

Central Administrative Tribunal
Principal Bench

RA No.292/2016

in
OA No.3837/2016

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

Hon'ble Dr. Birendra Kumar Sinha, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

J.K. Katyal s/o Late Sh. K.N. Katyal,
H.No.5/7, First Floor, Ramesh Nagar,
New Delhi – 110 015.
(Presently serving as Asstt. Engineer (C)
NDMC, N. Delhi) ...Review Applicant

Versus

New Delhi Municipal Council
Through its Chairman,
Palika Kendra,
New Delhi – 110 001. ...Respondents

ORDER (By CIRCULATION)

Hon'ble Dr. Birendra Kumar Sinha, Member (A):

This is a review application filed against the Tribunal's order dated 16.11.2016 vide which OA No.3837/2016 of the applicant was dismissed in *limine*. However, the applicant was given liberty to raise other grounds before the inquiry officer, if so advised.

2. Now, the review applicant has filed the present review application on several grounds, which he ought to have raised before the inquiry officer as per the liberty granted by the Tribunal vide order dated 16.11.2016. Further, we take note of the settled legal position that a review application is not an appeal in disguise or a fresh hearing and for that the

proper remedy is to file an appeal before the appropriate forum/superior court. In case of **West Bengal & Ors Vs. Kamalsengupta & Anr.** [2008(8) SCC 612], the Hon'ble Supreme Court after having considered the important decisions on the subject and defined the difference between the review and appeal, has held as follows:-

“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.”

3. It is apparent from the above that the scope of the review is in very narrow compass. It has already been

covered that there is a difference between appeal and review. Moreover, if the applicant is so advised, he may raise the grounds taken in the instant Review Application before the Inquiry Officer, as has been observed in the order under review, as the Tribunal cannot assume the role of the Inquiry Officer, as it is the forum of the first instance where the evidence is led and the witnesses are examined and cross-examined without which complete justice cannot be done. There is no knowing that the applicant may be absolved of the charges on the basis of such evidence. Hence, the applicant cannot and should not be deprived of such opportunity to appear before the inquiry officer.

4. Having considered the submissions of the review applicant and in view of our above discussion, we find no merit in the instant Review application and the same stands dismissed by circulation. However, we reiterate that the applicant may raise the grounds taken in the review application before the inquiry officer, if he is so advised.

(Raj Vir Sharma)
Member (J)

(Dr. Birendra Kumar Sinha)
Member (A)