CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
R.A.NO.32 OF 2016
(In OA No.31/15)
New Delhi, this the 8th day of February, 2016
CORAM:
HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

Delhi Transport Corporation,
Through its Chairman-cum-Managing Director,
I.P.Estate, New Delhi 110002 Petitioner

(By Advocate: Ms. Ruchira Gupta)

Vs.
Anil Luthra,
Aged 63 years,
s/o late Sh.J.R.Luthra,
Ex.Dy.Manager (Per), T.No.290, DTC HQ, 1492,
Otram Line,
G.T.B.Nagar (Kingsway Kamp),
Delhi 110009 Respondent

ORDER
(By Circulation)

The review petitioner was respondent in OA No.31 of 2015. The present review petition is filed 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 23.12.2015 passed by the Tribunal partly allowing OA No.31 of 2015 to the extent indicated in the said order.

2. In **Meera Bhanja (Smt.) v. Nirmala Kumari Choudhury (Smt.),** 1995(1) SCC 170, the Hon'ble 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.

3. 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.

4. 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.

5. 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

various earlier judgments and summarized the principles laid down therein which read thus:

> ñ35. 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 ñany other sufficient reasonò 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.ò

6. The Hon'ble 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:

> ñ20. 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 ñany other sufficient reasonò 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 ña reason sufficient on grounds at least analogous to those specified in the ruleò. 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.ò

7. Keeping in mind the principles laid down by the Honôble Apex Court in the above decisions, let me consider the claim of the review petitioner and find out whether a case has been made out by it for reviewing the order dated 23.12.2015 passed in OA No.31 of 2015.

8. In support of its claim for reviewing the order dated 23.12.2015, *ibid,* the review petitioner, besides reiterating more or less the same averments and contentions as in its counter reply, has stated that the decision of the Tribunal in **Raj Singh v. Delhi Transport Corporation and another,** OA No.4329 of 2012, is not applicable to the case of the applicant in OA No.31of 2015(respondent in the review petition). The Tribunal, while passing the order dated 23.12.2015,*ibid,* did not take into account the representation of the applicant in OA No.31 of 2015 requesting the respondent in OA No.31 of 2015 (review petitioner) to grant him the benefit either under the EPS-95 Scheme through RPFC or the DTC Pension Scheme. The Tribunal has also failed to appreciate the facts that every month subscription to the CPF Account was being deducted from the salary of the applicant (respondent in the review petition); that the applicant (respondent in the review petition), while in service, had applied for sanction of advance of 90% from CPF Account; and that the applicant (respondent in the review petition) received the employerôs share in the CPF. The Tribunal also failed to notice the decision of the Tribunal in **Delhi Transport**

Corporation Vs. Madhu Bhushan Anand, 172(2010) DLT 668 (DB), and the decisions of the Tribunal in **Lal Singh Vs. Government of NCT,** OA No.4293 of 2011, decided on 22.3.2013, and in **B.R.Khokha Vs. The Chairman-cum-Managing Director, DTC,** OA No.4464 of 2014, decided on 28.7.2015.

9. After going through the records of OA No.31 of 2015 and the order dated 23.12.2015, *ibid,* I have found no substance in the contentions of the review petitioner. After considering the relevant pleadings of the parties, and after referring to the decisions of the Hon'ble Supreme Court in **D.T.C.Retired Employees Association & others,etc. Vs. Delhi Transport Corporation, etc.,** JT 2001 (Suppl.1) SC 144, the decision of the Hon'ble High Court of Delhi in **Delhi Transport Corporation, etc. Vs. Madhu Bhushan Anand, etc.**(supra), and the decisions of the Tribunal in **Lal Singh Vs. Govt. of NCT of Delhi and others** (supra), **B.R.Khokha Vs. The Chairman-cum-Managing Director, DTC** (supra), and **Raj Singh Vs. Delhi Transport Corporation & another** (supra), the Tribunal, vide paragraphs 8 to 13, has observed and held as follows:

> ñ8. In **Raj Singh's** case (supra), the applicant had joined the service of the respondentï DTC on 1.10.1964 and retired from service on superannuation on 30.11.2004. Admittedly, in response to the office order dated 27.11.1992, ibid, the applicant did not exercise option for pension, nor did he indicate in writing to continue to be the member of the Contributory Provident Fund Scheme. Referring to the observations of the Hon'ble Supreme Court in **DTC Retired Employees Association & others, etc., etc**.(supra), and of the Hon'ble High Court of Delhi in **Madhu Bhushan Anand's** case (supra), it was held by the Tribunal that the applicant being an existing employee as on 27.11.1992, when the office order dated 27.11.1992, ibid, was promulgated by the respondent-DTC, he was deemed to have opted for the pension scheme benefits in terms of paragraph 9 of the office order dated 27.11.1992, ibid.

Accordingly, the respondent-DTC was directed to pay pension to the applicant with effect from the date following the date of his retirement, along with arrears of pension and interest thereon at the same rate as applicable to EPF/GPF. In W.P. (C) No. 4728 of 2014, decided on 30.7.2014, the Hon'ble High Court of Delhi has upheld the Tribunal's decision in **Raj Singh's** case (supra).

9. In **Lal Singh's** case (supra), the applicants had not opted for pension under the DTC Pension Scheme, but had opted to be continued with the Contributory Provident Fund Scheme. On their retirement, the applicants had received, without any protest, both their contribution to the CPF, as well as the employer's contribution. Therefore, the Tribunal held that the applicants were not entitled to pension.

10. In **B.R.Khokha's** case (supra), on similar fact situation, the Tribunal reiterated its view as taken in **Lal Singh's** case (supra).

11. In the present case, it is the admitted position between the parties that the applicant was an existing employee when the office order dated 27.11.1992, ibid, was issued by the respondent-DTC, and that the applicant did not give in writing to continue with the Contributory Provident Fund Scheme. Therefore, in terms of paragraph 9 of the Pension Scheme dated 27.11.1992, ibid, he was deemed to have opted for the pension scheme benefits, as has been observed by the Hon'ble Supreme Court and the Hon'ble High Court of Delhi. The respondent-DTC has not rebutted the statement of the applicant that prior to the date of his retirement, he made a representation dated 19.9.2011 (Annexure A/5) requesting the respondent DTC to grant him pension. Without deciding the claim of the applicant, as raised by him in the representation dated 19.9.2011, ibid, the respondent DTC paid the employer's share in the CPF to the applicant. On the facts and in the circumstances of the case, I find that the applicant's case is squarely covered by the decision of the Tribunal in **Raj Singh's** case (supra) which has been upheld by the Hon'ble High Court of Delhi.

12. As already discussed, the facts of **Lal Singh's** case (supra) and **B.R.Khokha's** case (supra) are different from that of the present case, and therefore, the decisions of the Tribunal in those cases are of no help to the case of the respondent-DTC.

13. In the light of above discussions, I have no hesitation in holding that the applicant is entitled to pension under the DTC Pension Scheme dated 27.11.1992, ibid. Accordingly, the respondent-DTC is directed to pay pension to the applicant with effect from the date following the date of his retirement, along with arrears of pension, within three months from today. The employer's share in the CPF, and other benefits, if any, which were not payable to the applicant, but were paid to him on his retirement by the respondent-DTC, shall be refunded by the applicant to the respondent-DTC within two months from today. It is, however, made clear that if the applicant does not make the aforesaid refund, the respondent-DTC shall be at liberty to withhold the sanction of payment of pension. As no direction is issued to the respondent-DTC to pay interest on the arrears of pension, etc., the applicant shall not pay any interest on the amount of refund to be made by him to the respondent-DTC.ò

From the foregoing, it is clear that the review petitioner (respondent in OA No.31 of 2015) has repeated its old arguments which have been overruled by the Tribunal, vide order dated 23.12.2015, *ibid*. 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 evidence/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 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 record or for some reason akin thereto. The review petitioner has not shown any material error, manifest on the face of the order, dated 23.12.2015, *ibid*, which undermines its soundness, or results in miscarriage of justice. If the review petitioner is not satisfied with the order dated 23.12.2015, *ibid,* 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. Therefore, the Review Application is dismissed at the stage of circulation itself.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

AN