

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

**RA-89/2016
MA-1401/2016 in
OA-2977/2013
With
RA-86/2016
MA-1391/2016 in
OA-2978/2013**

New Delhi this the 26th day of April, 2016.

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

Union of India through

1.The Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.

2.The Director,
Intelligence Bureau,
Ministry of Home Affairs,
North Block,
New Delhi.

....Review applicants in both RAs.

(through Sh. Rajinder Nischal, Advocate)

Versus

RA-89/2016, MA-1401/2016 in OA-2977/2013

Vinod Kumar Dhama,
S/o Sh. Mangey Ram Dhama,
Vill. P.O. Khekra, Patti Rampur,
Distt. Bhagpat, UP.

..... Respondent

RA-86/2016, MA-1391/2016 in OA-2978/2013

Satender Pal,
S/o Sh. Badan Singh,
H.No. H-404, Nanak Pura,
New Delhi.

..... Respondent

O R D E R (By circulation)**Mr. Shekhar Agarwal, Member (A)**

These two RAs have been filed by respondents of OA-2977/2013 and OA-2978/2013 for review of our order dated 24.11.2015 by which both the OAs were allowed. The operative part of the reads as follows:-

"9. We have considered the aforesaid citations. After perusing the office notings, we are of the opinion that the applicant has been able to establish that the respondents do not have any transparent transfer policy. They have been transferring employees who have approached Court/Tribunal for redressal of different grievances. Such transfer is result of mala fide and abuse of power and cannot be sustained. We, therefore, allow this O.A. and set aside the impugned transfer order dated 06.03.2013. We further direct the respondents to abandon such a transfer policy forthwith and frame a comprehensive transparent transfer policy. No costs.

10. Similarly, we quash the impugned transfer order No. 4/C4/2013(4)-845 dated 06.03.2013 of applicant in OA-2977/2013. A copy of this order be placed in both the OA files."

2. Both the review applications are accompanied by an application for condonation of delay in which the review applicants have stated that the certified copy of the order became available to them only on 29.12.2015 after which there has been delay of about 85 days in filing the review applications on account of administrative procedures involved. For the reasons stated in both the MAs, the same are allowed and delay is condoned.

3. The respondents have argued that in this case based on some file notings a presumption has been drawn by the Tribunal that the transfer of the review respondents was a coloured exercise done with a motive to punish them for approaching the Courts. The review applicants have submitted that they have a uniform transfer policy and it was their prerogative to transfer their employees to any part of the country. They have further stated that in so far as Intelligence Bureau was concerned, it has immunity and exemptions while rendering services

to the country and transfer of the review respondents was done as an administrative requirement and also as per the existing policy. However, an error apparent on the face of the record has occurred in the judgment inasmuch as this Tribunal has failed to appreciate the above.

4. We have considered the submissions of the review applicants. It is obvious that they are not pointing out any error apparent on the face of the record. Rather, they are questioning the finding arrived at by this Tribunal on the basis of material presented in the OA. This is obviously outside the scope of review application. If the review applicants were aggrieved by the findings of the Tribunal, they should have approached a higher judicial forum to challenge the same rather than filing a review application. If we were to entertain such a review application, we would be sitting in judgment over our own order.

5. While considering the scope of review, Hon'ble Supreme Court in the case of **Aribam Tuleswar 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."

5.1 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]

5.2 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.”

6. In view of the above, we find that there is no merit in these review applications and the same are dismissed in circulation. No costs.

(Raj Vir Sharma)
Member (J)

(Shekhar Agarwal)
Member (A)

/Vinita/