

Central Administrative Tribunal
Principal Bench: New Delhi

RA No. 79/2016

In

OA No. 3589/2013

Reserved on: 05.04.2016

Pronounced on: 25.04.2016

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Dr. B.K. Sinha, Member (A)

1. Suresh Kumar s/o Mr. Teeka Ram
Working as Assistant Store Keeper,
VSBTC Pusa, New Delhi.
2. Jadish Kumar s/o late Mr. Babu Lal
Working as Assistant Store Keeper,
ITI, Nand Nagari, New Delhi.
3. Anil Kumar s/o late Mr. Pyare Lal
Working as Store Keeper,
ITI, Pusa, New Delhi.
4. Sunil Dutt,
Working as Assistant Store Keeper,
ITI, Arab Ki Sarai, New Delhi.
5. Surender Prakash,
Working as Store Keeper,
ITI, Narela, New Delhi.
6. Karam Singh s/o Mr. Nathu Ram,
Working as Assistant Store Keeper,
ITI, Arab Ki Sarai, New Delhi.
7. Arvind Singh s/o late Mr. Jaipal Singh,
Working as Assistant Store Keeper,
ITI, Mori Gate, Delhi.
8. Arun Kumar s/o late Mr. H C Mudgal,
Working as Store Keeper,
SCVR, ITI, Delhi.
9. Ramesh Kumar s/o Mr. Ram Kala,
Working as Assistant Store Keeper,
ITI, Jahangirpuri, Delhi.
10. Ishwar Singh s/o Mr. Jugal Kishore,
Working as Assistant Store Keeper,
ITI, Tilak Nagar for woman,
New Delhi.

11. Rajinder Kumar s/o Mr. Godha Ram,
Working as Store Keeper,
ITI, Jail Road Tilak Nagar,
New Delhi.
12. Jitender Kumar,
Working as Assistant Store Keeper,
ITI, Hastsal, New Delhi.
13. M S Pathania s/o late Mr. Man Singh Pathania,
Working as Assistant Store Keeper,
ITI, Malviya Nagar, New Delhi.
14. Pushpa Bora s/o late Mr. Dev Singh,
Working as Assistant Store Keeper,
ITI, Siri Fort, New Delhi.
15. Vijay Kumar Narula,
Working as Store Keeper,
ITI, Siri Fort, New Delhi.
16. Baban Mahto s/o Mr. Jag Lal Mahto,
Working as Assistant Store Keeper,
ITI, Vivek Vihar (Woman),
New Delhi.
17. Satyaveer Singh s/o late Mr. Jagan Singh,
Working as Assistant Store Keeper,
ITI, Shahdara, New Delhi.
18. Arvind Kerketta s/o Mr. Joachim Kerketta,
Working as Assistant Store Keeper,
ITI, H J Bhabha Mayur Vihar,
New Delhi .

(By Advocate: Sh. Ajit Singh)

Versus

1. Govt. of NCT of Delhi through
Chief Secretary,
Delhi Secretariat,
IP Estate, New Delhi-2.
2. The Principal Secretary,
Directorate of Training & Technical Education,
Muni Maya Ram Marg,
Pitam Pura Delhi-88.Respondents

(By Advocate: None)

O R D E R

By Hon'ble Dr. B.K. Sinha, Member (A):

The instant Review Application has been filed under Rule 17 of the Central Administrative Tribunals (Procedure) Rules, 1987 seeking review of the Tribunal's order dated 12.01.2016 passed in OA No.3589/2013.

2. While giving factual matrix of the case as had been given in the OA, the basic grievance of the applicants in the instant review application is that the OA was disposed of without hearing their counsel whose absence was beyond control as he was attending some matter in Tis Hazari Court and by the time he reached the Tribunal, the OA had been reserved. It is the further case of the applicants that they filed one miscellaneous application for fixing a date in the OA for hearing but the said miscellaneous application could not be listed on the ground that the OA stood already disposed of orally on merit and, therefore, the instant RA has been filed.

3. The applicants have taken the ground that while passing the order dated 12.01.2016, the Tribunal has not appreciated the memorandum dated 13.01.2010 passed by the competent authority in pursuance of the Tribunal's order dated 12.11.2009 in OA No.3243/2009 wherein the

respondents themselves declared the posts of Assistant Store Keeper, Store Keeper and Store Superintendent as 'Technical' and other related actions will be initiated subsequently. They have also stated that prior to the OA, the applicants filed OA No.1866/2011 and the Tribunal vide order dated 24.05.2011 disposed of the same directing the respondents that such related action shall be taken expeditiously and in any case not later than six months from that date. Apart from the above, the applicants have dwelled only on treating the three posts i.e. Assistant Store Keeper, Store Keeper and Store Superintendent as technical in their department as has been done in other departments. No other grounds were advanced in support of the instant review application.

4. At the outset, we would like to go into the basic issue as to what is the scope of review. We take cognizance of the fact that the Tribunal's power under Section 22(3)(f) of the A.T. Act, 1985 is akin to that of statutorily and judicially recognized powers of the civil courts. This is not a carte blanche authorization given to the courts to re-visit and re-hear cases. It is subject to Order 47 Rule 1 implying that the Tribunal can only review its order/decision on discovery of new and important matter or evidence which the applicant could not produce at the time of initial decision despite

exercise of due diligence or the same was not within its knowledge or even the same could not be produced before the Tribunal earlier or the order sought to be reviewed suffers from some mistakes and errors apparent on the face of record or there exists some other reasons which, in the opinion of the Tribunal, are sufficient to review its earlier decision.

5. In a landmark decision in **West Bengal & Ors Vs. Kamalsengupta & Anr.** [2008(8) SCC 612], the Hon'ble Supreme Court after having considered the important decisions on the subject and defined the difference between the review and appeal, held as follows:-

“35. 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 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 another landmark decision in case of **Kamlesh Verma versus Mayawati & Ors.** [2013 (8) SCC 320], the Hon’ble Supreme Court has laid down conditions when the review will not be maintainable, relevant portion whereof is being extracted hereunder for better elucidation:-

“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.”

7. The Hon'ble Supreme Court in the afore judgments has reviewed all the major issues involving review and arrived at the conclusion on the basis thereof. It has been specifically provided that an erroneous order/decision cannot be corrected under the guise of exercise of power of review. It further provides that while considering an application for review, the Tribunal must confine its adjudication to the materials available at the time of initial decision. Thus, there is a difference between review and appeal, and an appeal cannot be allowed in guise of a review.

8. Insofar as the opportunity of hearing to the learned counsel for the applicants is concerned, the same has been afforded to him by listing the review application before the Bench but we are not convinced with the arguments so advanced on behalf of the applicants. We also take note of the fact that in Tribunal's order dated 24.05.2011 in OA No.1866/2011 on which the applicants have placed reliance was an ex parte order and the same was recalled and the OA was restored by the Tribunal vide order dated 03.04.2013 passed in MA No.1887/2012 preferred by the respondents. We further take note of the fact that subsequently OA No.1866/2011 came to be dismissed as withdrawn vide order dated 01.08.2013 with liberty to take appropriate proceedings as per law afresh. Meaning to

say, the ex parte order passed on 24.05.2011 directing the respondents to expedite the related action stood merged with the dismissal of the main OA.

9. We find that all the points raised by the applicants in the instant review application, other than those discussed above, have already been taken care in the order under review. We are of the firm opinion that re-appreciation of evidence is fully within the domain of the appellate court and it cannot be advanced in review petition. We also find no error apparent on face of the record which may warrant review as no new facts have been brought to light.

10. In view of our above observations, we find no good ground to review the order and resultantly the instant review application stands dismissed. No costs.

(Dr. B.K. Sinha)
Member (A)

(V. Ajay Kumar)
Member (J)

/Ahuja/