

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

R.A. No.42/2017 in
O.A. No.-4248/2011

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)

Mrs. Sunita Mehra
Aged 51 years, Group "B
w/o Mr. Subodh Mehra "
R/o I-750, Palam Vihar, Gurgaon – 122017

-Review Applicant

Versus

1. Secretary of Education
Govt. of NCT of Delhi
Department of Education Secretariat Building
IP Estate, New Delhi
2. Director of Education
Government of NCT of Delhi
Directorate of Education
Old Secretariat Building,
New Delhi
3. Mr. Jang Bahadur
Dy. Director of Education
(South West District)
Najafgarh, New Delhi
4. Mrs. Usha Sharma
Vice Principal
Sarvodaya Kanya Vidyalaya
Rajnagar II, Palam Colony
New Delhi – 45
Also at House No.346, Sect 22 Gurgaon – 122001 Haryana
5. Mr. Vikas Kalia
PS/LA to Director of Education
Office of the Director of Education
Old Secretariat, New Delhi

..Respondents

O R D E R (By Circulation)

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

This Review Application (RA) has been filed 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 08.12.2016 passed in OA No.4248/2011. The operative part of the order reads as under:-

"13. The law laid down by the Hon'ble Supreme Court in the cases of **Dev Dutt (supra) and Abhijit Ghos Dastidar v. Union of India & others** (Civil Appeal No.6227/2008) decided on 22.10.2008 make it mandatory for communicating the adverse ACRs to the concerned government employee. The ratio of law laid down in **V.S. Arora's** case (supra) by the Hon'ble High Court of Delhi requires that the adverse ACRs should be communicated within a reasonable period of time. The ACRs for the years 2008-09 and 2009-10 had been, admittedly, communicated to the applicant (Annexure A-1). The 'average' grading given in the ACRs have remained unaltered, as the representation of the applicant against the ACRs of 2008-09 and 2009-10 has been rejected by the competent authority vide Annexure A-2 rejection order. As such, the applicant could not have been granted the MACP benefits.

14. In the conspectus of the discussion in the foregoing paragraphs, we do not find any illegality in the action of the respondents in denying the MACP financial upgradation to the applicant in view of her ACRs for the years 2008-09 and 2009-10 being below the benchmark. Hence, we dismiss the O.A. as it is bereft of any merit. No order as to costs."

2. The applicant in the RA has not brought out any apparent error on the face of the order. On the contrary, she has pleaded almost the same grounds which she has done in the OA for claiming the reliefs. The order of the Tribunal clearly notices that the applicant was denied MACP financial upgradation on the ground of her ACRs for the years 2009-09 and 2009-10 being below benchmark. It is further noticed that these

ACRs were communicated to the applicant (Annexure A-1) and her representations for upgradation of the ACRs have been rejected by the Competent Authority vide Annexure A-2 order.

3. The review applicant has miserably failed to bring out any apparent error on the face of the order of the Tribunal.

4. The *sine qua non* for reviewing the order of the Tribunal is existence of an apparent error on the face of record. The review applicant has failed in pointing out such an apparent error in the order of the Tribunal.

5. Laying down the guidelines for review of its order by the Tribunal, the Hon'ble Supreme Court in the case of **State of West Bengal & Others vs. Kamal Sen Gupta & Another (2008) 3 AISLJ 202** held that Tribunal can review its order under eight situations as given in Para (28) of the said judgment, which are as follows:

"(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 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 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.”

6. In the conspectus of the discussions in pre-paras, we do not find any merit in the RA. The RA is accordingly dismissed, in circulation.

(K.N. Shrivastava)
Member (A)

(Raj Vir Sharma)
Member (J)

cc.