CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

R.A.NO. 122 OF 2016
(In O.A.NO.1603 OF 2014)

New Delhi, this the 22nd day of August, 2016

CORAM:
HON'BLE SHRI SUDHIR KUMAR, ADMINISTRATIVE MEMBER
AND
HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

Rajesh Gomes, aged 52 years,
s/o Sh.Rizku Gomes,
R/o G-13, Prithviraj Lane,
Khan Market,
New Delhi 110003 Applicant

(By Advocate: Mr.Amit Kumar)

Vs.

New Delhi Municipal Council (NDMC) & Others through:

1. The Chairman,
   NDMC,
   Palika Kendra,
   Sansad Marg,
   New Delhi
2. The Secretary,
   NDMC,
   Palika Kendra, Sansad Marg,
   New Delhi
3. The Director (Personnel),
   NDMC,
   Palika Kendra, Sansad Marg, New Delhi Respondents

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ORDER

(By Circulation)

RAJ VIR SHARMA, MEMBER(J):

The review petitioner was applicant in OA No.1603 of 2014. The present review application is filed by him 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 21.4.2016 passed by the Tribunal dismissing OA No. 1603 of 2014 as being devoid of merit.

2. In **Ajit Kumar Rath v. State of Orissa and others,** (1999) 9 SCC 596, the Hon'ble Supreme Court has held that 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. Any other attempt, except an attempt to correct an apparent error, or an attempt not based on any ground set out in Order 47 of the Code of Civil Procedure, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment.

3. In **Union of India v. Tarit Ranjan Das,** 2004 SCC (L&S) 160, the Hon'ble Supreme Court has held 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 court in respect of the original order, by a fresh order and rehearing the matter to facilitate a change of opinion on merits.

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

> ñ35. The principles which can be culled out from the above-noted judgments are:
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> (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 ñany other sufficient reasonò 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.ò

5. 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:

> ñ20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:
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> **20.1 When the review will be maintainable:**
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> 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;
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> ii) Mistake or error apparent on the face of the record;
>
> iii) Any other sufficient reason.
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> The words ñany other sufficient reasonò 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 ña reason sufficient on grounds at least analogous to those specified in the ruleò. The same principles have been reiterated in Union of India vs. Sandur Manganese & Iron Ores Ltd. (23013(8) SCC 337).
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> 20.2 **When the review will not be maintainable:**
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> i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.
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> ii) Minor mistakes of inconsequential import.
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> iii) Review proceedings cannot be equated with the original hearing of the case.
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> 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.
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> 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.ò

6. Keeping the above enunciation of law in mind, let us consider the claim of the review petitioner and find out whether a case has been made out by him for reviewing the order dated 21.4.2016 passed in OA No.1603 of 2014.

7. After going through the Review Application and the records of the O.A. together with the order dated 21.4.2016, *ibid*, we have found that in support of his prayer for reviewing the order dated 21.4.2016, *ibid,* the applicant-review petitioner, in the Review Application, has more or less reiterated his old contentions which have been overruled by the Tribunal, vide order dated 21.4.2016, *ibid*. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. The appreciation of evidence/materials on record, being fully within the domain of the appellate court, cannot be permitted to be advanced in the review petition. In a review petition, it is not open to the Tribunal to re-appreciate the evidence/materials and reach a different conclusion, even if that is possible. Conclusion arrived at on appreciation of

evidence/materials and contentions of the parties, which were available on record, cannot be assailed in a review petition, unless it is shown that there is an error apparent on the face of record or for some reason akin thereto. The review petitioner has not shown any material error, manifest on the face of the order, dated 21.4.2016, *ibid*, which undermines its soundness, or results in miscarriage of justice. If the review petitioner is not satisfied with the order dated 21.4.2016, *ibid,* passed by this Tribunal, remedy lies elsewhere. The scope of review is very limited. It is not permissible for the Tribunal to act as an appellate court. Therefore, the Review Application is dismissed at the stage of circulation itself.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SUDHIR KUMAR)
ADMINISTRATIVE MEMBER

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