

Central Administrative Tribunal
Principal Bench

RA No.321/2015
In
OA No.4427/2014

New Delhi, this the 21st day of December, 2015

Hon'ble Mr. A.K. Bhardwaj, Member (J)
Hon'ble Dr. B.K. Sinha, Member (A)

Sunil Kumar Mehra
s/o Sh. Surendra Mohan Lal,
Chief Town Planner,
East Delhi Municipal Corporation,
5035/3, Sant Nagar,
Karol Bagh, New Delhi – 110 005.Applicant

Versus

1. Chief Secretary, GNCTD,
2. Director of Local Bodies,
U.D. Department, GNCTD.
3. North Delhi Municipal Corporation,
Through its Commissioner.
4. South Delhi Municipal Corporation,
Through its Commissioner.
5. East Delhi Municipal Corporation,
Through its Commissioner.
6. Sh. Shamsher Singh,
Sr. Town Planner,
Town Planning Deptt.,
South Delhi Municipal Corporation.Respondents

O R D E R (By Circulation)

By Dr. B.K. Sinha, Member (A):

The instant Review Application has been filed by the review applicant seeking review of the Tribunal's order dated 16.10.2015 passed in OA No.4427/2014 and re-hearing of the matter.

2. The review applicant has submitted that as per directives of this Tribunal in OA No.2839/2012, where the review applicant figured as the applicant, a DPC was held for the vacant post of Chief Town Planner and the applicant, who is on the pay rolls of the North DMC emerged as the lone successful candidate. The review applicant has repeated the arguments that the respondent no.6, who was charge-sheeted and had been designated Senior Town Planner only, had been unauthorisedly using the designation of Chief Town Planner. This was well within the knowledge of the respondent authorities and it was with their active connivance that under RTI reply issued on 21.10.2015 it was informed that the post of Chief Town Planner in North DMC is vacant and no office order for appointment of any incumbent was issued. This, as per the contention of the review applicant, is an instance of malice both in law and in fact. The review applicant submits that the post of the Chief Town Planner in the office of respondent no.3 has been illegally usurped by the respondent no.6 who has been signing notes/files and taking decisions there under. Had these documents, which have now made available, produced before the Tribunal, the fate of the decision would have changed. The review applicant has also submitted that this Tribunal has been misguided by Sh. R.N. Singh, learned counsel for the respondent-North DMC regarding holding of the dual charge by the applicant, which has led to miscarriage of justice. The review applicant has reiterated the charge that he was posted away to East DMC vide order dated 12.12.2013 to remove him from the scene and

paved a way for handing over the charge illegally to the respondent no.6. The review applicant points out that there has been no reply to the interim relief clause and none appeared for the respondent no.6 before the Tribunal. There was also a query from the office of Lieutenant Governor regarding misusing of the designation of Chief Town Planner by the respondent no.6 which had been put under the wraps by the competent authorities. The review applicant also challenges the statement in para 13 of the Tribunal's order under review and has alleged that this Tribunal in this respect had relied upon incorrect facts to arrive at the conclusion of *mala fide* not being there. The review applicant has also expressed that he would like to know to which Corporation he belongs. He further submits that the Issue no.1 remains unresolved even in the case *Surender Kumar Vs South Delhi Municipal Corporation* (OA Nos. 603/2015 and 1101/2015). He, therefore, prays that the matter be heard again and decided afresh.

3. At the very beginning, we would like to state the limited scope of review, which has been finally summed up by the Hon'ble Supreme Court in the case of ***State of West Bengal and Others versus Kamalsengupta and Another*** [2008 (8) SCC 612], operative part whereof is extracted as under:-

“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 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."

4. From the above, it clearly emerges that there is a difference between the appeal and review. Review is permissible in limited number of cases as such it has been defined in Order 47 Rule 1 of CPC and further made concise in the landmark decision in the case of ***State of West Bengal and Others versus Kamalsengupta and Another*** (supra). However, we are of the opinion that provisions of Order 47 Rule 1 of CPC read with Section 22(3)(f) of the Administrative Tribunals Act, 1985 are not attracted to the facts of the instant review application. What the review applicant has sought

is re-hearing of the case and a total reversal of the decision dated 16.10.2015. We feel that it is an appeal which has been sought to be pushed through in the form of a review application, which is not permissible.

5. We could take note of the arguments which have mostly been raised by the applicant in the review application while arriving at a decision in the OA. The question of the respondent no.6 being a much stigmatized officer and illegally using the designation of Chief Town Planner without being one has also the charges against him had been pleaded in the OA. The review applicant further pleaded the issue relating to *mala fide* on part of the respondent authorities for turning a blind eye and aiding and abetting the misdeeds of the respondent no.6. This Tribunal, while deciding the OA, had also examined the affidavits sworn by the respondent organization and placed reliance as these affidavits been sworn on behalf of the statutory bodies and there would be a presumption of correctness unless proved wrong. The review applicant had not been able to place any satisfactory evidence before the Tribunal to arrive at a conclusion otherwise. This Tribunal is not a body which takes the place of enquiry officer or investigating authority relating to allegations of corruption. It has to be done by the concerned organization itself. This stand has been adopted in the Tribunal's order under review. The points which have been pleaded may form the basis for a challenge to the order before the superior courts but at present they do not come within the ambit

of review jurisdiction of this Tribunal. As such, we find no merit in the instant RA and the same is dismissed in circulation.

(Dr. B.K. Sinha)
Member (A)

(A.K. Bhardwaj)
Member (J)

/Ahuja/