

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

R.A.NO.80 OF 2015
(In OA No.2296 of 2013)

New Delhi, this the 30th day of November, 2015

CORAM:

**HON'BLE SHRI SUDHIR KUMAR, ADMINISTRATIVE MEMBER
&
HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER**

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Arvind Kumar Goel (since dead), through his LRs

1. (Mrs.)Anshu Goel,
Aged about 62 years,
Wife of (late) Sh.Arvid Kumar Goel,
R/9 R-44, First Floor,
Surya Nagar,
Ghaziabad 201011 (UP)

2. Ankur Goel,
Aged about 37 years,
Son of (late) Sh.Arvid Kumar Goel,
R/9 A-44, First Floor,
Surya Nagar, Ghaziabad 201011 (UP) . Applicants

(By Advocate: Shri R.A.Sharma)

Vs.

1. Delhi Development Authority,
through its Vice-Chairman,
Vikash Sadan (B-Block), 1st Floor,
Near I.N.A., New Delhi 110023

2. Director (Coordn.),
Bakra Beas Management Board,
47, Kaka Nagar,

ORDER
RAJ VIR SHARMA, MEMBER(J):

We have perused the records of OA No.2296 of 2013 and RA No.80 of 2015, and have heard Shri R.A.Sharma, learned counsel appearing for the review petitioners, and S/Shri Manish Garg and Hanu Bhaskar, learned counsel appearing for the respondents.

2. The review petitioners are the legal representatives of Shri Arvind Kumar Goel, applicant in OA No.2296 of 2013. The said Shri Arvind Kumar Goel had passed away during the pendency of O.A.No.2296 of 2013, and the present review petitioners had been substituted in his place. This review application has been filed by them 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 25.2.2015 passed by the Tribunal disposing of OA No.2296 of 2013.

3. The relevant portions of the order dated 25.2.2015, *ibid*, are reproduced below:

o The OA has been filed seeking the following reliefs:

(A) Direct the respondent No.1 to consider and count past service of the applicant rendered by him from 10.10.1972 to 5.9.1979 in the previous departments before joining the DDA on 6.9.1979, for the purpose of pay protection, financial upgradation under the ACP Scheme and for pension and pensionary benefits.

- (B) A further direction to the respondent No.1 to refix the pay and allowances, pension and pensionary benefits by counting the past service of the applicant rendered in the previous department(s) and pay arrears on account of the same.
- (C) A further direction to the respondent No.1 to pay simple interest @ 18% per annum on the arrears of pay & allowances as well as on pension & pensionary benefits as above, from the date these became due and till these are actually paid to the applicant.
- (D) Pass any other order or direction as deemed fit and proper in the facts and circumstances of the case in favour of the applicant.

2. The matter had earlier been taken on 07.08.2014 wherein it was observed that the respondents vide E.O.No.113 dated 21.1.2014 had allowed the period of service w.e.f. 10.10.1972 to 05.09.1979 rendered by the applicant with respondent no.2 for the purpose of grant of pay protection. However, about the other benefits after counting of service rendered with respondent no.2, the same had not been granted. It was pointed out by the respondents counsel at that stage that the LSPC of the past service of the applicant had not been received as yet. Counsel for the respondent no.2 was directed to ensure that those documents were provided to the respondent no.1. Applicant was also directed to file representation with the DDA with an advance copy to respondent no.2 specifying his claims pending with respondent no.1 along with the grounds for preferring such claims as per rules and instructions. It appears that representation was filed by the applicant and subsequently a communication dated 28.10.2014 was issued by respondent no.2, according to which an amount of Rs.7,515/- by way of final payment of LSPC was sent to respondent no.1.

3. When the matter was taken up today, a copy of the letter dated 28.10.2014 issued by Bhakra Beas Management Board and addressed to the Dy.Director/PB-1, DDA was produced which is reproduced below:

Subject:- Remittance of amount of LSPC of Sh.Ar vind Kumar Goel, S.O. (Civil) (File No.9(103)2004/PB-1) in Original application No.2296 of 2013 titled Arvind Kumar Goel V/S DDA and Ors. Central Administrative Tribunal (Principal Bench), New Delhi.

In view of decision dated 07.08.2014 of Central Administrative Tribunal (Principal Bench), New Delhi in Case No.OA 2296/2013, cheque No.299310 dated 21.10.2014 amount to Rs.7,515/- on account of final

payment of LSPC for the period of service w.e.f. 10.10.1972 to 05.09.1979 rendered by Sh. Arvind Kumar Goel in BBMB is sent herewith for taking further necessary action in the matter by your office.ö

A copy of cheque No.299310 dated 21.10.2014 amounting to Rs.7,515/- in favour of Account Officer, DDA has also been enclosed with the said letter.

4. In view of above, OA is disposed of with the direction to respondent no.1 that the payment received by way of LSPC be paid to the applicant within a period of four weeks from the date of receipt of a copy of this order.

5. No costs.ö

4. **In Meera Bhanja (Smt.) v. Nirmala Kumari Choudhury**

(Smt.), 1995(1) SCC 170, the Hon'ble Supreme Court has held that an error apparent on the face of record must be such an error which must strike one on mere looking at the record. An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evidence and if it can be established, it has to be established by lengthy and complicated arguments, such an error cannot be cured in a review proceeding.

5. **In State of West Bengal and others v. Kamal Sengupta and another**, (2008) 2 SCC (L&S) 735, the Hon'ble Apex Court, after scanning various earlier judgments, summarized the following principles:

- ö(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 öany 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

6. The Hon^{ble} 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:

“20.1 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 Poulose 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 negatived.ö

7. Keeping in mind the principles laid down by the Honorable Apex Court in the above decisions, let us consider the claim of the review petitioners and find out whether a case has been made out by them for reviewing the order dated 25.2.2015 passed in OA No.2296 of 2013.

8. In support of their claim for reviewing the order dated 25.2.2015 *ibid*, the review petitioners have submitted that when respondent no.2 paid the Leave Salary & Pension Contribution (LSPC) to respondent

no.1 during the pendency of OA No.2296 of 2013, the case of Shri Arvind Kumar Goel (applicant in OA No.2296 of 2013) ought to have been considered by respondent no.1 for the purpose of granting him the financial upgradations under the ACP and MACP Schemes, and consequential benefits, in terms of the circular dated 28.1.2008 (Annexure A/10 to O.A.), as prayed for in paragraph 8 of the O.A. The Tribunal, without considering the said aspect of the matter on the basis of materials available on record, disposed of O.A.No.2296 of 2013, vide its order dated 25.2.2015, whereby and whereunder respondent no.1 was directed by the Tribunal to pay the LSPC, which was received by respondent no.1 from respondent no.2, to the applicant. Thus, there is an error apparent on the face of record.

9. Respondent no.1, in its counter reply to RA, has stated that in compliance with the direction contained in the order dated 25.2.2015, *ibid*, the review petitioner no.1 was paid the LSPC, which was received from respondent no.2. It has been submitted by respondent no.1 that the order dated 25.2.2015, *ibid*, having been passed by the Tribunal on the basis of materials available on record, and the direction contained in the order dated 25.2.2015, *ibid*, having already been complied with by them in making payment of the LSPC to review petitioner no.1, vide cheque no.044956 dated 6.5.2015, there is no scope for reviewing the order dated 25.2.2015, *ibid*.

10. A perusal of the order dated 25.2.2012 *ibid*, which is sought to be reviewed, clearly reveals that the claim of the applicant-Shri Arvind

Kumar Goel for granting him financial upgradations under the ACP/MACP Scheme from due dates was not at all considered by the Tribunal. During the pendency of O.A.No.2296 of 2013, respondent no.1 issued order dated 21.1.2014 for counting the period of service from 10.10.1972 to 05.09.1979 rendered by Shri Arvind Kumar Goel under respondent no.2, for the purpose of grant of pay protection only. A copy of the letter dated 28.10.2014 was also filed by respondent no.2 stating that in compliance with the Tribunal's order dated 7.8.2014, cheque No.299310 dated 21.10.2014 for Rs.7515/- towards LSPC for the period of service w.e.f. 10.10.1972 to 5.9.2019 rendered by the applicant, was remitted to respondent no.1. Therefore, the issue, which remained to be considered and decided by the Tribunal in OA No.2296 of 2013, was as to whether respondent no.1 was liable to consider the case of the applicant-Shri Arviind Kumar Goel for granting him financial upgradation under the ACP/MACP Scheme from due dates, as per the circular dated 28.1.2008, *ibid*. It transpires from the order dated 25.2.2015, *ibid*, that the Tribunal, while disposing of OA No.2296 of 2013, vide order dated 25.2.2015, *ibid*, did not consider the said issue on the basis of materials available on record. Therefore, in our considered view, there is an error apparent on the face of record.

11. Furthermore, the payment of LSPC made by respondent no.2 to respondent no.1 was for the purpose of grant of pay protection and other consequential service benefits to the applicant-Shri Arvind Kumar Goel, by counting his past service under respondent no.2 during the period from

10.10.1972 to 5.9.1979. In O.A.No.2296 of 2013, the applicant did not claim payment of LSPC to him either by respondent no.1 or by respondent no.2. It was also not the case of respondent no.1 that the LSPC received from respondent no.2 was payable to the applicant or his legal representatives. Therefore, the direction given by the Tribunal to respondent no.1 to make payment of LSPC to the applicant is a material error manifest on the face of the order dated 25.2.2015, *ibid*, which undermines its soundness.

12. In the light of our above discussions, we have no hesitation in holding that the order dated 25.2.2015, *ibid*, is liable to be reviewed/recalled. Accordingly, the order dated 25.2.2015 passed in OA No.2296 of 2013 is reviewed/recalled. O.A.No.2296 of 2013 is restored to be heard and decided afresh on the basis of materials available on record.

13. Resultantly, R.A. is allowed to the extent indicated above. No costs.

14. OA No.2296 of 2013 shall be listed for hearing, in its turn, before appropriate Bench, as per roster.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SUDHIR KUMAR)
ADMINISTRATIVE MEMBER