

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

**RA-91/2013 in
OA-1751/2012**

Reserved on : 26.08.2015.

Pronounced on :08.09.2015.

**Hon'ble Mr. G. George Paracken, Member (J)
Hon'ble Mr. Shekhar Agarwal, Member (A)**

1. Dr. Chhote Lal,
S/o late Sh. Hari Charan,
R/o R-138, Shiv Vihar, Phase-2,
Karawal Nagar, Delhi-94
Working as STA (Ayurveda)
Department of Ayush,
B-Block, CGO Complex,
INA Market, New Delhi-23.

2. Dr. Anil Kumar Singh Bhadoria,
S/o Sh. R.S. Bhadoria,
R/o 740, Laxmi Bai Nagar,
New Delhi-23.
Working as RA (Ayurveda),
Department of AYUSH,
B-Block, CGO Complex,
INA Market, New Delhi.-23. Review Applicants

(through Sh. Ankur Chhibber, Advocate)

Versus

1. Union of India & Ors.,
through its Secretary,
Ministry of Health & Family Welfare,
Department of AYUSH,
B-Block, CGO Complex,
INA Market, New Delhi-23.

2. Joint Secretary,
Ministry of Health & Family Welfare,
Department of AYUSH,
B-Block, CGO Complex,
INA Market, New Delhi-23. Respondents

(through Sh. T.C. Gupta, Advocate)

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

This Review Application has been filed by OA applicants for review of our order dated 06.03.2013, the operative part of which reads as follows:-

"13. Thus, we hold that there is no infirmity in the impugned orders of the respondents dated 04.04.2012. However, considering the facts and circumstances of the case we direct the respondents not to make any recovery on account of excess amount paid to the applicants as a result of wrongly granting them higher scale. O.A. is accordingly disposed of. No costs."

2. The Review Application is rather bulky and the review applicants have reiterated the facts of this case in the same. We do not consider it necessary to reproduce them in this order. As far as the grounds for review are concerned, the review applicants have stated as follows:-

(i) The order of Tribunal was contrary to the facts and rules on the subject.

(ii) That the applicants had stated in their arguments that Recruitment Rules did not provide for minimum qualification of degree. This provision was contrary to the IMCC Act, 1970. The Tribunal has failed to appreciate this.

(iii) Both the applicants were having degree qualification and it was wrong to conclude that they were not having the minimum qualification required.

(iv) On many other posts, such as, RO(H) and ARO/RA in the Research Council where degree/diploma is

prescribed in the Recruitment Rules, the upgraded scale of pay of Rs.8000/13500 has been allowed to continue.

(v) Some additional material has been placed on record in grounds H to K on the basis of which it has been argued that medical practice was also part of the duties of the applicants.

3. The respondents have filed their reply opposing the averments of the review applicants. They have also stated that the review application has been filed after the expiry of the prescribed period and was, therefore, barred by limitation. The review applicants have, however, filed an application for condonation of delay stating that the parent of one of the applicants were very old and had fallen ill. Hence, there was some delay in filing the review application.

4. We notice that the review application has been filed on 30.04.2013 whereas our order was passed on 06.03.2013. Thus, there has been some delay in filing the review application. Nevertheless, for reasons stated in the application for condonation of delay, we condone the delay and proceed to adjudicate the review application on merits.

4.1 We notice from the grounds taken by the review applicants that each of them has been considered by us

in our order. Thus, as regards degree being minimum prescribed qualification, in our order, we have stated that Recruitment Rules provided even diploma holders to be appointed as RAs. Consequently, irrespective of the provisions of IMCC Act, the inference is that the minimum prescribed qualification for appointment to the post of RA was not degree but even diploma holders were eligible. We have also stated in our order that even though both the applicants possessed degree qualification, it was not material since the minimum qualification prescribed for the post on which they were appointed was not degree. We have also stated in our order that there was nothing on record to show that the job of the applicants required medical practice as part of the duties. The additional material placed on record by them in this regard cannot be considered in a Review Application.

4.2 Thus, it is clear that all the grounds mentioned by the review applicants have been considered by us and rejected in our order. No other ground was pressed before us. It is evident that in the garb of a review application, the review applicants are only trying to re-argue the case on merits questioning our findings in this case. This is obviously beyond the purview of a review

application. If we allow this application then we would be acting as an Appellate Authority against 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 no merit in this Review Application and the same is dismissed. No costs.

(Shekhar Agarwal)
Member (A)

(G. George Paracken)
Member (J)

/Vinita/