

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

**R.A.NOS.109 & 248 OF 2015**

(In OA No.3423/10)

New Delhi, this the 11<sup>th</sup> day of January 2016

**CORAM:**

**HON'BLE SHRI SUDHIR KUMAR, ADMINISTRATIVE MEMBER**

**&**

**HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER**

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**R.A.NO.109/15:**

Shri Jagdish Chandra,  
s/o late Shri Udai Ram,  
House No.N-11B,  
Street No.1, Shadatpur Extension,  
Delhi 110094  
DOB 14-06-1951

.....

Petitioner

(In Person)

Vs.

1. Delhi Transport Corporation,  
Govt. of NCT,  
I.P. Estate,  
New Delhi  
Through its Chairman cum Managing Director
2. Govt. of NCTD,  
Through Secretary-cum-Commissioner,  
Transport Department,  
5/9, Under Hill Road,  
Delhi 110 054
3. Regional Provident Fund Commissioner,  
Bhavishya Nidhi Bhawan,  
28, Community Centre,

Wazirpur Industrial Area,  
Delhi - 110 052

.....Respondents

(By Advocate: Mr.M.K.Singh for Ms. Avnish Ahlawat)

In RA No.248/15:

1. Delhi Transport Corporation,  
Govt. of NCT,  
I.P. Estate,  
New Delhi  
Through its Chairman cum Managing Director

2. Govt. of NCTD,  
Through Secretary-cum-Commissioner,  
Transport Department,  
5/9, Under Hill Road,  
Delhi 110 054

3. Regional Provident Fund Commissioner,  
Bhavishya Nidhi Bhawan,  
28, Community Centre,  
Wazirpur Industrial Area,  
Delhi - 110 052

..... Petitioners

(By Advocate: Mr.M.K.Singh for Ms.Avnish Ahlawat )

Vs.

1. Shri Jagdish Chandra,  
S/o late Shri Udai Ram,  
House No.N-11B,  
Street No.1, Shadatpur Extension,  
Delhi-110 094  
D.O.B. 14-06-1951

2. Shri S.K. Mohadikar,  
S/o Shri K.M. Mohadikar,  
Flat No. 80, Pocket B,  
New M.I.G. Mayur Vihar,  
Phase-III,  
Delhi - 110 096  
D.O.B. 26-02-1961

3. Shri Harvinder Kumar Arora,  
S/o Shri Devi Dayal Arora,  
54/9 (3rd Floor) Ashok Nagar,  
Post Office Tilak Nagar,  
New Delhi - 110 018  
D.O.B. 13-08-1956
4. Smt Nirmal Bisht,  
W/o Shri Lok Pal Singh Bisht,  
Flat No.8, Jai Laxmi Apptt.  
I.P. Extn., Patpar Ganj,  
Delhi - 110 092  
D.O.B. 15-08-1956
5. Smt. Shanti Verma,  
W/o Shri Tilak Raj Verma,  
89D, Pocket-1, Mayur Vihar Phase-1,  
Delhi - 110 091  
D.O.P.B. 15-10-1955
6. Shri Vimal Kumar Vajpayee,  
S/o Late Shri Shiv Mangal Vajpayee,  
I/2052, Durga Mandir Marg,  
East Ram Nagar,  
Shahadra, Delhi - 110 032  
D.O.B. 01.01.1955
7. Shri Ramesh Kumar Sharma,  
S/o Shri J.P. Sharma,  
202, Chander Vihar,  
Delhi - 110 092  
D.O.B. 19-07-1959
8. Shri Naresh Kumar Sharma,  
S/o Late Shri Ram Kishan Sharma,  
House No.236 Chand Nagar,  
(Near Tilak Nagar),  
New Delhi - 110 018  
D.O.B. 30.04.1958
9. Shri Kuldeep Raj Sharma,  
S/o Shri R.C. Sharma,  
WZ-196-C/1, Street No.3,  
Virender Nagar,  
New Delhi - 110 058

D.O.B. 26.01.1959

.....Respondents

(Respondent No.1-In person)

.....

### ORDER

RAJ VIR SHARMA, MEMBER(J):

R.A.No.109 of 2015 is filed by Mr.Jagdish Chandra, who was one of the nine applicants in OA No.3423 of 2010. R.A.No.248 of 2015 is filed by Delhi Transport Corporation and others, who were respondents in OA No.3423 of 2010.

2. In RA No.109 of 2015, the review petitioner prays for the following reliefs:

- õ(a) Review the order dated 1<sup>st</sup> April, 205 passed in OA No.3423/2010 and allow the application in favour of applicant and direct to respondents to grant the pension/pensioneary benefits to applicant from the date of his entitlement for pension along with interest and other consequential benefits; and
- (b) pass such other and further order as this honøble Tribunal may deem fit and proper in the facts and circumstances of the case.ö

3. In RA No.248 of 2015, the review petitioners pray for the following reliefs:

- õa) Review the order dated 1<sup>st</sup> April 2015 passed in OA No.3423/2010 and dismissed the OA as being the same is devoid of any merits.
- b) Pass such other and further order as this Honøble Court may deem fit and proper and circumstances of the case.ö

4. Before proceeding to consider the cases of the respective parties, and the contentions raised by them, we would like to refer to the

following decisions of the Honøble Supreme Court regarding the scope of review, and power of review exercisable by judicial forums, including the Tribunal established under the Administrative Tribunals Act, 1985.

4.1           In **Meera Bhanja (Smt.) v. Nirmala Kumari Choudhury (Smt.)**, 1995(1) SCC 170, the Honøble Supreme Court has held that an error apparent on the face of record must be such an error which must strike one on mere looking at the record. An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evidence and if it can be established, it has to be established by lengthy and complicated arguments, such an error cannot be cured in a review proceedings.

4.2           In **Ajit Kumar Rath v. State of Orissa and others**, (1999) 9 SCC 596, the Honøble 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.

4.3 In **Union of India v. Tarit Ranjan Das**, 2004 SCC (L&S) 160, the Honøble 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.

4.4 In **State of West Bengal and others v. Kamal Sengupta and another**, (2008) 2 SCC (L&S) 735, the Honøble Apex Court has scanned various earlier judgments and summarized the principles laid down therein which read thus:

õ35. 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 õany other sufficient reasonö 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.

4.5 The Honøble 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 Baselios Catholicos v. Most Rev. Mar Poulouse 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.* (23013(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 negated.

5. Keeping in mind the principles laid down by the Honøble Apex Court in the aforesaid decisions, let us consider the claim of the review petitioners in both the R.As. and find out whether a case has been made out by them for reviewing the order dated 1.4.2015 passed in OA No.3423 of 2010.

6. The Tribunal had partly allowed O.A.No.3423 of 2010, vide its order dated 1.4.2015, the operative part of which reads thus:

õthe respondent-DTC is directed to move the appropriate Government, i.e., Central Government for according approval of exemption under Section 17(1C) of the Act of 1952 and to decide the claim of the applicants after the decision of the appropriate Government is received by them. The respondent-DTC is also directed to take appropriate steps for completing the entire exercise, including decision on the applicant's claim, within a period of three months from today. As the Central Government is not a party-respondent in the present O.A., we refrain ourselves from issuing any direction to the Central Government. However, we would like to observe that the respondent-DTC is at liberty to bring this order to the notice of



the Central Government, while putting up the proposal seeking exemption under Section 17(1C) of the Act of 1952. Ordered accordingly.ö

7. In RA No.109 of 2015, the review petitioner has stated, *inter alia*, that by the Government of India, Ministry of Surface Transport (Transport Wing)œ notification dated 5.8.1996, the President has delegated the power of the Central Government to the Lieutenant Governor of the National Capital Territory of Delhi in respect of the Delhi Transport Corporation. Accordingly, the Government of India, Ministry of Surface Transport, vide letter dated 5.8.1996, transferred the Delhi Transport Corporation from the Central Government to the Government of NCT of Delhi. Copies of the said notification and letter of the Government of India, Ministry of Surface Transport (Transport Wing), have been filed by the review petitioner along with the R.A.

7.1 Opposing R.A.No.109 of 2015, the respondent-DTC has filed a counter reply, wherein the fact of transfer of Delhi Transport Corporation from the Central Government to the Government of NCT of Delhi has not been disputed.

8. In RA No.248 of 2015, the review petitioners have stated that the applicants in OA No.3423 of 2010 (review petitioner in RA No.109 of 2015 and others) were not entitled to pension under the DTC Pension Scheme introduced by the DTC, vide office order dated 27.11.1992, on the basis of the options exercised by them in response to the office order dated 28.10.2002. The review petitioners have also stated that the legality and/or

validity of the order issued by the RPFC refusing exemption under Section 17(1C) of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the 'Act of 1952') has already been examined by the Tribunal in OA No.1157 of 2010, and the Tribunal, vide its order dated 26.7.2011, has dismissed the said O.A. It has also been stated by the review petitioners that the refusal of exemption by the RPFC, and consequential order issued by the RPFC imposing penalty of Rs.207 Crores on the DTC, are the subject-matters of challenge in W.P. (C) No.1712 of 2013, which is still pending before the Hon'ble High Court of Delhi. Therefore, RA No.109 of 2015 and OA No.3423 of 2010 are liable to be dismissed, and RA No.248 of 2015 has to be allowed. In support of their contentions, the review petitioners in RA No.248 of 2015 have drawn our attention to the decision of the Hon'ble Supreme Court in **DTC Retired Employees' Association and others v. Delhi Transport Corporation and others**, (2001) 6 SCC 61; the decisions of the Hon'ble High Court of Delhi in **DTC v. Madhu Bhushan Anand**, 172(2010) DLT 668, and in **Rati Bhan v. Delhi Transport Corporation**, WP ( C ) No. 7477 of 2011; and the decisions of the Tribunal in O.A.No.1157 of 2010( decided on 26.7.2011), O.A.No.4482 of 2011 (decided on 27.3.2013) and O.A.No.2999 of 2011 (decided on 30.9.2013).

8.1 A counter reply to RA No.248 of 2015 has been filed by respondent no.1-Shri Jagdish Chandra (who is review petitioner in RA

No.109 of 2015 and was one of the nine applicants in OA No.3423 of 2010) refuting the stand taken by the review petitioners.

9. We have perused the pleadings of the parties in OA No.3423 of 2010, the judgment dated 22.7.2013 passed by the Honøble High Court of Delhi in W.P. ( C ) No. 672 of 2012, the order dated 1.4.2015 passed by the Tribunal in OA No.3423 of 2010, and the records of RA No.109 and 248 of 2015. We have heard the review petitioner in RA No.109 of 2015 and the learned counsel appearing for the review petitioners in RA No. 248 of 2015.

10. As per the direction issued by the Honøble High Court of Delhi in its judgment dated 22.7.2013 passed in W.P. (C) No. 672 of 2012, the Tribunal had to consider and decide the question as to whether the RPFC rightly refused the exemption under Section 17(1C) of the Act of 1952. While considering the said question, it was found by the Tribunal that the RPFC was not competent to grant or refuse exemption under Section 17(1C) of the Act of 1952. However, on the basis of the materials available on records of OA No. 3423 of 2010, the Tribunal found that the Central Government was the -appropriate Governmentø which could consider the proposal of the Delhi Transport Corporation for grant of exemption under Section 17(1C) of the Act of 1952 and take appropriate decision in the matter. Accordingly, the Tribunal, while partly allowing OA No.3423 of 2010, vide its order dated 1.4.2015, directed the respondent-Delhi Transport Corporation to move the Central Government for according exemption under Section 17(1C) of the Act of 1952, and to decide the claims of the applicant-

review petitioner and others, after the decision of the Central Government was received by them. From the Government of India's notification and the letter dated 5.8.1996, *ibid*, copies of which have been filed by the review petitioner in RA No.109 of 2015, it is evident that the Delhi Transport Corporation has been transferred from the Central Government to the Government of NCT of Delhi. Therefore, the Government of NCT of Delhi was the appropriate Government which could consider the proposal of the Delhi Transport Corporation for according exemption under Section 17(1C) of the Act of 1952. In this view of the matter, we find that there is a patent error in the order dated 1.4.2015, *ibid*, which can be corrected by way of review, and the words 'Central Government' appearing in paragraph 15 of the order dated 1.4.2015, *ibid*, have to be read as 'Government of NCT of Delhi'

11. After going through the orders passed by the Tribunal and the judgments passed by the Hon'ble High Court of Delhi in the cases referred to and relied on by the review petitioners in RA No.248 of 2015 and respondent no.1 in RA No.109 of 2015, we find that the question, as formulated by the Hon'ble High Court of Delhi in its judgment dated 22.7.2013 passed in W.P. (C) No. 672 of 2012 was neither raised by the parties, nor was the same considered by the Tribunal and the Hon'ble High Court of Delhi. The judgment dated 22.7.2013, *ibid*, passed by the Hon'ble High Court of Delhi being binding on all concerned, including the Tribunal, we are not inclined to accept the contention of the review petitioners in RA

No.248 of 2015 that the question of grant of exemption is no longer required to be gone into by the Tribunal in OA No. 3423 of 2010 or in RA No.109 of 2015. We also find that the rival contentions raised by the review petitioners in both the RAs regarding entitlement of the review petitioner in RA No.109 of 2015 and other similarly persons for pension under the DTC Pension Scheme introduced vide office order dated 27.11.1992,*ibid*, do not deserve consideration by us in the present proceedings.

12. The other contention of the review petitioners in RA No. 248 of 2015 is that W.P. (C) No. 1712 of 2013 has been filed by the Delhi Transport Corporation challenging the decisions of the RPFC refusing exemption under Section 17(1C) of the Act of 1952 and imposing penalty of Rs.207 Crores, and that since the said W.P. (C) No. 1712 of 2013 is still pending before the Honøble High Court of Delhi, R.A.No.109 of 2015 and OA No.3423 of 2010 are liable to be dismissed. We do not find any substance in this contention of the review petitioners in RA No.248 of 2015. The subject-matters of W.P. ( C) No. 1712 of 2013 are different from that of O.A.No.3423 of 2010 and W.P ( C ) No. 672 of 2012. In compliance with the direction issued by the Honøble High Court of Delhi in its judgment dated 22.7.2013 passed in W.P. (C) No. 672 of 2012, the Tribunal had decided OA No.3423 of 2010, vide order dated 1.4.2015, which is sought to be reviewed in both the R.As. In the present proceedings, we are only required to see whether, or not, the order dated 1.4.2015, *ibid*, is liable to be reviewed.

13. In the light of our above discussions, we pass the following orders:

- (1) R.A.No.109 of 2015 is partly allowed. The order dated 1.4.2015 passed by the Tribunal in OA No.3423 of 2010 is partially reviewed and/or modified. The respondent-DTC is directed to move the respondent-Government of NCT of Delhi for according exemption under Section 17(1C) of the Act of 1952, and to decide the claim of the applicant-review petitioner and other similarly placed persons, after the decision of the Government of NCT of Delhi is received by them. The respondent-DTC and respondent-Government of NCT of Delhi are directed to take appropriate steps for completing the entire exercise within a period of three months from today.
- (2) R.A.No.248 of 2015 is dismissed.

14. No order as to costs.

**(RAJ VIR SHARMA)**  
**JUDICIAL MEMBER**

**(SUDHIR KUMAR)**  
**ADMINISTRATIVE MEMBER**

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