

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

R.A. No.21/2017 in
O.A. No.-4341/2010

New Delhi this the 10th day of February, 2017

Hon'ble Mr. Raj Vir Sharma, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)

Mangat Singh,
Ex. Sr. O.T. Technician,
G-441, Dakshin Puri,
New Delhi-62.

-Review Applicant

Versus

1. Medical Superintendent
Safdarjung Hospital, Govt. of India,
Office of Medical Superintendent,
New Delhi-110 029.
2. Union of India through its Secretary,
Ministry of Health, Government of India,
New Delhi.

-Respondents.

O R D E R (By circulation)

Mr. K.N. Shrivastava, Member (A):

This Review Application (RA) has been filed by the review applicant under Section 22 (3) (f) of Administrative Tribunals Act, 1985, read with Rule 17 of Central Administrative Tribunal (Procedure) Rules, 1987, seeking review of this Tribunal's order dated 01.10.2016 passed in OA No.4341/2010. The grounds pleaded in the RA for seeking review of the order of this Tribunal are as under:-

“6.1....This Tribunal while deciding the abovementioned O.A., has given a finding as “there is nothing on record to prove that the applicant was indeed wanting himself to be relieved from CGHS FAP cell in Supreme Court for availing the said promotion and that the concerned authority in CGHS FAP Cell came in his way.” Which is ignorance of para h and i mentioned in para 3 above. It is respectfully submitted that in para h and i of the grounds, the Applicant has clearly mentioned about his representations for relieving him from CGHS FAP cell in Supreme Court and has also annexed Annexures A-5 and A-6 for substantiating his point. However, the said averments as well as the annexures have missed the attention of this Hon’ble Tribunal.

6.2 This Hon’ble Tribunal could not address the issue of Pay protection and regularization of overstay on deputation, despite there being clear submissions to this effect in the OA, as the same could not be canvassed properly by the Applicant.

6.3 The issue for consideration before this Hon’ble Tribunal was that whether the Applicant is entitled for promotion and further that, even if the Applicant is not entitled for promotion, whether he is entitled for protection and regularization of his overstay on deputation and consequential benefits. However, this Hon’ble Court has been pleased to decide the issue of promotion only as the issues fixed in para 5 of the judgment under review, that too while annexures P-5 and P-6 has missed the attention of this Hon’ble Tribunal.

6.4....as there was no issue framed by this Hon’ble on Pay protection and regularization of overstay on deputation, the important aspect regarding the applicability of judgment of M.R.Gupta vs. Union of India (1995) 5 SCC 628 for the purpose of refixation of pension of the Applicant has missed the attention of this Hon’ble Tribunal. It is respectfully submitted that the said judgment has been found to be non-applicable in case of promotion, but fact remains that if the issue of refixation of salary/pension of the Applicant would have been decided, the judgment of M.R.Gupta would have assumed importance.

6.5 This aspect has missed the attention of this Hon’ble Tribunal that the Respondent ought to have protected pay of the applicant which was drawing deputation and till he joined respondent No.1 after release by the department where he was on deputation.”

2. From a plain reading of the RA and the grounds pleaded therein, it appears that the review is in the nature of an appeal.

3. The *sine qua non* for review of an order is existence of apparent error on the face of record. The review applicant has failed to bring out any such apparent error in the order of the Tribunal.

4. Hon'ble Supreme Court in the case of **Kamalesh Verma vs. Mayawati** (2014) (1) SCC (L&S) 96, after examining the review power of the Courts under the Constitution, Cr. PC and CPC, has laid down the following nine principles when review will not be maintainable:-

- o(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.”

5. In view of the aforementioned principles laid down by the Hon'ble Apex Court and also taking into consideration in fact that the review applicant has failed to bring out any apparent error in the order of the Tribunal, the RA is dismissed, in circulation, being devoid of any merit.

(K.N. Shrivastava)
Member (A)

(Raj Vir Sharma)
Member (J)

cc.