

**Central Administrative Tribunal
Principal Bench**

RA No.97/2018
In
OA No.4168/2011

New Delhi this the 23rd day of July, 2018.

Hon'ble Mr. Justice Dinesh Gupta, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)

The Commissioner,
North Delhi Municipal Corporation,
Dr. S.P. Mukherjee Civic Centre, 9th Floor,
J.L. Marg, New Delhi.

-Applicant

-Versus-

1. Shri R.C. Meena, S/o Shri Ram Jivan,
Aged about 45 years,
r/o E-3, MCD Flats, Bhamasha Market,
Kamla Nagar, Delhi-110 007.
2. South Delhi Municipal Corporation,
Through its Commissioner, 9th Floor,
Dr. S.P. Mukherjee Civic Centre,
J.L. Marg, New Delhi.
3. The Commissioner,
South Delhi Municipal Corporation,
Dr. S.P. Mukherjee Civic Centre, 9th Floor,
J.L. Marg, New Delhi.
4. Director (Personnel),
South Delhi Municipal Corporation,
Dr. S.P. Mukherjee Civic Centre, 22nd Floor,
J.L. Marg, New Delhi.
5. Director (Vigilance),
South Delhi Municipal Corporation,
Dr. S.P. Mukherjee Civic Centre, 26th Floor,
J.L. Marg, New Delhi.

-Respondents

O R D E R (By Circulation)**Mr. K.N. Shrivastava, Member (A):**

Through the medium of this Review Application (RA), filed under Section 22 (3) (f) of the Administrative Tribunals Act, 1985, the review applicant, who was respondent no.3 in OA No.4168/2011, has sought review of order dated 23.05.2018 passed in the said OA.

2. The main grounds pleaded in the RA for review of the order are as under:

2.1 The Tribunal has failed to consider that the review DPC had already been held on 17/18.09.2015 and the respondent no.1 in the RA/original applicant sought to challenge the same by filing MA No.2616/2016 in the OA praying for amendment in the OA by incorporating the challenge to the review DPC in the relief clause of the OA. The said MA, however, was withdrawn by the applicant.

2.2 The Tribunal has failed to consider the final seniority list issued on 10.03.2016 and thereafter the DPC held in December, 2016 considered the applicant for the vacancy year 2008-2009 to 2014-2015 but kept his name in sealed in view of pendency of the criminal case.

2.3 The Tribunal has failed to consider that the reply had been filed on 14.03.2012 and another affidavit was filed on 12.09.2012

by the review applicants herein. Thereafter much water has flown with regard to the promotion of the applicant to the post of Executive Engineer and various orders have been passed by the courts with regard to seniority and promotion in question. Therese facts the review applicant had filed additional affidavit on 12.10.2015 wherein it had been specifically stated in para 14 that the review DPC had already been held on 17/18.09.2015 and that the review applicant is in process of finalizing the seniority list.

2.4 The Tribunal has failed to consider that the applicant has himself stated in the last table of para no.3 of the rejoinder that he has been discharged in only one of the two police cases.

2.5 The Tribunal has erroneously stated that the learned counsel for the review applicants herein stated that a revised seniority list was published in the year 2016 and with reference to it a proposal for review DPC is going to be sent to UPSC.

3. We have perused the RA. The scope of review lies in a narrow compass as prescribed under Order XLVII, Rule (1) of CPC. None of the grounds raised in the RA brings it within the scope and purview of review. It appears that the review applicant is trying to re-argue the matter afresh, as if in appeal, which is not permissible. If in the opinion of the review applicant the order passed by the Tribunal is erroneous, the remedy lies elsewhere. Under the garb of review, the

review applicant cannot be allowed to raise the same grounds, which were considered and rejected by the Tribunal while passing the order under review. The review applicant has failed to bring out any error apparent on the face of the order under review. Existence of an error apparent on the face of the record, is *sine qua non* for review of the order.

5. On the power of the Tribunal to review its own orders, the Hon'ble Supreme Court has laid down clear guidelines in its judgment in the case of **State of West Bengal & others Vs. Kamal Sengupta and another**, [2008 (3) AISLJ 209] stating therein that *"the Tribunal can exercise powers of a Civil Court in relation to matter enumerated in clauses (a) to (i) of sub-section (3) of Section (22) of Administrative Tribunal Act including the power of reviewing its decision."*

At Para (28) of the judgment, the principles culled out by the Supreme Court are as under:-

"(i) The power of 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 specific grounds

(iv) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as a error apparent on the face of record justifying exercise of power under Section 22(2) (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 a larger bench of the Tribunal or of a superior court

(vii) A decision/order cannot be reviewed under Section 22(3)(f).

(viii) 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.

(ix) 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.”

6. For the reasons discussed in the foregoing paras, we do not find any merit in the RA. Accordingly, the RA is dismissed in circulation. No costs.

(K.N. Shrivastava)
Member (A)

(Justice Dinesh Gupta)
Member (J)

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