr.Rakesh Khurana,
Resident of: 4/28, Jangpura-B,
Bhogal, New Delhi,
Date of Appointment/working as Staff Nurse in erstwhile Municipal Corporation of Delhi since 07.05.1992
Presently posted at: T.B.Chest Clinic,
South Delhi Municipal Corporation, Nehru Nagar, Delhi

3. Indumati Jamwal, Staff Nurse,
Aged about 48 years,
Wife of A-80, First Floor,
Meera Bagh, Paschim Vihar, New Delhi,
Date of Appointment/working as Staff Nurse in
erstwhile Municipal Corporation of Delhi since 11.05.1989.

presently posted at Hindurao Hospital,
North Delhi Municipal Corporation,
Delhi

4. Jyoti Sharma, Staff Nurse,
Aged about 44 years,
w/o Mr.Anurag Sharma,
resident of GG-1/204-A,
Vikaspuri, New Delhi 110018,
Date of Appointment/working as Staff Nurse in
Erstwhile Municipal Corporation of Delhi since 26.03.1994.
Presently posted at Lala Lajpat Rai Ayurvedic Panchkarm Hospital,
South Delhi Municipal Corporation,
Rajouri Garden,
New Delhi 110027

í í Petitioners.

(By Advocate: Mr.Pradeep Kumar)

Vs.

1. North Delhi Municipal Corporation,
Service to be effected upon/through its Commissioner,
At: Dr.S.P.Mukherjee Civic Centre,
Minto Road, New Delhi 110002
2. East Delhi Municipal Corporation,
Service to be effected upon/through its Commissioner,
At: 419, Udyog Sadan,
Patparganj Industrial Area,
New Delhi 110096
3. South Delhi Municipal Corporation,
Service to be effected upon/through its Commissioner,
At: Dr.S.P.Mukherjee Civic Centre,
Minto Road, New Delhi 110002
4. Government of N.C.T.Delhi,
Service to be effected upon/through its Principal Secretary,
At Department of Health & Family Welfare,

9th Level, Delhi Secretariat, I.P.Estate,
New Delhi 110002

THERMODYNAMICS

ORDER
(By Circulation)

Per RAJ VIR SHARMA MEMBER(D):

The review petitioners were applicants in OA No.3349 of 2014. The present 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 12.9.2016 passed by the Tribunal dismissing OA No.3349 of 2014 as being devoid of merit.

2. 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.

3. 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.

4. 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:

35. 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 "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.

5. 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:

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" 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 "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in *Union of India vs. Sandur Manganese & Iron Ores Ltd.* (2013(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.ö

6. 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 12.9.2016 passed in OA No.3349 of 2014.

7. In support of their prayer for reviewing the order dated 12.9.2016, *ibid*, the review petitioners have mainly urged that the Tribunal erred in holding that the respondent-MCD was not bound by the provisions contained in the letter dated 9.4.2000 issued by the Government of India, and that it would be wholly illegal to deny placement of the senior most persons in the upgraded posts with effect from 15.7.1998 with a view to award them financial upgradation under the ACP Scheme with effect from 9.8.1999, and to place the junior persons in the upgraded posts with effect from 15.7.1998.

8. We have carefully perused the records of OA No.3349 of 2014 together with the order dated 12.9.2016, *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 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 to 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 the record or for some reason akin thereto. The review petitioners have not shown any material error, manifest on the face of the order dated 12.9.2016, *ibid*, which undermines its soundness or results in miscarriage of justice. If the review petitioners are not satisfied with the order 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.

12. In the light of what has been discussed above, we do not find any merit in the R.A. The R.A. being devoid of merit is dismissed at the stage of circulation itself. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(P.K.BASU)
ADMINISTRATIVE MEMBER