

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

**RA-264/2016 in
OA-3342/2014
MA-3363/2016**

New Delhi this the 16th day of November, 2016.

Hon'ble Mr. Shekhar Agarwal, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)

Sh. Om Prakash Verma,
S/o Late Sh. Ramdeen,
R/o B-1/297, Sector-G,
Jankipuram, Lucknow, UP.
Presently posted as
Special Secretary,
Department of Home,
Government of U.P.,
Civil Secretariat, Vidhan Bhawan,
Lucknow.

..... Review Applicant

Versus

1. Union of India through
Secretary,
Department of Personnel & Training,
Ministry of Personnel,
Public Grievances and Pensions,
Govt. of India, New Delhi.
2. State of U.P. through
Its Principal Secretary,
Department of Appointment and
Personnel, Govt. of U.P.
Lal Bahadur Shastri Bhawan,
Lucknow-226001.
3. Union Public Service Commission
Through its Secretary,
Dholpur House, Shahjahan Road,
New Delhi-110069.

.... Respondents

O R D E R (By Circulation)
Mr. Shekhar Agarwal, Member (A)

This Review Application has been filed by the OA applicant for review of our order dated 07.10.2016, the operative part of which reads as follows:-

“7. Thus, after consideration of all the judgments relied upon by the parties and the arguments advanced by them, we are of the opinion that this O.A. can be disposed of with the following directions:-

- (i) Respondent No.2 Govt. of U.P. shall communicate to the applicant his APAR for the year 2005-2006 within two weeks from the date of receipt of a certified copy of this order.
- (ii) The applicant can then make a representation for upgradation of the APAR within two weeks thereafter.
- (iii) In the event of such a representation being made, the Government of U.P. shall decide the same in accordance with Rules within six weeks thereafter.
- (iv) In case the applicant succeeds and there is a material change in his APAR, a review meeting of the Selection Committee shall be convened by the respondents to reconsider induction of the applicant in the IAS through the Selection List of 2010 within eight weeks thereafter.
- (v) If the applicant is found suitable then he shall be so appointed with all consequential benefits within six weeks thereafter.”

2. The review applicant has contended that instead of giving direction to the respondents to communicate the below bench APAR of the year 2005-06 to him and then give him an opportunity to

make a representation against the same, this Tribunal should have directed the respondents to hold a review DPC to consider the candidature of the applicant after ignoring the aforesaid APAR. He has stated that the UPSC has issued guidelines for promotion to All India Services which lay down that if there is an un-communicated adverse remark in the character roll, the same shall be ignored while considering the candidature of an officer.

3. We have considered the aforesaid submission of the review applicant. This issue has been dealt with by us in paras-6.5. & 6.6 of the judgment. We have held that the judgment of Apex Court in the case of **Abhijit Ghosh Dastidar Vs. UOI**, 2009(16) SC 146 cannot be followed in view of the judgment of Hon'ble High Court of Delhi in the case of **UOI & Ors. Vs. Swati S. Patil** [WP(C) No. 4018/2011] wherein it has been held that non-reasoned direction in the decision in **Abhijit Ghosh Dastidar's** case (supra) was an exercise of power vested in the Hon'ble Supreme Court under Article 142. We have further opined that law laid down by Hon'ble Supreme Court in the case of **Dev Dutt Vs. UOI**, JT 2008(7) SC 463 was to be followed that all APARs need to be communicated and employee given an opportunity to make a representation, if he so desired. Thus, this issue has been dealt with by us in details along with reasons.

4. By suggesting that respondents should have been directed to hold review DPC, the review applicant is not pointing out any error

apparent on the face of the record. Rather, he is questioning our finding on this issue and trying to re-argue the case. This is clearly beyond the scope of the review application. If the applicant was aggrieved by our finding, remedy lay elsewhere and not in filing review application.

5. 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."

5.1 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]

5.2 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."

6. In view of the aforesaid, we do not find merit in this review application and the same is dismissed in circulation.

(Dr. Brahm Avtar Agrawal)
Member (J)

(Shekhar Agarwal)
Member (A)

/Vinita/