

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

R.A.NO.276 OF 2012

(In OA No.2827/11)

&

MA NO.2592 OF 2012

New Delhi, this the 28th day of October, 2016

CORAM:

**HON'BLE SHRI SUDHIR KUMAR, ADMINITRATIVE MEMBER
AND**

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

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1. Manoj Kumar s/o late Shri Pratap Singh
r/o H.No.1/47 A, Gali No.4
Vishwash Nagar, Shahdara, Delhi-32
2. Sanjeev Rattan s/o late Shri Manphool Singh
r/o A-127, West Nathu Colony
Gali No.2/4 Shahdara, Delhi-93
3. Gaurav Kumar Varun s/o late Shri Devender Kumar
r/o B-227/A, Gali No.11
Bhajanpura, Delhi-53
4. Smt. Geeta Shukla d/o late Shri Suraj Pal Shukla
r/o 11 A Rani Garden, Shastri Nagar
Delhi-31
5. Ajay Kumar s/o late Smt. Kamlesh
H.No.A-29, Buddha Marg
Mandawali, Delhi-92

í í í ..Applicants

(By Advocate: Mr. M K Bhardwaj)

Versus

The Municipal Corporation of Delhi

1. Through its Commissioner
Municipal Corporation of Delhi
Civic Centre, Minto Road
New Delhi-2
2. The Director (Personnel)
Civic Centre, Minto Road
New Delhi-2
3. Sanjay Kumar b/o Lt. Ms. Sushma
Serving as LDC

4. MCD, Civic Centre, Minto Road, New Delhi
Ms. Sunita d/o Lt. Shri Dharma Singh
Serving LDC
MCD Civic Centre Minto Road, New Delhi
5. Shri Sanjay s/o late Shri Yadram
Serving LDC
MCD Civic Centre Minto Road, New Delhi
6. Shri Brijesh s/o Lt. Shri Surrender Kr. Sharma
Serving LDC
MCD Civic Centre Minto Road, New Delhi
7. Mahesh Chand Sikka s/o late Shri Ramesh Chand Sikka
Serving LDC
MCD Civic Centre Minto Road, New Delhi
8. Rajesh Kumar s/o Lt. Shri Uday Singh
Serving LDC
MCD Civic Centre Minto Road, New Delhi
9. Rajender Singh Rawat s/o Lt Shri Puran Singh Rawat
Serving LDC
MCD Civic Centre Minto Road, New Delhi
10. Sunder Lal s/o Lt. Shri Ram Kishan Saini
Serving LDC
MCD Civic Centre Minto Road, New Delhi
11. Sanjay Kumar Batra s/o late Shri Manohar Lal Batra
Serving LDC
MCD Civic Centre Minto Road, New Delhi
12. Raj Pal s/o Lt. Smt. Imarti Devi
Serving LDC
MCD Civic Centre Minto Road, New Delhi
13. Mahesh Kumar s/o Lt. Shri Udai Singh
Serving LDC
MCD Civic Centre Minto Road, New Delhi
14. Naresh Kumar s/o Lt. Shri Nathu Ram
Serving LDC
MCD Civic Centre Minto Road, New Delhi
15. Sonu Parcha d/o late Shri Jagdish Chand
Serving LDC
MCD Civic Centre Minto Road, New Delhi
16. Tajender Nath s/o late Shri P K Bhattacharya
Serving LDC
MCD Civic Centre Minto Road, New Delhi

17. Suchi Gupta d/o late Smt. Vijay Laxmi
Serving LDC
MCD Civic Centre Minto Road, New Delhi
18. Bharti d/o late Shri Deeda Ram
Serving LDC
MCD Civic Centre Minto Road, New Delhi
19. Praveen Kumar s/o late Shri Bijender Singh
Serving LDC
MCD Civic Centre Minto Road, New Delhi
20. Manoj Kumar s/o late Shri Mange Ram
Serving LDC
MCD Civic Centre Minto Road, New Delhi
21. Manoj Kumar s/o late Shri Mange Ram
Serving LDC
MCD Civic Centre Minto Road, New Delhi
22. Vikas Bharti s/o late Shri Roshan Lal
Serving LDC
MCD Civic Centre Minto Road, New Delhi

(Service to respondent no.3 to 22 may be effected through respondent no.2)

í í í ...Respondents

ORDER

Per RAJ VIR SHARMA, MEMBER(J):

We have perused the records of O.A.No.2827 of 2011 and RA No.276 of 2012, and have heard Mr.M.K.Bhardwaj, the learned counsel appearing for the review petitioners, and Mr.Sandeep Chhabra, the learned counsel appearing for respondent nos. 1 to 5.

2. The review petitioners were applicants in OA No.2827 of 2011. 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 27.1.2012 passed by the Tribunal dismissing OA No.2827 of 2011 as being barred by limitation, and also being devoid of merit.

3. M.A.No.2592 of 2012 is filed by the review petitioners seeking condonation of delay in filing of the review application. In view of the

decision of the Full Bench of the Tribunal in *Raghava Reddy, AE and others v. Union of India*, 2010(1) SLJ(CAT) 1, we have considered the prayer of the review petitioners for condonation of delay in filing of the R.A. Considering the reasons stated by the review petitioners, we allow MA No.2592 of 2012 and condone the delay in filing of the R.A. Accordingly, MA No. 2592 of 2012 is disposed of.

4. 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.

5. 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.

6. 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.”

7. The Honorable 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. (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 negatived.

8. 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 27.1.2012 passed in OA No.2827 of 2011.

9. In support of their prayer for reviewing the order dated 27.1.2012, *ibid*, the review petitioners have submitted that the Tribunal failed to appreciate the facts and circumstances of the case, and erred in holding that the O.A. was barred by limitation. The review petitioners have also submitted that the Tribunal failed to consider their submission that when the official respondent nos. 1 to 5 had prepared a common panel in which they (review petitioners) and private respondent nos. 6 to 25 were included, and when they (review petitioners) and private respondent nos. 6 to 25 were initially appointed against Group -DØ posts on the basis of the said panel, and further when, according to the official respondent nos. 1 to 5, they (review petitioners) were ineligible to the appointed to the posts of LDC, the appointment of private respondent nos.5 to 25 was unsustainable.

10. We have very carefully considered the above submissions of the review petitioners.

11. 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. Save and except repeating their old arguments, which have been overruled by the Tribunal, vide its order dated 27.1.2012, *ibid*, the review petitioners have not shown any material error, manifest on the face of the order dated 27.1.2012, *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 have no hesitation in holding that the review petitioners have not been able to make out a case for reviewing the order dated 27.1.2012, *ibid*. The R.A. being devoid of merit is dismissed. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SUDHIR KUMAR)
ADMINISTRATIVE MEMBER