

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

R.A.NO. 61 OF 2016

(In OA NO.3984 OF 2013)

New Delhi, this the 17th day of March, 2016

CORAM:

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

AND

HON'BLE SHRI K.N.SHRIVASTAVA, ADMINISTRATIVE MEMBER

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Indian Council of Medical Research,

through its Authorized Signatory

V.Ramalingaswamy Bhawan,

Ansari Nagar,

Post Box 4911,

New Delhi 110029

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Petitioner

(By Advocate: Mr.R.N.Singh)

Vs.

1. Dr.Bela Shah,
D/o Dr.S.M.Shah,
Aged 59 years,
R/o C-4/186, Sector 36, Noida 201303, U.P.

2. Dr.V.M.Katoch,
Director General,
Indian Council of Medical Research,
V.Ramalingaswamy Bhawan,
Ansari Nagar,
Post Box 4911
New Delhi 110029

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Respondents

ORDER

(By Circulation)

RAJ VIR SHARMA, MEMBER(J):

The review petitioner-Indian Council of Medical Research was respondent no.1 in OA No.3984 of 2013. Dr.Bela Shah (respondent no.1 in

the review petition) was applicant in OA No.3984 of 2013. Dr.V.M.Katoch, Director General, Indian Council of Medical Research (respondent no.2 in the review petition) was respondent no.2 in OA No.3984 of 2013.

2. The review application is accompanied by an affidavit sworn by Mr.Joginder Pal, Assistant Director-General (Admn.), Indian Council of Medical Research, New Delhi.

3. The present review application is filed by the review petitioner-Indian Council of Medical Research (respondent no.1 in OA No.3984 of 2013) 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 12.1.2016 passed by the Tribunal dismissing OA No. 3984 of 2013, as being devoid of merit.

4. In **Ajit Kumar Rath v. State of Orissa and others**, (1999) 9 SCC 596, the Honøble 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 Honøble 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 Honøble Apex Court has scanned its various earlier judgments and summarized the following principles:

õ35. 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 õany other sufficient reasonö 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.ö

7. The Honøble 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 Poullose 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 negated.ö

8. Keeping the above enunciation of law in mind, let us consider the claim of the review petitioner and find out whether a case has been made out by it for reviewing the order dated 12.1.2016 passed in OA No.3984 of 2013.

9. In support of its claim for reviewing the order dated 12.1.2016, *ibid*, the review petitioner has urged that the submission of the learned counsel appearing for the applicant, as noted by the Tribunal in paragraph 12 of the order dated 12.1.2016, *ibid*, that ~~no~~ charge sheet has yet been served on the applicant in the departmental proceedings contemplated against herø, is contrary to the fact inasmuch as the charge sheet was served upon the applicant, vide charge memorandum bearing No.VIG/02/2008(Pt) dated 27/30.04.2015, which was challenged by the applicant in OA No.3428 of 2015. The review petitioner has stated that OA No. 3428 of 2015 was also listed before the Tribunal on 23.11.2015, 24.11.2015 and 3.12.2015. The facts of service of the charge sheet on the applicant, and the filing of OA No.3428 of 2015 were not noticed by the Tribunal, while observing in paragraph 12.3 of the order dated 12.1.2016, *ibid*, that ~~the~~ Central Vigilance Commission is yet to render the necessary advice in the matter and to send back the duly vetted charge sheets to the ICMR for proceeding in the departmental inquiry after serving the charge sheet on the applicantø, and that ~~the~~ disciplinary proceeding against the applicant has been contemplated, and the disciplinary authority has submitted the charge sheets to the Central Vigilance Commission for vetting and adviceø. Thus, it is submitted by the review petitioner that paragraphs 12 and 12.3 of the order dated 12.1.2016 contain factual errors which need to be corrected by way of review.

10. We have carefully perused the materials available on record of OA No.3984 of 2013, and the order dated 12.1.2016, *ibid*, which is sought to be reviewed.

11. In paragraph 12 of the order dated 12.1.2016, *ibid*, the Tribunal has only noted the submission of the learned counsel appearing for the applicant. While considering the said submission of the learned counsel, the Tribunal referred to the pleadings and materials available on record of OA No.3984 of 2013. On the basis of materials available on record, the Tribunal recorded its findings and/or observations in paragraph 12.3 of the order dated 12.1.2016, *ibid*.

11.1 If at all the charge sheet dated 27/30.4.2015 was served on the applicant during the pendency of O.A.No.3984 of 2013, it was the bounden duty of the review petitioner (respondent no.1 in OA No. 3984 of 2013) to bring the said fact to the notice of the Tribunal, by filing additional affidavit along with copy of the charge sheet, soon thereafter, or at least at the time when O.A. No.3984 of 2013 was finally heard in December, 2015, but the review petitioner failed to do so.

11.2 The observations made by the Tribunal in paragraph 12.3 of the order dated 12.1.2016, *ibid*, are found to have been based on the additional affidavit filed by Mr.Joginder Pal, Assistant Director General (Admn.), Indian Council of Medical Research, New Delhi, on 22.9.2014, along with the correspondences between the ICMR and the Central Vigilance Commission. After 22.9.2014, no further additional affidavit was filed on behalf of the respondents in OA No. 3984 of 2013. The matter was listed for hearing on 16.10.2014, 8.12.2014, 9.12.2014, 21.1.2015, 10.2.2015, 12.3.2015, 13.3.2015, 15.4.2015, 20.4.2015, 12.5.2015, 13.5.2015, 29.5.2015, 13.7.2015, 21.7.2015, 14.8.2015, 19.8.2015, 24.8.2015, 27.8.2015, 27.10.2015, 3.11.2015, 16.11.2015, 24.11.2015, 3.12.2015, and 10.12.2015. On some of the dates, the matter was even heard in part, and, on some dates, was adjourned at the instance of the respondents. On none of the dates,

when the matter was taken up for hearing, the respondents brought the fact of service of charge sheet on the applicant.

11.3 The review petitioner, or, for that matter, Mr.Joginder Pal, Assistant Director General (Admn.), ICMR, who has sworn the affidavit filed along with the R.A., has given no explanation whatsoever as to why the fact of service of charge sheet dated 27/30.4.2015 on the applicant could not be brought to the notice of the Tribunal, though O.A.No.3984 of 2012 was taken up for hearing on several dates, and was finally heard in December, 2015.

11.4 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. The review petitioner has not shown any material error, manifest on the face of the order dated 12.1.2016, *ibid*, which undermines its soundness or results in miscarriage of justice.

12. After having considered the averments made, and contentions raised by the review petitioner in the R.A., in the light of the decisions cited *supra*, we do not find any merit in the R.A. Accordingly, the R.A. is dismissed at the stage of circulation itself. Consequently, the M.A. Nos.1003 & 1004 of 2016 filed by the review petitioner for exemption from filing certified copy of the order dated 12.1.2016, and for condonation of delay in filing of the R.A., are disposed of.

(K.N.SHRIVASTAVA)
ADMINISTRATIVE MEMBER

(RAJ VIR SHARMA)
JUDICIAL MEMBER