CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

MA No.1709/2016
(In RA No.335/2015 arising out of OA No.1824/12)
é é é é ..

New Delhi, this the 20th day of March, 2017

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

Sh. Aman Gupta,
S/o Sh. Anil Gupta,
8110, Pocket XI, Sector-B,
Vasant Kunj,
New Delhi-70. é é .. Applicant/Petitioner

(By Advocate: Mr. Ajit Sharma)
Vs.
Union of India through

1. The Secretary,
   Department of Personnel and Training,
   Ministry of Personnel, Pensions and Public
   Grievances, Government of India,
   North Block, New Delhi-1.
2. The Secretary (Foreign Secretary),
   Ministry of External Affairs,
   Government of India,
   South Block,
   New Delhi-1. é é é é .. Respondents

(By Advocate: Mr.Gyanendra Singh)

ORDER

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

We have perused the records of OA No.1824 of 2012 and RA No.335 of 2015, and have heard Mr.Ajit Sharma, the learned counsel appearing for the applicant/review petitioner, and Mr.Gyanendra Singh, the learned counsel appearing for the respondents. We have also perused the written

submissions filed by Mr.Ajit Sharma, the learned counsel appearing for the applicant/review petitioner.

2. MA No.1709 of 2016 has been filed by the review petitioner seeking condonation of delay of 893 days in filing of RA No.335 of 2015 on 16.11.2015 for reviewing the order dated 18.4.2013 passed in OA No.1824 of 2012.

3. Brief facts giving rise to RA No.335 of 2015 are as follows:

3.1 The applicant/review petitioner was a candidate for the Civil Services Examination (CSE)-2010 under the categories of visually impaired persons. While appearing for the said examination he had given Indian Administrative Service (IAS) as his first preference, Indian Foreign Service (IFS) as second his second preference, and Indian Corporate Law Service (ICLS) as his third preference. He qualified in the said examination securing 3rd rank amongst the category of visually impaired persons. He was allotted ICLS which he joined. His contention is that he should have been allotted IAS which was his first preference or IFS which was his second preference.

3.2 The applicant/review petitioner filed OA No.1824 of 2012 seeking the following reliefs:

> ñ(i) Allow this application.
>
> (ii) Consequently direct respondent no.1 to draw up the IAS reservation roster keeping in view its own OMs and the principles that vacancies are to be considered from the year 1996 and that a vacancy arising first shall be filled first irrespective of which CSE it was filled through.
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> (iii) Consequently, direct respondent no.1 to allocate and appoint the applicant to the Indian Administrative Service on the basis of his 3rd rank in CSE 2010 in the visually impaired category and the then existence of 6 (backlog and fresh) vacancies. The respondent should also be directed that the applicants appointment shall carry with it all consequential benefits such as those of seniority.
>
> (iv) Direct respondent no.2 to draw up the IFS reservation roster as per the laid down rules, starting from the recruitment year 1996 and putting Hearing, Locomotor and Visual disability categories at points 1, 34 and 67 respectively in the reservation roster.

(v) Consequently direct the respondents to appoint visually impaired persons to the IFS on the basis of CSE 2010 as well (against 1 vacancy of 2020 and 2 backlog vacancies).

(vi) Grant any other relief which your Lordships deem fit and proper in the circumstances of the case and in the interest of justice.

Award the cost.ò

3.3 The Tribunal, by order dated 18.4.2013, dismissed OA No.1824 of 2012 as being devoid of merit.

3.4 Being aggrieved by the Tribunalôs order dated 18.4.2013(ibid), the applicant/review petitioner filed W.P. (C) No.8540 of 2015 before the Honôble High Court of Delhi. The Honôble High Court passed the following order on 9.9.2015:

ñAfter some hearing in the matter, learned counsel for the petitioner wishes to withdraw the present writ petition as he wishes to file a review petition before the Tribunal.

The present writ petition stands dismissed as withdrawn.ò

3.5 Hence, the present R.A.No.335 of 2015 was filed by the applicant/review petitioner on 16.11.2015 seeking review of the order dated 18.4.2013 passed in OA No.1824 of 2012.

3.6 Along with RA No.335 of 2015, MA No.1709/2016 was filed by the applicant/review petitioner seeking condonation of delay of 893 days in filing of the said RA.

4. In support of his prayer for reviewing of the order dated 18.4.2013 (ibid), the applicant/review petitioner, in RA No.335 of 2015, has urged the following grounds:

"GROUNDS

I. That the order of dismissal by Tribunal of the OA filed by Applicant suffers from severe infirmities and illegalities, as it is against the basic tenets of law and has been passed without application of mind. The tribunal has relied on the submissions made by the respondents without even considering the detailed submissions, counter affidavits and arguments advanced by the Applicant.

II. That the tribunal has completely ignored the averments made by the Applicant with regard to the irregularities in the manner in which the roster has been prepared. It is trite

law Reservation made in favour of handicapped persons is an illustration of classification under clause (1) of Article 16. In furtherance of that Disability Act, 1995 provides for reservation of seats in public employment for disabled people. It is submitted that backlog vacancies were available in the concerned sub-category, yet the Respondent did not requisition for filing up of all the backlog vacancies to the UPSC, accruing till that date. This resulted in denial of right to be appointed when vacancy existed and the candidate was eligible and recommended by competent authority for appointment/allocation. Such denial amounts to a violation of the right of equality of opportunity in public employment guaranteed by Article 14 r/w Article 16 of the Constitution of India and it resulted in unfair and unequal treatment of the Applicant in matter of public employment.

III. That the Cadre Controlling Authority (hereinafter ñCCAò) for IAS is the Department of Personnel and Training (DoPT) which is Respondent No.1 here. Roster of IAS appointments is maintained as a block of 100 and it is continuously numbered. The Roster point for reservation for V.I. candidates is point number 1 in a block of 100. Thus, if 80 IAS appointments are made in one year then the roster will be filled from 001 till 080. Out of these 80 appointments, as per the reservation policy, point number 001 is reserved for a candidate who is visually impaired. Next year if 80 more appointments are made, the roster will be filled from 81 till 160. However, since roster point 101 has been reached and it can only be filled up by a Visually Impaired candidate. Thus, it is submitted that whenever roster moves, the vacancies at point 001, 101, 201, 301 and so on can only be filled up by V.I. candidates. Consequently, as per the Respondent when roster reached 1298 at the end of recruitment year 2011, the number of VI vacancies were 13 since the last VI vacancy was filled at Roster point 1201. However, it is pertinent to note that the CCA began preparation of the reservation roster register only from the year 1997, which is in violation of the Disability Act, 1995 as well as the directions issued vide OM dt. 29.12.2005 and OM dt. 26.04.2006. If the Respondent would have maintained the registers from recruitment year 1997, as required by law, then the roster would have reached 1378 in recruitment year 2011 including the 80 IAS officers appointed in year 1996. Consequently, there were 14 posts reserved for VI candidates uptil recruitment year 2011.

IV. In 2010, when the Applicant wrote the exam, his recruitment year was 2011. Up till recruitment year 2011, 8 candidates with VI disability had been appointed in total since the coming in of the Disability Act, 1996 which came into effect from 01.01.1996. The said Act provisioned for inter alia a right to reservation of certain posts in favour of candidates with disability.

V. In recruit year 2011, one more seat was available to candidates with VI disability apart from at least 5 other backlog vacancies which had not been filled till date, as the respondent in the reply to the Application of the Applicant at CAT claimed 13 vacancies existed. It is pertinent to note here that no stay had been granted by either CAT/any other competent court of jurisdiction against filling of these seats. In the detailed reply on affidavit submitted by both the respondents in CAT, neither has even claimed that any such order/direction existed at the time of rejecting the claim of the Applicant. It is admittedly not the ground on which the Applicant has been denied appointment/allocation to IAS/IFS. In this background, failure of Respondents to offer these seats to the Applicant despite him being eligible for such allocation/appointment amounts to infringement/violation of the fundamental rights enshrined under Article 14 and 16 of the Constitution of India.

VI. That there was no appointment made by the respondents under reservation for disabled candidates in furtherance of the right arising out of the Disability Act, 1995 until the year 2004 when the Delhi High Court in the case of Ravi Kumar Arora vs. Union of India & Ors. [111(2004)DLT 126] directed the appointment of the Applicant therein who was a Physically Handicapped (PH) category candidate, observing that the backlog vacancies accumulating over time since the coming in of the Disability Act, 1995 must be filled up and the Applicant therein was entitled to being considered for appointment against such vacancies. Furthermore, the court observed that disabled candidates must not suffer due

to the lack of initiative by the bureaucracy and thus non-indentification of seats suitable for disabled candidates cannot be a valid ground for denial of their right to reservation. A true copy of this judgment is annexed hereunder as Ann-D. Consequently, thereafter several candidates belonging to various civil service examinations started claiming that they be appointed against the backlog vacancies which have remained unfilled due to non-requisition by DoPT and other CCAs. Thus, seats accruing from Recruitment year 1996 till the recruitment year 2011 (on basis of CSE-2010) in the concerned sub-category are the concern of the present petition.

VII. That the Tribunal erred by assuming that from recruitment year 1996-2010, the number of vacancies in the VI sub-category of Category PH (Physically Handicapped) in IAS were 13 including vacancies for CSE 2010. Tribunal wrongly held that 1298 IAS officers had been appointed within the time span mentioned above, as the Respondent contended. In fact, including 80 recruitments for the year 1996, the total number of IAS appointees before 2011 was 1378 IAS officers.

VIII. That the Tribunal has erred in relying upon contentions of the Respondent that all of these 13 had been filled before the Applicant was considered for the said Services and thus the Applicant was not allocated IAS despite being recommended for it by the concerned authority. The above assertion made by respondents is factually wrong and was an attempt at misleading the Tribunal. The respondents have deliberately not disclosed to the Tribunal the date and time of appointment of the abovesaid 13 appointments.

IX. That it cannot be pressed enough that it is not even the case of the Respondents that there was some stay/direction from any Court or Tribunal regarding blocking of seats/backlog vacancies or that they have blocked some seats on ad-hoc basis. The respondents had not even claimed that their action of denying equal opportunity of public employment was in furtherance of or in pursuance of a court order. In the absence of any such contention, there is no reason as to why the denial of vacancy to the Applicant must not be considered a violation of rights protection under Part-III of the constitution of India, 1950 if the Applicant can show from record that on the day of his allocation letter, there were existing vacancies. The Tribunal miserably failed to appreciate this fact.

X. That the tribunal failed to appreciate that the assertions made by the Applicant no.1, regarding number of total vacancies arising from 1996-2011 as well as about the number of appointments made till the date on which the Applicant was considered for allocation, were not based on facts and were an attempt to prejudice the case of the Applicant. The contentions of Respondent were primarily two-fold. Firstly, they maintained that against the number of vacancies in the concerned sub-category in IAS were 13 including CSE 2010. They also contended that all of these 13 had been filled before the Applicant was considered for the said Services and was not allocated IAS.

XI. The Tribunal erred by assuming that since1996 the number of vacancies in the V.I. sub-category of Category P.H. (Physically Handicapped) in IAS were 13 including vacancies for CSE 2010 as till that date 1298 IAS officers had been appointed within the time span mentioned above as the respondents contended. In fact, till CSE-2010 1378 IAS officers had been recruited /appointed as stated in paras above. As regards the number of vacancies available till CSE-2010 (Recruitment Year 2011), it is submitted that the Tribunal failed to appreciate that respondents have erroneously assumed that the rights of disabled persons under the Disability Act, 1995 would take effect from 1997 (CSE 1996) and no vacancy for such candidates was accruing to the candidates eligible for these reservations. Their right to have reservation in public employment amongst the order benefits which accrue to them by operation of the Disability Act, 1995 was provided for and became operational from the date of coming into operation of this abovesaid act i.e. w.e.f. January 1st, 1996. Thus, any recruitment subsequent to that must reserved a seat for such candidates and if the competent authority failed to earmark such a seat it would not result in lapse of the right of disabled candidates. The Supreme Court in Govt. of India & Anr. vs Ravi Kumar Gupta & Anr[(2010) 7 SCC 626] has category stated:

> ñWhile it cannot be denied that unless posts are indentified for the purposes of Section 33 of the aforesaid Act, no appointments from the reserved categories contained therein can be made, and that to such extent the provisions of Section 33 are dependent on Section 32 of the Act, as submitted by the learned ASG, but the extent of such dependence would be for the purpose of making appointments and not for the purpose of making reservation. In other words reservation under Section 33 of the Act is not dependent on identification, as urged on behalf of the Union of India, though a duty has been cast upon the appropriate Government to make appointments in the number of posts reserved for the three categories mentioned in Section 33 of the Act in respect of persons suffering from the disabilities spelt out therein. In fact, a situation has also been noticed where on account of non-availability of candidates some of the reserved posts could remain vacant in a given year. For meeting such eventualities, provision was made to carry forward such vancies for two years after which they would lapse. Since in the instant case such a situation did not arise and posts were not reserved under Section 33 of the Disabilities Act, 1995, the question of carrying forward of vacancies or lapse thereof, doe not ariseò.

XII. Furthermore, it is pertinent to mention that in effect all the appointments for V.I candidates have happened post -2004 after the Supreme courts affirmation of the Delhi High Court decision in favour of Ravi Kumar Arora. In this light, the submission of Respondent in Reply-affidavit in CAT that reservation could not be effected through 1996 due to administrative exigencies seems to be only an excuse to escape liability and deny the Applicant his rightful claim. Neither the Applicant nor any other disabled candidate should suffer for the inaction/ inability of the Respondents. In fact, an O.M. dt. 26.04.2006 issued by the Respondents mandated:

> ñ.... All establishments should prepare the reservation roster registers as provided in this Departmentôs OM No. 36035/8/2003- Estt(Res) dt. 29.12.2005 starting from the year 1996 and reservation for persons with disabilities be earmarked as per instructions contained in the OM.ò

It is submitted that this O.M. is very clear that the roster must be maintained from 1996 onwards. This would mean maintenance of roster for the recruitment year 1996 since the roster is the list of all the Appointments/ recruitments made in the particular Service for that year. However, the Respondents have contended in Tribunal that despite of the Disability Act, 1995 coming into force from 01.01.1996 the right to reservation in public employment for Disabled candidates would only arise from 1997 (CSE 1996) would be filled. The Tribunal erred in not appreciating that a logical extrapolation of this argument is that the concerned Cadre Controlling Authority (hereinafter ñCCAò) was not required to maintain reservation roster register from recruitment year 1996 the Right of disabled candidates to have reservation had already accrued vide the Disability Act from January 1st, 1996. This amounts to violation of the right accrued vide a Central Legislation in favour of all disabled candidates, generally and for the Applicant, specifically. The Tribunal has gravely ignored this issued without giving a finding on merits.

XII. That the Tribunal gravelly erred when it failed to appreciate that the relevant date for consideration and adjudication of this dispute is 11.08.2011 which is the date of letter of allocation. Despite there being at least 6 vacancies for IAS in V.I. subcategory of PH category and the Applicant being at rank 3 of the said list, without any reasonable justification, the Applicant was denied appointment /allotment of his first preference seat i.e. IAS and was allocated ICL Service. Article 16 (1) of The Constitution of India, 1950 provides:

> ñ16 Equality of opportunity in matters of public employment.-(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.ò

Further, Article 14 guarantees right to equality to all citizens of this country and states:

> ñ14. Equality before law.- The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of Indiaò.

This denial of appointment /allotment was a violation of the Applicants fundamental rights guaranteed under Article 14 and 16 of the constitution of India. The status as on that particular date is to be taken into account as that is the day when the right to appointment/non-allocation of seat his rights have been infringed. Taking into account of subsequent developments despite the Applicantôs pointing them out is against established principles of law. The appointments made after that day and the allocations granted during the pendency of the suit cannot prejudice the claim of the Applicant. It is humbly submitted that the Respondent has made appointments of various candidates in blatant and gross contravention of the directions, rules, regulations and statutory principles applicable in this regard.

XIV. The Tribunal further erred in not appreciating that the roster prepared by the CCA was not maintained as per the statutory provisions, the relevant O.M.s and the directions issued by the Supreme Court, High Courts and CAT in similar cases regarding maintenance of such register. This misleading, ambiguous and improper roster/record maintained by the Respondent is contrary to law.

XV. That the Tribunal has gravely erred in ignoring the averments made by the Applicant and relying upon the false averments and submissions of the respondents. Respondent has repeatedly misled the court while explaining the procedure for filling up of vacancies and in fact has deliberately concealed some vital information from the Tribunal. In para 22 of reply filed by Respondent in OA 1824/2012, the Respondent has on an affidavit stated:

> ñThat since, the Respondent No.1 has allocated service to the applicant from CSE-2010 for which , his name has duly been recommended by UPSC and **since all the vacancy reserved for PH candidates & backlog vacancies has already been allocated to the candidates of previous CSE year, the applicant cannot be allocated IAS/IFS on the basis of CSE-2010".**(emphasis supplied)

XVI. It is pertinent to note that the Applicant had filed OA 1824/2012 in CAT in the year 2012 and in fact some backlog vacancies with regard to the same sub-category in IAS have actually been allocated to some candidates in year 2012. This is evident from their own records and is also reflected in the O M.ôs issued by Respondent as well as in the year-wiselist of appointments of candidates to IAS. This clearly reveals that a number of vacancies have been filled in IAS against backlog vacancies after the refusal of IAS allocation to the Applicant, despite the claim by Respondents that there were no backlog vacancy available for applicant as on 11.08.2011. The respondents failed to appoint/allocate either of those vacancies to the Applicant. This amounts to violation of the fundamental right to equality of opportunity in public employment of the Applicant.

XVII. That no similar review petition has been filed by the Applicant in this Hon'ble Tribunal or in the Hon'ble Supreme Court of India.

XVIII. That this Writ Petition is maintainable as the Applicant has no other alternate efficacious remedy against the order passed by CAT which is bad in law and contrary to established principles of law.ò

5. In the written submissions filed by the learned counsel appearing for the applicant on 26.7.2016 in MA No.1709 of 2016, the delay of 893 days in filing of RA No.335 of 2015 has been explained in paragraphs 6.1 to 6.11 thereof, which are reproduced below:

> ñ6.1 That the OA No.1824 of 2012 was dismissed vide detailed order of this Hon'ble Tribunal dated 18.04.2013 which was despatched to him on 09.05.2013 & the Applicant most humbly accepts that from this date the

time period of limitation started running even though he actually received the copy of the same after about a month.

6.2 That in the meantime on 03.05.2013 the Applicant was informed vide results declared by the UPSC that he has cleared CSE-2012 securing rank 57 in the overall merit list. At this time he was serving as Assistant Registrar of Companies (Delhi & Haryana) in the ICLS. The department was highly understaffed and well aware of his impending training the Petitioner immediately started the process of handing over charge to his colleagues as per the instruction of his superior officers.

6.3 The petitioner received his service allocation letter to the IAS on 11.08.2013. Immediately thereafter from 01.09.2013 to 13.12.2013, the petitioner was despatched for training at the Lal Bahadur Shastri National Academy of Administration, Mussoorie (hereinafter referred to as ñthe Academyò).

6.4 Thereafter from 16.12.2013 to 16.02.2014, the Petitioner was undergoing the IAS Phase-I Training, including the winter study tour/Bharat Darshan and from 17.02.2014 to 21.02.2014, the Parliament attachment.

6.5 That from 02.03.2014 to 13.06.2014 he was again stationed at the Academy undergoing the remaining duration of the Phase I training and from 29.06.2014 to 05.07.2014 the Applicant was stationed at the Assam Administrative Staff College, Guwahati.

6.6 It is trite that the above courses are ñno leaveò courses and immediately on completion of these training programs the Applicant sought legal advice from his counsel who advised him that the suitable forum for a Review/Appeal is the Honôble Delhi High Court.

6.7 That immediately (within 6 days of his return to Delhi) on 11.07.2014 the Applicant got the Writ Petition filed under legal advice and guidance of the counsel (Sr.Advocate/Sh.Harishankar) against the order dated 18.04.2013. Thereafter the Applicant was informed by the Counsel that while the Writ has been filed, the Court has asked forcertain certified copies of documents which takes time. The Applicant had no reason to disbelieve the Counsel land given his strenuous schedule undergoing district training under the District Magistrate, the Applicant took periodic updates from the Counsel who assured him that things are underway.

6.8 That from 28.06.2015 to 21.08.2015 the Applicant was again undergoing training at the Academy. Cognizant of the fact that substantial time had passed from the date of filing he sought advice from an alternative Counsel who after checking the facts informed the Applicant that his Writ Petition is still pending acceptance at the Registry of the Delhi High Court for want of removal of objections.

> 6.9 That immediately (within less than a week) the Applicant changed his Counsel and on 03.09.2015 itself the W.P. (C) No. 8540/2015 was admitted and thereafter listed on 09.09.2015 for disposal.
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> 6.10 That on 09.09.2015 while hearing the Writ Petition, the Hon'ble Bench in the High Court advised the Counsel of the Applicant that it would be rather appropriate that he approach this Hon'ble Tribunal under its jurisdiction to Review whereafter the W.P. (C) No. 8540/2015 was "dismissed as withdrawn".
>
> 6.11 That immediately thereafter on 16.11.2015 the present Review Application, viz. RA No.335/2015 has been filed in this Hon'ble Tribunal.'

It was also submitted by the learned counsel that the delay of 893 days in filing of the RA was not due any laches on the part of the applicant, but due to mistake of counsel. The Tribunal has failed to consider all the submissions made on behalf of the applicant, while passing the order dated 18.4.2013 (ibid). As per the law settled by the Courts, the matter should be disposed of on merits, and unless mala fides are writ large, delay should be condoned and the substantive right of the party should be adjudicated upon.

6. To buttress his submissions, Mr.Ajit Sharma, the learned counsel appearing for the applicant/review petitioner has relied on the decisions of the Hon'ble Supreme Court reported in AIR1987 SC 1353, **Collector, Land Acquisition, Anantnag and another Vs. Ms. Katiji and others,** and in (2000)9 SCC 733, **Radha Krishna Rai Vs. Allahabad Bank and others.**

6.1 In **Collector, Land Acquisition, Anantnag and another Vs. Ms. Katiji and others** (supra), the Civil Appeal was filed against the order passed by the Hon'ble High Court of Jammu & Kashmir refusing to condone delay in filing of the appeal against a decision enhancing compensation in respect of acquisition of lands for a public purpose to the extent of nearly 14 lakhs rupees by making an upward revision of the order of 800% (from Rs.1000 per kanal to Rs.8000 per kanal) thereby raising an important question as regards principles of valuation, and dismissing the appeal barred by limitation. Allowing the Civil Appeal, the Hon'ble Supreme Court

observed that the doctrine of equality before law demands that all litigants including the State as litigant are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step-motherly treatment when the State is the applicant praying for condonation of delay. In fact, on account of an impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file pushing, and passing on the buck ethos, delay on part of the State is less difficult to understand though a more difficult to approve. In any event, the State which represents collective cause of the community, does not deserve a litigant non grata status. So also the approach of the Courts must be to do even-handed justice on merits in preference to the approach which scuttles a decision on merits.

6.2 In **Radha Krishna Rai Vs. Allahabad Bank and others** (supra), the appellant was kept under the impression that the appeal had already been filed. When the appellant tried to contact his advocate to know about the progress of his case, he did not receive any satisfactory information. When the appellant found that the progress of the matter was not satisfactory, he engaged another advocate. On enquiry by the subsequent advocate, it came to her knowledge that no appeal was filed by the appellant before the Division Bench. Then she filed an appeal before the Division Bench, with a petition to condone the delay in the above circumstances. Condoning the delay and allowing the Civil Appeal, the Hon'ble Supreme Court held that the period of delay was unduly long, the circumstances were also very unusual. The appellant was a victim of misrepresentation of facts by his own advocate and was kept under the impression that the appeal was pending before the Hon'ble High Court whereas no appeal was in fact filed by the advocate. It could not be said that the appellant was not vigilant in prosecuting the appeal. The cause shown by the appellant was sufficient to justify condoning the delay in filing of the appeal.

7. After considering the pleadings of the applicant-review petitioner and the submissions made by the learned counsel appearing for him, we are not satisfied that the applicant-review petitioner had sufficient cause for not making the RA within the prescribed period of limitation. We have found that only after his withdrawing W.P. (C) No.8540 of 2015 and dismissal of the said writ petition (as being withdrawn) by the Hon'ble High Court of Delhi on 9.9.2015, the applicant-review petitioner filed the present RA on 16.11.2015. We have found no substance in the plea of the applicant-review petitioner that on wrong advice of his previous advocate, WP (C) No.8540 of 2015 was filed by him challenging the Tribunal's order dated 18.4.2013(ibid) and that on being correctly advised by his subsequent advocate, he filed present RA on 16.11.2015, and, therefore, the delay was not due to any laches on his part but due to mistake of his previous advocate. This plea of the applicant-review petitioner is a clever ruse. Acceptation of such plea of the applicant-review petitioner would be tantamount to abuse of process of the Tribunal. As the applicant was pursuing W.P. (C) No.8540 of 2015 before the Hon'ble High Court of Delhi up to 9.9.2015 against the Tribunal's order dated 18.4.2013(ibid), it cannot be said that his preoccupations during the period from 9.5.2013 till 15.11.2015 created any sort of impediment for him to file the RA within the prescribed period of limitation or that he was diligently prosecuting the present R.A. If at all there was any communication gap between him and his advocate appearing for him in the writ petition before the Hon'ble High Court of Delhi, the applicant cannot be allowed to utilize the same as a cause while explaining the delay in filing of the RA before this Tribunal. In the above view of the matter, the decisions of the Hon'ble Supreme Court in **Collector, Land Acquisition, Anantnag and another Vs. Ms. Katiji and others** (supra) and **Radha Krishna Rai Vs. Allahabad Bank and others** (supra), besides being distinguishable on facts, are of no avail to the applicant. Therefore, we have found no merit in the prayer made by the applicant to condone the

delay of 893 days in filing of the RA. Accordingly, MA No.1709 of 2016 is liable to be rejected.

8. Furthermore, after going through the Review Application and the records of the O.A. together with the order dated 18.4.2013(ibid), we have found that in support of his prayer for reviewing the order dated 18.4.2013(*ibid),* the applicant-review petitioner, in the Review Application, has more or less reiterated his old contentions which have been overruled by the Tribunal, vide order dated 18.4.2013 (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 record or for some reason akin thereto. The review petitioner has not shown any material error, manifest on the face of the order, dated 18.4.2013(*ibid),* which undermines its soundness, or results in miscarriage of justice. Admittedly, the applicant-review petitioner had challenged the Tribunalôs order dated 18.4.2013(ibid) by filing WP (C) No. 8540 of 2015, but had withdrawn the same, and accordingly, the Honôble High Court of Delhi had dismissed the same as withdrawn, vide order dated 9.9.2015 (supra). Thereafter, the present R.A. was filed by him on 16.11.2015. The scope of review is very limited. It is not permissible for the Tribunal to act as an appellate court. In this view of the matter, we do not find a prima facie case to have at all been made out by the applicant-review petitioner for reviewing the order dated 18.4.2013(ibid). The view taken by us is fortified by the decisions of the Honôble Supreme Court in **Ajit Kumar Rath v. State of Orissa and others,** (1999) 9 SCC 596; **Union of India v. Tarit Ranjan Das,** 2004 SCC

(L&S) 160; **State of West Bengal and others v. Kamal Sengupta and another,** (2008) 2 SCC (L&S) 735; and **Kamlesh Verma v.Mayawati & others,** 2013(8) SCC 320.

9. In **Ajit Kumar Rath v. State of Orissa and others** (supra)**,** 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.

10. In **Union of India v. Tarit Ranjan Das**(supra)**,** 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.

11. In **State of West Bengal and others v. Kamal Sengupta and another**(supra), 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.
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> (ii) The Tribunal can review its decision on either of thegrounds enumerated in Order 47 Rule 1 CPC.
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> (iii) The expression ñany other sufficient reasonò appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.
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> (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

12. The Hon'ble Supreme Court, in **Kamlesh Verma vs.Mayawati & others**(supra)**,** 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:

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

13. In the light of our above discussions, MA No.1709 of 2016 for condonation of delay of 893 days in filing of RA No.335 of 2015 is rejected. R.A. No.335 of 2015 is rejected as being barred by limitation, besides being devoid of merit. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SHEKHAR AGARWAL)
ADMINISTRATIVE MEMBER

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