

**Central Administrative Tribunal
Principal Bench, New Delhi.**

**RA-72/2017
MA-876/2017 in
CP-509/2016 in
OA-2218/2013**

New Delhi this the 14th day of March, 2017.

Hon'ble Mr. Shekhar Agarwal, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

Sh. Raj Bahadur
Retired Income Tax Officer,
S/o Late Sh. Ram Swaroop,
Aged about 65 years,
R/o K-3311, Shastri Nagar,
Meerut-250004(Uttar Pradesh).

.... Review Applicant

Versus

1. Sh. Atulesh Jindal,
Chairman,
Central Board of Direct Taxes,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi-110001.
2. Miss Rani S. Nair,
Chair Person,
Central Board of Direct Taxes,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi-110001.
3. Miss Nishi Singh,
Member (P&V), Central,
Central Board of Direct Taxes,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi-110001.

.... Respondents

ORDER (By Circulation)**Mr. Shekhar Agarwal, Member (A)**

This Review Application has been filed for review of our order dated 23.01.2017 passed in CP-509/2016 in OA-2218/2013, the operative part of which reads as follows:-

“2. In compliance thereof, the respondents have filed an affidavit on 18.12.2016 along with which they have attached a copy of their order dated 11.11.2016 by which promotion of the applicant as I.T.O, Group ‘B’ has been approved w.e.f. 28.03.1990 . Learned counsel for the respondents argued that with the passing of the aforesaid order, the Tribunal's order has been fully complied with. The petitioner, who is present in the Court, however, stated that he was entitled to the consequential benefits of further promotion to higher posts, as a result of being promoted with retrospective effect. On instructions, learned counsel for the respondents stated that the respondents are taking action on the same and shall be considering the applicant for promotion to higher posts as well in due course. Learned counsel for the respondents has also handed over a copy of the letter dated 19.01.2017 in the open Court.

3. We have considered the aforesaid submissions. We find that our directions in order dated 17.12.2015 were only to consider the applicant for promotion as ITO which has been granted. Therefore, we are satisfied that our order has been complied with.

4. Accordingly, this C.P. is closed. Notices issued to the alleged contemnors are discharged.”

2. The review applicant has stated that this Tribunal has committed an error apparent on the face of the record by observing in para-3 of the order dated 23.01.2017 that the directions in Tribunal's order dated 17.12.2015 were only to consider the applicant for promotion as ITO. He has also stated that due to this

observation of the Tribunal the respondents have foreclosed the case for grant of consequential benefits to him.

3. We have considered the aforesaid submissions of the applicant. After perusing our order dated 17.12.2015, we had come to the conclusion that the directions to the respondents were only to consider the case of the applicant for grant of promotion as ITO. Since the same had already been granted, we had closed the CP. What the applicant is pointing out is not an error apparent on the face of the record in our judgment. Rather he is questioning our finding. If we were to allow the applicant's prayer, we would be sitting in judgment over our own finding and acting as our own Appellate Authority. This is clearly beyond the scope of review application.

4. While considering the scope of review, Hon'ble Supreme Court in the case of **Aribam Tuleshwar Sharma Vs. Aribam Pishak Sharma**, (1979) 4 SCC 389 referred to an earlier decision in the case of **Shivdeo singh Vs. State of Punjab**, AIR 1963 SC 1909 and observed as under:-

“It is true as observed by this Court in **Shivdeo Singh v. State of Punjab**, AIR 1963 SC 1909, there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which is inherent in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and

important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all matters or errors committed by the Subordinate Court."

4.1 Similarly in the case of **Ajit Kumar Rath Vs. State of Orissa and Others**, AIR 2000 SC 85 the Apex Court reiterated that power of review vested in the Tribunal is similar to the one conferred upon a Civil Court and held:-

"The provisions extracted above indicate that the power of review available to the Tribunal is the same as has been given to a court under Section 114 read with Order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application on account of some mistake or error apparent on the face of the record or for any other sufficient reason. 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. **It may be pointed out that the expression "any other sufficient reason" used in Order 47 Rule 1 means a reason sufficiently in the rule.**

Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment."

[Emphasis added]

4.2 In the case of **Gopal Singh Vs. State Cadre Forest Officers' Assn. and Others** [2007 (9) SCC 369], the Apex Court held that after rejecting the original application filed by the appellant, there was no justification for the Tribunal to review its order and allow the revision of the appellant. Some of the observations made in that judgment are extracted below:-

"The learned counsel for the State also pointed out that there was no necessity whatsoever on the part of the Tribunal to review its own judgment. Even after the microscopic examination of the judgment of the Tribunal we could not find a single reason in the whole judgment as to how the review was justified and for what reasons. No apparent error on the face of the record was pointed, nor was it discussed. Thereby the Tribunal sat as an appellate authority over its own judgment. This was completely impermissible and we agree with the High Court (Justice Sinha) that the Tribunal has traveled out of its jurisdiction to write a second order in the name of reviewing its own judgment. In fact the learned counsel for the appellant did not address us on this very vital aspect."

5. On the basis of the above, we come to the conclusion that this review application is devoid of merit and is dismissed in circulation.

(Raj Vir Sharma)
Member (J)

(Shekhar Agarwal)
Member (A)

/Vinita/