

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH****R.A. No.91/2016 In
O.A. No.3755/2014****New Delhi this the 2nd day of September, 2016****HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)
HON'BLE MR. V.N. GAUR, MEMBER (A)**

Atul Sood, Age 49 years
Designation: Inspector
No.D/3013, PIS No.16900058
S/o Shri Sansar Chand Sood
R/o 251-E, MIG Flats, Rajouri Garden,
New Delhi-110027.

Age 47 years (Group-B)
Posting at: Incharge Lock Up
Tis Hazari Courts, Delhi
Unit 3rd Bn. DAP Delhi Police. ..Review Applicant

(Argued by:Shri S.C. Sagar, Advocate)

Versus

1. Delhi Police
Through Commissioner of Police,
Police Headquarter, I.P. Estate, New Delhi.
2. Govt. of NCT of Delhi through Chief Secretary,
Players Building,I.P. Estate,
New Delhi. Respondents

(None)

ORDER (ORAL)**Justice M. S. Sullar, Member (J)**

The pith and substance of the facts and material, relevant for deciding the instant Review Application (RA) and expounded from the record is that, on 09.06.2013, three incidents of chain snatching were reported in the area of Sarojini Nagar Market, where the review applicant was posted as SHO. The incidents had taken place due to absence of staff

on 07.10.2013 at beat No.7 under the supervisory control of the review applicant. Thus he was stated to have committed the misconduct in performance of his official duty. Consequently, the impugned Show Cause Notice (SCN) dated 17.06.2013, for imposing minor penalty, was issued to him and his conduct was Censured.

2. In pursuance thereof, he was asked to submit his reply to the SCN, but he neither filed the reply nor appeared in OR to explain his conduct.

3. Taking into consideration the serious allegations and the fact that no reply was filed by the review applicant, in all, his conduct was Censured, vide the impugned order dated 09.08.2013. The appeal filed by the review applicant against the order of the Disciplinary Authority was dismissed by the Appellate Authority, vide impugned order dated 07.05.2014. Dissatisfied thereby, the review applicant has filed the OA.

4. Having completed all the codal formalities and after having duly considered all the issues raised therein, the OA was dismissed, vide a detailed order dated 10.03.2016, by this Tribunal, which, in substance, is as under:-

“16. As is evident from the record that the impugned show cause notice for minor penalty of Censure dated 17.06.2013 (Annexure-C) was issued to the applicant with regard to three pointed instances of chain snatching in one day in his area. He was asked to show cause as to why his conduct be not censured. He did not bother to file the reply. If the applicant had probable defence to explain his conduct, then he should have filed the reply to the show cause notice. Neither he filed reply to the show cause notice despite repeated reminders nor appeared on 26.07.2013 in OR, as directed by DCP, for the reasons best known to him. Even this behaviour of the applicant amounts to misconduct and insubordination which is not at all expected from a SHO of disciplined force.

17. The only ground pressed into service and the argument of the learned counsel that since the applicant was required to appear in the court, so he

could not appear before DCP on 26.07.2013, is not only devoid of merit but misplaced as well and deserve to be rejected for more than one reasons.

18. At the first instance, applicant was required to file the reply to the show cause notice within a period of 15 days from its receipt. No cogent material or explanation is forthcoming on record as to what prevented him to file the reply to show cause notice within a period of 15 days from its receipt. Secondly, the DD Entry No.13-A and 24-A of Police Station, Sarojni Nagar, New Delhi are neither here nor there. It is nowhere mentioned therein that in what connection he proceeded to the court and whether he attended the court as a witness in pursuance of already issued summon or he went to the court in connection with some investigation of a criminal case. In case the applicant was actually required to attend the court for public purpose, then indeed he would have informed the DCP in advance or at least after attending the court, which is totally lacking in the present case. Therefore, in that eventuality, possibility of subsequent recording of such DD entries, in order to create a false defence by the applicant, cannot be ruled out under the present set of circumstances.

19. No other point, worth consideration, has been urged or pressed by learned counsel for the parties.

20. In the light of the aforesaid reasons and thus seen from any angle, there is no merit and instant OA deserves to be and is hereby dismissed as such. No costs”.

5. Now the review applicant has filed the present RA bearing No.91/2016, for reviewing the indicated order, mainly on the grounds, which have already been considered and negated while deciding the main OA, by this Tribunal.

6. Ex-facie, the main argument of learned counsel that since the Review Applicant had attended the court of Metropolitan Magistrate, Dwarka, Delhi, so he could neither file the reply nor appeared on 26.07.2013 in OR, as directed by DCP, is neither tenable nor the summon dated 25.07.2013 issued by the Reader of the Court of the DCP, South District, Delhi (Annexure P-1), order dated 25.07.2013 (Annexure P-2), alleged application dated Nil for recalling the order dated 25.07.2013 (Annexure P-3) and order dated 08.08.2013 (Annexure P-4), would come to the rescue of the review applicant.

7. As is evident from the record that in the main judgment of the Tribunal dated 10.03.2016 (Annexure-P), sought to be reviewed, a categorical finding has been recorded that “neither review applicant filed reply to the SCN despite repeated reminders nor appeared on 26.07.2013 in OR, as directed by the DCP”. It is nowhere mentioned in Exhibit P-1 to P-4, that, in fact, the review applicant actually appeared in the court on 26.07.2013. Moreover, he could file reply to the SCN much prior to 26.07.2013, but he failed to do so, despite repeated reminders.

8. That means, the epitome of the material now sought to be produced by the review applicant, has already been duly considered and negated along with the main judgment by this Tribunal. No fresh ground to review the order is made out.

9. Sequelly, it is now well settled principle of law that the earlier order can only be reviewed if the case squarely falls within the legal ambit of review and not otherwise. Order 47 Rule 1 CPC read with Section 22(3)(f) of the Administrative Tribunals Act, 1985 regulates the provisions of review of the orders. According to the said provision, a review will lie only when there is discovery of any new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by the review applicant seeking the review at the time when the order was passed **or made on account of some mistake or error apparent on the face of the record.** It is now well settled

principle of law that the scope for review is rather limited and it is not permissible for the forum hearing the review application to act as an Appellate Authority in respect of the original order by a fresh and re-hearing of the matter to facilitate a change of opinion on merits. The reliance in this regard can be placed on the judgments of the Hon'ble Supreme Court in cases of ***Parsion Devi and Others vs. Sumitri Devi and Others (1997) 8 SCC 715, Ajit Kumar Rath Vs. State of Orissa (1999) 9 SCC 596, Union of India Vs. Tarit Ranjan Das (2003) 11 SCC 658 and Gopal Singh Vs. State Cadre Forest Officers' Association & Others (2007) 9 SCC 369.***

10. An identical question came up to be decided by Hon'ble Apex Court in case ***State of West Bengal and Others Vs. Kamal Sengupta and Another (2008) 8 SCC 612.*** Having interpreted the scope of review and considering the catena of previous judgments mentioned therein, the following principles were culled out to review the orders:-

“(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”.

11. Meaning thereby, the original order can only be reviewed if case strictly falls within the domain of Order 47 Rule 1 CPC read with Section 22(3)(f) of the Administrative Tribunals Act, 1985 and not otherwise. In the instant RA, the review applicant has not pointed out any error on the face of record warranting a review of the order dated 10.03.2016 (Annexure-P). Above all, the issues now sought to be urged, were subject matter of the OA and have already been adjudicated upon by the Tribunal.

12. Be that as it may, the *sine qua non* for seeking review, is to point out any apparent error on the face of the record. The review applicant has miserably failed to do so.

13. In the light of the aforesaid reasons, as there is no apparent error on the face of record, so no ground, much less

cogent is made out to entertain the present Review Application, which is hereby dismissed. However, the parties are left to bear their own costs.

(V.N. GAUR)
MEMBER (A)
02.09.2016

(JUSTICE M.S. SULLAR)
MEMBER (J)
02.09.2016

Rakesh