CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

R.A.NO.301 OF 2016
(In OA No.1135/15)
&
M.A.No.3808/16
(In RA No.301/2016)

New Delhi, this the 7th day of July, 2017

CORAM:
HON'BLE SHRI SHEKHAR AGARWAL, ADMINISTRATIVE MEMBER
AND
HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

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1. Union of India through the General Manager,
   Ordnance Factory, Muradnagar,
   Distt. Ghaziabad (UP)
2. The Secretary,
   Ministry of Defence,
   New Delhi
3. The Directorate General,
   Ordnance Factories 10-A,
   S.K. Bose Road, Kolkata-01é é é . Petitioners

(By Advocate: Mr.V.S.R.Krishna)

Versus

1. Hem Nath Mishra
   S/o Shri Shiv Nath Mishra
   R/o I/32/414, Ordnance Factory Estate,
   Muradnagar, Ghaziabad (UP)
2. Smt. Satyawati Devi,
   w/o BhopalSingh,
   R/o 2/466, Near New Baldeep Public School,
   Santpura, Govindpuri, Modi Nagaré . Respondents

(By Advocate: Shri U.Srivastava for applicant-respondent no.1)

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ORDER

***Per* Raj Vir Sharma, Member(J):**

In the present R.A., filed under Rule 17 of the Central Administrative Tribunal (Procedure) Rules, 1987, read with Section 22(3)(f) of the Administrative Tribunals Act, 1985, the review petitioners, who were

official respondent nos. 1 to 3 in OA No.1135/15, have prayed for review of the order dated 2.9.2016 passed by the Tribunal allowing OA No.1135/15 filed by the applicant (respondent no.1 in the present Review Petition No.301/16).

2. Respondent no.1 (applicant in OA No.1135/15) has filed a counter reply resisting the RA.

3. We have carefully perused the records of OA No.1135/15 and of RA No.301/16, and have heard Shri V.S.R.Krishna, the learned counsel appearing for the official respondent-review petitioners, and Shri U.C.Shrivastava, the learned counsel appearing for the applicant-respondent no.1 in the RA.

4. Along with the RA, the respondent-review petitioners have filed MA No.3808/16 seeking condonation of delay of 73 days in the filing of the R.A. Considering the reasons assigned by the respondent-review petitioners, we allow MA No.3808/16 and condone the delay of 73 days in the filing of the RA.

5. The brief facts giving rise to the present RA No.301/16 are as follows:

5.1 In the year 1994 the official respondent nos. 1 to 3-review petitioners initiated the process of selection and recruitment to the post of Non-Language Teacher (Hindi/Sanskrit) (NLT-HS, in short) in the Inter College, Ordnance Factory, Muradnagar, Ghaziabad District, Uttar Pradesh. The vacancy in the said post was mentioned as UR/General category. The official respondent nos. 1 to 3-review petitioners, vide letter dated

11.10.1994, appointed respondent No.1 of the present RA 301/16 as NLT-HS. Respondent no.2 of the present RA filed Civil Misc. Writ Petition No.34262/1994 before the Hon'ble Allahabad High Court challenging the said appointment of respondent no.1 of the present RA. The learned Single Judge of the Hon'ble High Court, by judgment dated 4.7.1997, allowed the Writ Petition and quashed the said appointment of respondent no.1 of the present RA. Special Appeal No.774/1999 filed by the official respondent-review petitioners, and Special Appeal No.630/1997 filed by respondent no.1 of the present RA against the judgment dated 4.7.1997(ibid) were dismissed by the Division Bench of the Hon'ble High Court, vide order dated 13.7.2009. RA No.289583/09 filed by the official respondent-review petitioners in Special Appeal No.774/1999 was also rejected by the Division Bench of the Hon'ble High Court. Thereafter, SLP (Civil) Nos.6018-6019/2011 filed by the official respondent-review petitioners against the aforesaid judgments/orders of the Hon'ble High Court were also dismissed by the Hon'ble Supreme Court. In compliance with the judgment of the Hon'ble High Court, the official respondent-review petitioners issued an order dated 15.6.2011 cancelling the appointment of respondent no.1 of the present RA. The official respondent-review petitioners also issued an order dated 16.6.2011 offering appointment to respondent no.2 of the present RA on the post of NLT (HS), which was re-designated as TGT(Hindi), and directing her to report for joining along with the original experience certificate and other testimonials. As respondent no.2 of the present RA

failed to report for joining along with the original experience certificate, the offer of appointment issued to her was cancelled and fresh notification was issued by the official respondent-review petitioners in the present RA to fill up the said vacancy. Respondent no.1 in the present RA filed Civil Appeal No.9135-9136 of 2013 (arising out of SLP Nos.34392-34393 of 2011) which was disposed of by the Hon'ble Supreme Court, vide order dated 8.10.2013, with the direction to the official respondent-review petitioners to ñissue a fresh advertisement for appointment of teachers in the school run by the Ordnance Factoryò. It was also observed by the Hon'ble Apex Court that the official respondent-review petitioners would be at liberty to give age relaxation to the appellant (respondent no.1 in the present RA) if permissible under the Rule. As a consequence, the official respondent-review petitioners issued Advertisement dated 14/20.02.2015 which was challenged by respondent no.1 of the present RA by filing OA No.1135/15 as being contrary to the Hon'ble Supreme Court's order.

5.2 The Tribunal, by order dated 7.4.2015 passed in OA No.1135/15, directed that if any selection was made by the official respondent-review petitioners, the same would be subject to the outcome of the said O.A.

5.3 After considering the materials available on record, and the rival contentions of the parties, the Tribunal allowed OA No.1135/15, vide order dated 2.9.2016(ibid), the relevant part of which is reproduced below:

> ñ34. Therefore, it appears that the Hon'ble Supreme Court has itself partially overruled its earlier order dated 11.04.2016 (*sic*) in CC No.6018-6019/2011, and perhaps the removal of the applicant from service itself

> was not warranted, as the law laid down by the Hon'ble Supreme Court now stands. However, since in its latest order dated 08.10.2013, the Hon'ble Supreme Court has ultimately only directed the Official respondents to issue a fresh advertisement for appointment of teachers, and also to consider to grant age relaxation to the appellant/applicant herein, if it was permissible under the rules, it is clear that as per the law as laid down now by the Hon'ble Supreme Court, the vacancy of 1994 itself has got regenerated through the Hon'ble Supreme Court's order, and the Official respondents cannot be allowed to readvertise that post as has been done presently, as per the presently existing RRs. The vacancy against the post concerned has to be re-advertised only as a 1994 vacancy, and has to be filled up as per the then prevailing Recruitment Rules only.
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> 35. Therefore, going by the Hon'ble Supreme Court's judgment in **Y.V.Rangaiah** vs. **J.Sreenivasa Rao** (supra) reiterated in **Deepak Agarwal & Another** vs. **State of Uttar Pradesh & Others** (supra), and accepting the contention of the applicant that as per Clause 6 of the Gazette Notification vide SRO No.91 dated 08.04.1995, there is a provision for the respondents to relax any of the provisions, for reasons to be recorded in writing, with respect to any class or category of persons, which would include relaxation of age criteria also, the OA is allowed to the extent that the impugned Advertisement is set aside, and the official respondents are directed to re-advertise the post once again, as per the Recruitment Rules, as they had prevailed in the year 1994, and pass an order in terms of Clause 6 of the SRO 91 dated 08.04.1995, regarding the applicant's prayer for age relaxation, after considering the applicant's case on merit, so that the liberty granted to them by the Hon'ble Supreme Court to consider to provide age relaxation to the appellant/applicant gets utilized. For further clarity, it may be stated that the concerned post, when it is re-advertised, would have the same rules and requisite qualifications as had been advertised in the year 1994, and any of the qualifications for the equivalent or re-designated post, which have been subsequently prescribed, including roster etc., under which prescriptions the impugned advertisement had been issued, shall not at all be made applicable at the time of fresh re-advertisement now.ò

5.4 Hence, the present RA No.301/16 has been filed by the official respondent-review petitioners seeking review of the Tribunal's order dated 2.9.2016(ibid).

6. In support of their prayer for review of the order dated 2.9.2016(ibid), the official respondent-review petitioners have urged the following grounds:

> ña) Because the order dated 02.09.2016 suffers from errors and is hence liable to be reviewed. It is submitted that the judgment was reserved by the Hon'ble Tribunal on 22.02.2016 and the judgment was pronounced on 02.09.2016. In the meantime several developments have taken place which has a direct impact on the order dated 02.09.2016 passed. It is

submitted that based on the fresh advertisement dated 14-20.02.2015 issued based on the orders dated 08.10.2013 passed by the Hon'ble Supreme Court in CA No.9135-9136 of 2013, the review applicants have finalized the selections and the selected candidate, viz., Shri Jain Singh Yadav has been appointed as TGT (Hindi) on 24.02.2016. It is submitted that in terms of principles of natural justice, the new appointee i.e. Shri Jai Singh Yadav should have been given an opportunity to defend his appointment. True copy of appointment order dated 06.2.16 is annexed and marked as Annexure R-2.

b) Because there is an error in the order dated 02.09.2016 in so far the advertisement dated 14-20.02.2013 has been set aside but in the interregnum period the advertisement has outlasted itself in the selection process being complete and the selected candidate joining his duties. In such circumstances for the Hon'ble Tribunal to direct re-advertisement of a post which post stands filled is an error which needs to be rectified.

c) Because a perusal of the order dated 08.10.2013 of the Hon'ble Apex Court would show that the Hon'ble Court has directed the review applicants to issue fresh advertisement for appointment of teachers. The issuance of fresh advertisement would therefore include the adopted of the applicable RRs as also the relevant roster of reservations. It is in accordance with the above that the fresh advertisement dated 14-20.02.2015 was issued. It is submitted that the Hon'ble Tribunal gravely erred in not properly appreciating the directions of the Hon'ble Apex Court.

d) Because the Hon'ble Tribunal erred in not appreciating the fact that prior to issuing the advertisement in the year 2015 as per the directions of the Hon'ble Apex Court the review applicants had conducted the recruitment exercise twice earlier i.e. in the years 2001 and 2005. It is based on these recruitments undertaken that the post advertised in the year 2015 fall on the roster for OBC.

c) Because the Hon'ble Tribunal gravely erred in directing the review applicants to re-advertise the post arising in the year 1994 and pass an order in terms of clause 6 of the SRO 91 dated 08.04.1995 regarding respondent No.1's case for age relaxation. It is submitted that it is legally not correct to consider an SRO issued at a later date for the purposes of a post arising on a earlier point of time. Accordingly the direction to consider age relaxation in terms of SRO dated 08.04.1995 is erroneous and liable to be reviewed.

d) Because in the present case where a post has been held to be filled as per the RRs, the question of re-advertising the said post all over again is neither just nor proper especially when a new incumbent has joined the post in accordance with valid selections made.ò

7. 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.

7.1 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.

7.2 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

7.3 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;
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> 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:**

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

8. Having tested the grounds urged by the official respondent-review petitioners for reviewing the order dated 2.9.2016(ibid) on the touchstone of the principles of law laid down by the Hon'ble Supreme Court in the above decisions, we have found no case for review to have been made out by the official respondent-review petitioners. 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 other reason akin thereto. The official respondent-review petitioners have not shown any material error, manifest on the face of the order, dated 2.9.2016(*ibid*), which undermines its soundness, or results in miscarriage of justice. If the official respondent-review petitioners are 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.

9. In the light of what has been discussed above, the RA being devoid of merit is dismissed. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SHEKHAR AGARWAL)
ADMINISTRATIVE MEMBER

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