

**Central Administrative Tribunal
Principal Bench**

**RA-82/2018
In
OA-3643/2012**

New Delhi, this the 28th day of May, 2018

**Hon'ble Mrs. Jasmine Ahmed, Member (J)
Hon'ble Mr. Uday Kumar Varma, Member (A)**

Head Constable Vashisht Kumar No. 321/E,
S/o Shri Ram Niwas, Age 49,
R/o H-15 police station
Lajpat Nagar, III Delhi. Applicant

(through Sh. Sachin Chauhan)

Versus

1. Govt. of NCTD through
The Commissioner of Police,
Police Headquarters, MSO Building,
IP Estate, New Delhi.
2. The Dy. Commissioner of Police,
3rd Bn.
DAP Vikaspuri, New Delhi.
3. Insp. Vimal Kishor,
Enquiry Officer,
3rd BN, DAP, Vikas Puri,
New Delhi. Respondents

ORDER (By Circulation)

Hon'ble Mr. Uday Kumar Varma, Member (A)

This RA has been filed by the applicant in OA No. 3643/2012 seeking review of the order of the Tribunal dated 20.04.2018. The main contention of the applicant is that there is an error apparent on the face of record as the Hon'ble Tribunal in Paragraph 11 records:

“11. We find that that arguments by and large from both the sides have remained the same i.e. same grounds were raised in the earlier hearing and there is no material difference between the

arguments put forth on earlier occasion and now. No few facts have also been brought to our notice.”

2. The applicant has stated that above facts are wrongly recorded within the body of the judgment. He further contends that the Tribunal has totally ignored the material on record which was filed by the applicant in pursuance of Hon’ble High Court judgment dated 02.07.2013 in WP (C) No.3736/2013. The Hon’ble High Court had given liberty to the applicant to file additional pleadings with documents and had further directed the Tribunal to take into account these additional pleadings. It is, therefore, applicant’s contention that the Tribunal has erred in not discussing the additional pleadings given by the applicant and has thus violated the directions of Hon’ble High Court.

3. The other grounds in this Review are also related to this basic grievance of the applicant. A further ground is that the distinction made by the Tribunal within the body of the judgment is erroneous in as much as that while in the Departmental Inquiry, Head Constable Dharam Veer Singh is named as witness but he has not been examined in the criminal case. It has been clarified by the applicant that the examination of Head Constable Dharam Veer Singh in the criminal case was not relevant. The applicant has further stated that the acquittal of the applicant was absolutely honourable and no questions could be raised about the same and that the Trial Court has in its judgment demolished the entire story of prosecution despite

the fact that the prosecution witness had deposed before the Trial Court on the lines of prosecution story.

4. Essentially, the applicant is aggrieved that the material filed by him in MA No. 3054/2014, MA No. 410 /2017 and MA No. 814/2017 has not been referred to and discussed by the Tribunal in its judgment. MA No. 3054/2014 is with regard to filing of documents, namely Arrest Memo dated 17.05.2007, D.D. No-13 dated 17.05.2007(showing the FIR No-35/07), FIR No-35/07 dated 17.05.2007, Naksha Moka(Site Map) prepared by I.O.(SI Satender Vashisht), Trial Court judgment in FIR No-34/2007, House Search Memo in pursuance of FIR No-34/07, RTI information letter dated 17.09.07 alongwith DD No-5A dated 17.05.2007 and D.D. No-35 B dated 17.05.2007 and FIR No-253 dated 22.05.2007 at P.S. Sector-58, Noida. MA No. 410/2017 again consists of some documents, namely, FIR No-35/20 dated 17.05.2007, Arrest Memo dated 17.05.2007, D.D. No. 35B & 5A, House Search memo in pursuance of FIR No-34/07, Naksha Moka(Site Map) prepared by I.O. (SI Satender Vashisht), D.D. No-13 dated 17.05.2007, The Station Daily Diary dated 17.05.2007, Complaint of Owner of UP-14T-5576,Eng. NO. 59000 and Chassis No. 59063 & FIR, Statement of PW-3 and letter dated 19.02.2008, 26.06.2008, information sought unde RTI 10.02.2009, letter dated 03.05.2007. MA No. 814/2017 encloses letter dated 14.05.2007, letter dated 18.01.2008 and DD No. 3, DD No. 13, 16 & 22 dated 21.05.2007. The letter dated 14.05.2007 is written by the

applicant to meet the respondents in connection with the transfer and letter dated 18.01.2008 has been written by the son of the applicant, which is an RTI application.

5. We wish to clarify that all these documents essentially support and buttress the plea that the Trial Court has very rightly acquitted the applicant and that the case against the applicant was a manufactured one, created out of malice and had no legal basis. We have no disagreement with this contention because we are not questioning the order of the Trial Court. It is neither our intention nor our mandate to question the legality or otherwise of the Court. This we have made abundantly clear in our order and therefore, even while considering these documents, we did not consider it necessary to explicitly discuss these documents because we were not questioning the Trial Court's judgment which is sacrosanct in its own way. Therefore, the applicant's contention that the Tribunal has erred on the face of the record while not taking into account these documents is not correct and therefore not acceptable.

6. The mandate given to us by the Hon'ble High Court while remanding the case for fresh consideration was to examine the applicant's case in the light of **Ajayvir Gulia's** judgment. The judgment passed in **Ajayvir Gulia's** case did go in some detail about the various aspects of the Trial Court's order and held that seen from a certain perspective the acquittal of the applicant by the Trial Court should not necessarily result in

closing the departmental inquiry against him. It is this principle which was enunciated by the Hon'ble High Court, and, in our considered view, we were duty bound to consider and apply the same in the instant case. We have made it abundantly clear that we are not questioning the Trial Court's judgment but we have certainly analysed certain aspects of this judgment in the light of **Ajayvir Gulia's** case and have come to conclusion that the ends of justice will be met if the prayer of the applicant for closing his departmental inquiry is not accepted.

7. The grounds taken in this RA do not point to any error in applying the principle of **Ajayvir Gulia's** case. The burden of the RA is that the documents to establish conclusively that the applicant was innocent have been ignored by the Tribunal. We have made it clear in the preceding paragraphs that these documents while supporting and establishing the validity of the Trial Court's judgment do not alter the mandate of Hon'ble High Court which was contained in its remand order and therefore, their discussion does not make any material difference to the actual issue under adjudication. To that extent, our observation that there is no material difference between arguments put forth on earlier occasion and now, and that no new facts have been brought to our notice, seem completely valid and in our view do not amount to error apparent on the face of record.

8. The scope of review application in judicial proceedings before Central Administrative Tribunal is very limited. A series of judgments have clearly held that review application cannot be used as an instrument to reopen and reanalyse the order made in the original application. In this case, all that the additional documents do is to support and strengthen the applicant's case that the acquittal by the Trial Court is absolutely right. Since we are not disputing the order of the Trial Court, therefore, reference and discussion of these documents are not relevant to the issue under adjudication in this case.

9. What is the scope of review? We take cognizance of the fact that the Tribunal's power under Section 22(3)(f) of the A.T. Act, 1985 is akin to that of statutorily and judicially recognized powers of the civil courts. This is not a carte blanche authorization given to the courts to re-visit and re-hear cases. It is subject to Order 47 Rule 1 implying that the Tribunal can only review its order/decision on discovery of new and important matter or evidence which the applicant could not produce at the time of initial decision despite exercise of due diligence or the same was not within its knowledge or even the same could not be produced before the Tribunal earlier or the order sought to be reviewed suffers from some mistakes and errors apparent on the face of record or there exists some other reasons which, in the opinion of the Tribunal, are sufficient to review its earlier decision.

10. In a landmark decision in **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, 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.”*

11. In another landmark decision in case of **Kamlesh Verma versus Mayawati & Ors.**[2013 (8) SCC 320], the Hon'ble Supreme Court has laid down conditions when the review will not be maintainable, relevant portion whereof is being extracted hereunder for better elucidation:-

“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.”*

12. The Hon'ble Supreme Court in the aforementioned judgments has reviewed all the major issues involving review and arrived at the conclusion on the basis thereof. It has been specifically provided that an erroneous order/decision cannot

be corrected under the guise of exercise of power of review. It further provides that while considering an application for review, the Tribunal must confine its adjudication to the materials available at the time of initial decision. Thus, there is a difference between review and appeal, and an appeal cannot be allowed in guise of a review.

13. We also find that all the relevant points essential for adjudication of the basic issue have already been discussed in depth in the order under review. We also find no error apparent on face of the record which warrants review of our order.

14. Given the discussion in the preceding paragraphs, it is our considered view that the review application is devoid of merit and deserves to be dismissed. RA is accordingly dismissed.

(Uday Kumar Varma)
Member (A)

(Jasmine Ahmed)
Member (J)

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