CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

R.A.NO.296/16
(In OA No.823/16)
New Delhi, this the 29th day of August, 2017
CORAM:
HON'BLE SHRI SHEKHAR AGARWAL, ADMINISTRATIVE MEMBER
AND
HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER
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Rohitash Kumar Verma
Aged about 31 years,
S/o Sh.Kailash Chand Bairwa,
R/o E-342, 3rd Floor,
Gali No.19, Sadh Nagar,
New Delhi 110045 (Applicant in OA 823/16)é é Petitioner

(By Advocate:Mr.M.K.Bhardwaj)
Vs.
1. South Delhi Municipal Corporation,
Through its Commissioner,
S.P.Mukherjee, Civic Centre,
JLN Marg, New Delhi.
2. Director of Education,
South Delhi Municipal Corporation,
S.P.Mukherjee, Civic Centre,
JLN Marg, New Delhi.
3. Delhi Subordinate Service Selection Board,
Through its Chairman,
FC-18, Institutional Area, Karkardooma,
Delhi (Respondents in OA 823/16)é Opposite Parties

(By Advocate: Mr.R.K.Jain)

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ORDER

Per RAJ VIR SHARMA, MEMBER(J):

The review petitioner was applicant in OA No. 823 of 2016. The present review application has been 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 10.11.2016 passed by the Tribunal dismissing OA No.826 of 2016 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:
>
> (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:**
>
> 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 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).

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.ò

6. 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

petitioner and find out whether a case has been made out by him for review of the order dated 10.11.2016 passed in OA No.823 of 2016.

7. In support of his prayer for review of the order dated 10.11.2016(ibid), the applicant-review petitioner has urged the following grounds:

ñA. Because in para 20 of the order, this Hon'ble Tribunal has wrongly recorded that the applicant failed to give any proof of having attended 3 months ñBridge Courseò to seek parity with the case of Rajasthan State. The applicant had during the course of arguments brought the original certificate issued by JRN Rajasthan Vidyapeeth University and the same was shown to the Court and a photocopy of the same was also provided. It has been clearly mentioned in the said Certificate that the Part-II Examination is in fact Bridge Course and the applicant had qualified in Part-II Examination consisting of 6 theory papers and 3 Practical. Copy of said Certificate is annexed with the RA as Annexure RA-2.

B. Because it has been wrongly recorded in para 20 last 6 lines that the applicant attended B.Ed. Bal Vikas Integrated Course of 1 year, only after less than 11 months. The said course was of one year and duly recognized equivalent to ETE/JBT. The NCTE being the statutory body and final authority in the matter of determining eligibility for appointment to the post of Teacher (Primary) has also accepted the said equivalence and declared that the candidate possessing the qualification of B.Ed. Bal Vikas Integrated Course are eligible for appointment to the post of Teacher (Primary).

C. Because there is no difference in the RRs of SDMC as well as RRs examined by Hon'ble Supreme Court of India in the case of Rajasthan State. The SDMC had also nowhere taken objection regarding not having 2 years course. The finding of the Hon'ble Tribunal regarding not having 2 years Certificate Course in ETE is beyond pleadings.

D. Because the Hon'ble Tribunal has in fact, set aside the letter of NCTE dated 04.12.2015 without there being any challenge to the same and the same is proved from the fact that the Hon'ble Tribunal has viewed that the decision of the NCTE as contained in letter dated

04.12.2015 can be a conjecture without there being any pleadings by any of the parties. The said letter dated 04.12.2015 was never disputed by SDMC or any other respondents.

E. Because in para 21, the Hon'ble Tribunal has recorded that the judgment of the Hon'ble Supreme Court of India (Annexure A-5) was not an order in rem and not in personem. The said judgment of Hon'ble Supreme Court of India was not in personem but in rem as evident from the judgment itself.

F. Because in para 22, this Hon'ble Tribunal has recorded that the Integrated B.Ed. Course completed by the applicant was of less than one year, whereas, it is clear from the marksheets as well as other documents brought on record that the same was a one year course duly recognized by the NCTE. Due to recording the facts incorrectly, an error apparent on the face of record has occurred and the same required to be rectified.

G. Because the decision taken by NCTE being the creation of Parliamentary Act are binding on all the Departments including South DMC and in case of any contradiction in RRs/Decisions related to recruitment of Teachers, the decision taken by NCTE is final and binding.

H. Because the grounds raised by the applicant were not considered while deciding the OA, therefore, the order passed by the Hon'ble Tribunal required to be reviewed in the interest of justice.ò

8. Resisting the RA, the respondent-opposite parties have filed a counter reply, wherein it has been contended, *inter alia*, that the applicant-review petitioner, through the present RA, wants to re-argue the matter, which in law is impermissible. All the contentions raised by the applicant-review petitioner have been adjudicated by the Tribunal. The applicant-review petitioner did not have the qualification as prescribed in the Recruitment Rules. Therefore, the review application is liable to be dismissed.

9. We have carefully perused the records of OA No.823 of 2016 and of the present RA No. 296 of 2016, and have heard Mr.M.K.Bhardwaj, the learned counsel appearing for the applicant-review petitioner, and Mr.R.K.Jain, the learned counsel appearing for the respondent-opposite parties.

10. After going through the records of OA and of R.A., we have found that the applicant-review petitioner has more or less repeated his old arguments which have been overruled by the Tribunal, vide order dated 10.11.2016(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 the record or for some reason akin thereto. The applicant-review petitioner has not shown any material error, manifest on the face of the order, dated 10.11.2016(*ibid*), which undermines its soundness, or results in miscarriage of justice. If the applicant-review petitioner 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.

11. In the light of what has been discussed above, we hold that the applicant-review petitioner has not been able to make out a *prima facie* case for review of the order dated 10.11.2016(*ibid*). Resultantly, the R.A., being devoid of merit, is dismissed. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SHEKHAR AGARWAL)
ADMINISTRATIVE MEMBER

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