

**Central Administrative Tribunal
Principal Bench, New Delhi.**

**RA-246/2015 in
OA-3661/2013
MA-3157/2015**

New Delhi this the 23rd day of September, 2015.

**Hon'ble Mr. Shekhar Agarwal, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)**

Sh. Lalit Kumar Vimal,
S/o late Sh. Chanderpal Singh,
R/o H.No. 181, Pocket-D8,
Sector-6, Rohini,
Delhi-85.

..... Review Applicant

Versus

1. The Chief Secretary,
Govt. of NCT of Delhi,
I.P. Estate, New Delhi.

2. Govt. of NCT of Delhi
Through its Secretary,
Health and Family Welfare Department,
Technical Recruitment Cell,
9th Level, A-Wing, Delhi Secretariat,
New Delhi-2.

3. The Medical Superintendent,
Bhagwan Mahavir Hospital,
Pitampura, Delhi-34. Respondents

ORDER (By Circulation)

Mr. Shekhar Agarwal, Member (A)

This review application has been filed by the OA applicant for review of our order dated 26.05.2015 by which the OA-3661/2013 had been disposed of. In his application, it has been stated that in Para-8.2 of the order this Tribunal has observed as follows:-

"In our opinion, even if a show cause notice had been issued, under the circumstances, it would have been an empty formality. There was nothing

which the applicants could have stated in their reply, which would have altered the anomalous position that had occurred due to grant of higher scale to O.T. Technicians. If we now quash the order of the respondents and direct them to issue a show cause notice to the applicants, it would be an exercise in futility. In our considered opinion, the circumstances that exist in this case warrant that an exception be made to the general rule following the principles of natural justice."

2. According to the review applicant, there was an error apparent in this order and if this was allowed to stand, it would result in serious miscarriage of justice. The above observation of the Tribunal is hit by Article-19 (1)(f) of the Constitution and was contrary to the established principles of law laid down by Hon'ble Supreme Court. This Tribunal has failed to consider that had a show cause notice been issued to the review applicant, he could have explained in details the history of the case. As such, issue of show cause notice was not an empty formality. The Tribunal also failed to appreciate that the applicant had been granted the pay scale of Rs.5000-8000 as far as back in the year 2002. He was also regularized in terms of the order dated 04.12.2002 in Wit Petition (C) No.1629/2010 and the respondents were not at liberty to deviate from the terms and conditions of that order as sanctified by the Hon'ble High Court of Delhi. The review applicant had been working on ad hoc basis since 2002 and cannot be allowed to stagnate in the same pay scale in years to come. The Tribunal also committed an error in coming to the conclusion that excess had been paid to the applicant, which cannot be recovered in terms of Hon'ble Supreme Court's judgment in the case of **State of Punjab & Ors. Etc. Vs. Rafiq Masih (White Washer etc.) in** Civil Appeal No. 11527/2014 & Other connected cases because no excess amount had ever been paid to him and whatever was paid was as per the entitlement of the review applicant. The Tribunal has also not appreciated that the review applicant has been condemned without being given an opportunity of hearing. This Tribunal should have followed strictly the

judgments of Hon'ble High Court of Delhi in Writ Petition (C) No. 4899/2011

(GNCTD & Ors. Vs. Uma Lohani) along with the case **GNCTD Vs. Raja Ram** in which the Hon'ble High Court has given certain directions in Paras-32 & 33. The review applicant was similarly situated as Uma Lohani and deserved to be treated in similar way. The review applicant has further stated that his counsel had restricted the relief only to violation of principles of natural justice but this could not be binding on him being contrary to his interest. The review applicant has further argued that the purpose of review is to ensure justice and it should not be defeated by errors, which can lead to miscarriage of justice. Such an error should be rectified as has been held by Hon'ble Supreme Court in the case of **Lily Thomas, etc. etc. vs. UOI & Ors**, 2000(6)SCC 224.

3. We have perused the grounds taken by the review applicant as mentioned above. In our opinion none of these grounds is indicating any error in the judgment apparent on the face of the record. The review applicant is, in fact, trying to reargue the case and questioning our finding that issue of show cause notice in this case would have been an empty formality and, therefore, if the order of the respondents was quashed and they were directed to issue a show cause notice, it would be an exercise in futility as there was nothing, which the applicant could have stated in their reply to the show cause notice, which would have altered the anomalous position that had occurred due to grant of higher pay scale to OT Technician. If the applicant is aggrieved by these findings, the appropriate remedy for him would have been to approach higher judicial forum. Questioning the findings of the Court is outside the purview of the review application. If we were to allow this review application, we would be sitting in appeal over our own order and rehearing the case.

3.1 While considering the scope of review, Hon'ble Supreme Court in the case of **Aribam Tuleshwar Sharma Vs. Aribam Pishak Sharma**, (1979) 4 SCC 389 referred to an earlier decision in the case of **Shivdeo Singh Vs. State of Punjab**, AIR 1963 SC 1909 and observed as under:-

"It is true as observed by this Court in **Shivdeo Singh v. State of Punjab**, AIR 1963 SC 1909, there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which is inherent in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all matters or errors committed by the Subordinate Court."

3.2 Similarly in the case of **Ajit Kumar Rath Vs. State of Orissa and Others**, AIR 2000 SC 85 the Apex Court reiterated that power of review vested in the Tribunal is similar to the one conferred upon a Civil Court and held:-

"The provisions extracted above indicate that the power of review available to the Tribunal is the same as has been given to a court under Section 114 read with Order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application on account of some mistake or error apparent on the face of the record or for any other sufficient reason. 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. **It may be pointed out that the expression "any other sufficient reason" used in Order 47 Rule 1 means a reason sufficiently in the rule.**

Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment."

[Emphasis added]

3.3 In the case of **Gopal Singh Vs. State Cadre Forest Officers' Assn. and Others** [2007 (9) SCC 369], the Apex Court held that after rejecting the original application filed by the appellant, there was no justification for the Tribunal to review its order and allow the revision of the appellant. Some of the observations made in that judgment are extracted below:-

"The learned counsel for the State also pointed out that there was no necessity whatsoever on the part of the Tribunal to review its own judgment. Even after the microscopic examination of the judgment of the Tribunal we could not find a single reason in the whole judgment as to how the review was justified and for what reasons. No apparent error on the face of the record was pointed, nor was it discussed. Thereby the Tribunal sat as an appellate authority over its own judgment. This was completely impermissible and we agree with the High Court (Justice Sinha) that the Tribunal has traveled out of its jurisdiction to write a second order in the name of reviewing its own judgment. In fact the learned counsel for the appellant did not address us on this very vital aspect."

4. We are, therefore, of the opinion that this review application is devoid of merit. Accordingly, it is dismissed in circulation.

(Raj Vir Sharma)
Member (J)

(Shekhar Agarwal)
Member (A)

/Vinita/