

**Central Administrative Tribunal  
Principal Bench  
New Delhi**

RA No.40/2016  
MA No.553/2016  
in  
OA No.4678/2014

Order Reserved on: 27.05.2016

Pronounced on:31.05.2016.

**Hon'ble Mr. V. Ajay Kumar, Member (J)**  
**Hon'ble Mr. K.N. Shrivastava, Member (A)**

1. Union of India through its Secretary,  
Ministry of Defence,  
Govt. of India,  
South Block, New Delhi-110001.
2. Controller General of Defence Accounts,  
Ulan Batar Road, Palam,  
Delhi Cantt-110010.

-Review Applicants

(By Advocates Shri A.K. Behera with Shri Ajesh Luthra)

-Versus-

1. Smt. Reena Tandon,  
Aged about 41 years,  
W/o Shri Vijay Narain Tandon,  
R/o House no. A-19E, DDA Flats,  
Munirka.

(By Advocate Shri Rajinder Nischal)

2. Secretary, UPSC,  
Dholpur House,  
Shahjahan Road,  
New Delhi-110011.

(By Advocate Shri Amit Sinha for Shri R.V. Sinha for R-2)

**ORDER**

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

This Review Application (RA) has been filed by the review applicants (respondents 2&3 in OA-4678/2014) under Rule 17 of the Central Administrative Tribunal (Procedure) Rules, 1987, seeking review of the order dated 07.09.2015 in OA no.4678/2014.

2. The issue involved in the OA was as to writing of the APAR of the respondent no.1 in the RA (applicant in OA-4678/2014) for the period 25.04.2011 to 30.09.2011. The Tribunal in the order under review has observed that the applicant in the OA (respondent no.1 in the RA) was on Child Care Leave (CCL) for about three months and after deducting it, the reporting period would get reduced to less than three months and as such no APAR can be written for the said period. Accordingly, the Tribunal vide the order dated 07.09.2015 in OA no.4678/2014 has ordered as under:

“6. In the wake, once there is change in the ACR of the applicant to be taken into account to consider her promotion to SAG, her case need to be reconsidered for such promotion by convening reviewing DPC within a period of 3 months from the date of receipt of a copy of this order. It goes without saying that review DPC would assess the candidature of the applicant in accordance with the extant rules and instructions on the subject and would taken into consideration the ACR pertaining to the period, immediately preceding the one, ACRs for which were taken into account by original DPC.”

3. Pursuant to the notices issued, the respondents entered their appearance. The case was taken up for preliminary hearing on 24.05.2016. Shri Rajinder Nischal, learned counsel for the review applicants and Shri A.K. Behera with Shri Ajesh Luthra, learned counsel for the respondents argued the case. The main contention of the learned counsel for the review applicants was that the DoP&T OM no.21011/1/2006-Estt.(A) dated 16.01.2006 (Annexure RA-3) was not taken into consideration by the Hon'ble Tribunal while passing the order dated 07.09.2015 in OA no.4678/2014.

4. On the other hand, the learned counsel for the respondents in the RA, submitted that it is not correct to say that the Tribunal did not take cognizance of the Annexure RA-3 OM dated 16.01.2006 of DoP&T. Shri A.K. Behera, drew our attention to para-8 of the RA, wherein the review applicants themselves have stated that during the course of hearing of the arguments in OA-4678/2014, the provisions contained in DoP&T OM dated 16.01.2006 were made part of the arguments and as such, the review applicants have not brought out any new document, which was not considered by the Tribunal earlier nor have they pointed out any apparent error in the face of the Tribunal's order dated 07.09.2015 in OA no.4678/2014.

5. We have considered the arguments put-forth by the learned counsel for the parties. We have gone through the contents of the Annexure R-3 OM dated 16.01.2006 issued by the DoP&T. The said OM states that the earned leave (EL) taken for a duration of more than 15 days can be deducted from the reporting period of an APAR. Meaning thereby that if the EL has been taken for a period of less than 15 days, the said period will not be deducted from the period under report.

6. In the instant case, the Tribunal in its order under review has noted that respondent no.1 in the RA (applicant in the OA) was on CCL for about three months and had ordered that the said period should be deducted from the reporting period (from 22.05.2011 to 30.09.2011). After deduction, the reporting period becomes less than 03 months and hence APAR for the said period cannot be written. Hence, we do not find any ground, much less, any valid ground for reviewing the order dated 07.09.2015 in OA no.4678/2014.

7. On the issue of review of its order by the Tribunal, the Supreme Court in the case of **State of West Bengal & others V. Kamal Sengupta and another** (2008) 3AI SLJ 209 has held that “the Tribunal can exercise powers of a Civil Court in relation to matter enumerated in clauses (a) to (i) of sub-section (3) of Section

(22) of Administrative Tribunal Act including the power of reviewing its decision.”

At Para (28) of the judgment, the principles culled out by the Supreme Court are as under:-

“(i) The power of Tribunal to review its order/decision under Section 22(3) (f) of the Act is akin/to analogous to the power of a Civil Court under Section 114 read with order 47 Rule (1) of CPC.

(ii) The Tribunal can review its decision on either of the grounds enumerated in order 47 Rule 1 and not otherwise.

(iii) The expression “ any other sufficient reason” appearing in Order 47 Rule 1 has to be interpreted in the light of other specific grounds

(iv) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as a error apparent in the fact of record justifying exercise of power under Section 22(2) (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 a larger bench of the Tribunal or of a superior court

(vii) A decision/order cannot be reviewed under Section 22(3)(f).

(viii) 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.

(ix) 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.”

8. The Supreme Court in the case of **Kamlesh Verma Vs. Mayawati** (2014) 1 SCC (L&S) 96, after examining the review

power of courts, the Apex Court has laid down, inter alia, the following principles when 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 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 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.”

9. In the case of **Meera Bhanja (Smt.) Vs. Nirmala Kumari Choudhary (Smt.)** (1991)1 SCC 170, the Supreme Court has held:

“The review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of order 47 Rule 1 CPC. The review petition has to be entertained only on the ground of error apparent on the face of record and not on any other ground. An error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on points where there may conceivably be two options. The limitation of powers of courts under Order 47 Rule 1 CPC is similar to jurisdiction available to

the High Court while seeking review of the orders under Article 226.”

10. In the case of **Union of India Vs. Tarit Ranjan Das** 2004 SCC (L&S) 160, the Supreme Court has observed as under:-

“The Tribunal passed the impugned order by reviewing the earlier order. A bare reading of the two order shows that the order in review application was in complete variation and disregard of the earlier order and the strong as well as sound reasons contained therein whereby the original application was rejected. The scope of review is rather limited and it is not possible for the forum hearing the review application to act as an appellate authority in respect of the original order by a fresh and rehearing of the matter to facilitate a change of opinion on merits. The Tribunal seems to have transgressed in jurisdiction in dealing with the review petition as it was hearing original application. This aspect has also not been noticed by the High Court.”

11. In view of the rulings of the Hon’ble Supreme Court in the **Kamel Sen Gupta** (supra), and other cases as cited above, and in view of the discussion in para-8, we do not find any ground for reviewing the order of the Tribunal dated 07.09.2015 in OA No.4678/2014. Accordingly the RA is dismissed.

**(K.N. Shrivastava)**  
**Member (A)**

**(V. Ajay Kumar)**  
**Member (J)**

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