CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

R.A.NO.310 OF 2012
(In OA No.3164 of 2011)

New Delhi, this the 25th day of August, 2015

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

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Late Yatindra Nath Rai (since dead)
(Ex-Electrical Chargeman, at Superintendent/Train Lighting,
Northern Railway, New Delhi),
through his widow Mrs.Neelam Rai,
resident of House No.B-99,
Rishi Nagar, Rani Bagh,
Delhi 110034 ….. Applicant

(By Advocate: Mr.H.P.Chakravorty)

Vs.

1. Union of India, through the General Manager,
   Northern Railway, HQ Office,
   Baroda House,
   New Delhi 01
2. The Divisional Railway Manager,
   Northern Railway, State Entry Road,
   New Delhi 110055 …… Respondents

(By Advocate: Mr.Subodh Kaushik for Mr.V.S.R.Krishna)

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ORDER

RAJ VIR SHARMA, MEMBER(J):

The original review petitioner was applicant in OA No.3164 of 2011. This review application was 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

25.7.2012 passed by the Tribunal dismissing OA No.3164 of 2011. Paragraphs 9 and 10 of the order dated 25.7.2012 read thus:

> "9. In the case in hand, as already stated above, the applicant has challenged his removal from service by filing OA in the year 2001 as well as in the year 2007, which were dismissed by this Tribunal. The applicant has suppressed this material fact from this Tribunal. Not only that, applicant on the basis of the forged report of the Board of Inquiry procured an order dated 20.09.2010 from this Tribunal, thereby the respondents were directed to consider his representation in the light of the such forged document. Thus, it is a case where applicant should have been proceeded further for misleading this Tribunal for procuring order in earlier OA on the basis of forged document and also suppressing the material fact. Be that as it may, we leave the matter here. However, according to us, the conduct of the applicant is such which warrants dismissal of OA without hearing the applicant on merit. That apart, since the quietus has been given by this Tribunal regarding removal of the service of the applicant from 1998 by dismissing the OAs, it is not permissible for us to grant the relief prayed for by the applicant even on merit.
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> 10. In the result, for the foregoing reasons, OA is found bereft of merit, which is accordingly dismissed, with no order as to costs."

2. 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 proceedings.

3. 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.

4. 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.

5. 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 various earlier judgments and summarized the principles laid down therein which read thus:

> "35. The principles which can be culled out from the above-noted judgments are:
> (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 "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."

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. 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:**
>
> 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."

7. Keeping in mind the principles laid down by the Hon'ble Apex Court in the above decisions, let us consider the claim of the review applicant and find out whether a case has been made out by him for reviewing the order dated 25.7.2012 passed in OA No.3164 of 2011.

8. In support of his claim for reviewing the order dated 25.7.2012 *ibid*, the review applicant, besides reiterating more or less same averments and contentions as raised by him in OA No.3164 of 2011, has pleaded that the Tribunal wrongly held that the applicant had suppressed the fact that he had earlier challenged his removal from service by filing O.As. in the year 2001 as well as in the year 2007, which had been dismissed by the Tribunal, and that on the basis of forged report of the Board of Inquiry, he had procured an order dated 20.9.2010 from the Tribunal directing the respondents to consider his representation. Thus, it is submitted by the review applicant that the Tribunal having arrived at the above findings without any materials available on record, there is an error apparent on the face of record and therefore, the order dated 25.7.2012 *ibid* is liable to be reviewed, and the reliefs prayed for by the applicant in the O.A. should be granted to him.

9. Opposing the R.A., the respondents have filed a counter reply. The applicant has also filed a rejoinder reply thereto.

10. We have perused the records of the O.A. and R.A. along with the order dated 25.7.2012 *ibid.* A perusal of the order dated 25.7.2012 *ibid*, which is sought to be reviewed, reveals that after perusing the records and considering the rival contentions of the parties, the Tribunal held that the applicant had challenged his removal from service by filing OAs in the year 2001 as well as in the year 2007, which had been dismissed by this Tribunal. The applicant had suppressed this material fact from this Tribunal. Not only that, applicant on the basis of forged report of the Board of Inquiry had

procured an order dated 20.09.2010 from the Tribunal, whereby the respondents had been directed to consider his representation in the light of the such forged document. The Tribunal also held that since the quietus had been given by this Tribunal regarding applicant's removal from service by dismissing the OAs earlier filed by him, it was not permissible for the Tribunal to grant the relief prayed for by the applicant even on merit. While considering the present R.A., we have also carefully gone through the records of O.A.No.3164 of 2011. We have found that at the time of hearing of OA No.3164 of 2011, the respondents' counsel had produced before the Tribunal a copy of the order dated 11.12.2007 passed by the Tribunal dismissing OA No.2302 of 2007 earlier filed by the applicant. The order dated 11.12.2007 *ibid* reads thus:

> "Applicant, who was appointed as Chargeman Grade-B on 17.12.1970, was chargesheeted for a long absence from duty for sixteen years. He did not participate in the enquiry proceedings and, therefore, was proceeded ex parte. The disciplinary authority, on the basis of the report of the enquiry officer, vide order dated 29.8.99, imposed the penalty of removal from service upon the applicant. This order was challenged by the applicant way back in 2001 when he filed OA No.2522/2001. The same was dismissed by a reasoned and speaking order by this Tribunal on 24.9.2001.
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> 2. In the present OA filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, the challenge is to letters dated 30.12.98 and 24.10.2000 vide which two representations made by the applicant were rejected. The representations of the applicant were only with regard to his removal from service and the letters aforesaid came to be issued much before applicant raked up that issue in OA referred to above. The order which has attained finality cannot be reopened in an indirect manner. OA is dismissed in *limine*. No order as to costs."

From the above, it is clear that O.A.Nos. 2522 of 2001 and 2302 of 2007, wherein the applicant's removal from service was directly or indirectly

questioned, had been dismissed by the Tribunal. Thereafter, he had once again filed OA No.3110 of 2010 and, by suppressing the fact of dismissal of his earlier O.As. in the matter of his removal from service, had obtained an order dated 20.9.2010 from the Tribunal directing the respondents to consider his representation in the matter of his removal from service. Therefore, it cannot be said that the findings recorded by the Tribunal in its order dated 25.7.2012 were arrived at by the Tribunal without taking into consideration the materials available on record and/or placed before it. This apart, 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 the record, or for some reason akin thereto. The review applicant has not shown any material error, manifest on the face of the order, dated 25.7.2012 *ibid*, which undermines its soundness, or results in miscarriage of justice. If the review applicant is not satisfied with the order 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. All the pending MAs are accordingly disposed of.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SUDHIR KUMAR)
ADMINISTRATIVE MEMBER

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