

CENTRAL ADMINISTRATIVE TRIBUNAL**CHANDIGARH BENCH**

...

Orders pronounced on : 14.09.2018
(Orders reserved on : 06.09.2018)

CORAM: **HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)**
HON'BLE MS. P. GOPINATH, MEMBER (A)

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(1) R.A. No.060/00040/2018 IN O.A. No.060/00621/2016

1. Union of India through the Secretary to the Government of India, Ministry of Communication and I.T. Department of Post, New Delhi.
2. Post Master General, Area-II, Sector-17, Chandigarh.
3. Senior Supdt. Of Post Offices, Ludhiana Civil Division, Ludhiana.

... Review Applicants (Respondents in the OA)

(BY : MR. RAM LAL GUPTA, SR.CGSC)

Versus

Sudarshan Sharma wife of Late Sh. Kanti Prakash R/o B-V-385, Kaushal Building, Chauri Sarak, Ludhiana (Group C).

(BY: MR. M. K. BHATNAGAR, ADVOCATE)

Respondent (Applicant in the OA)

(2) R.A.NO.060/00041/2018 IN O.A.NO.060/00376/2016

1. Union of India through the Secretary to the Government of India, Ministry of Communication and I.T. Department of Post, New Delhi.
2. Post Master General, Area-II, Sector-17, Chandigarh.
3. Senior Supdt. Of Post Offices, Patiala Division, Patiala.

(BY : MR. K.K. THAKUR, SR. PANEL COUNSEL)

Review Applicants (Respondents in the OA)

Versus

Swaran Kanta wife of Late Sh. Surinder Mohan Basin aged about 70 years r/o B-XXXIII-2307, Bhagwan Dass Colony, Neta Ji Nagar, Salem Tabri, Ludhiana, Group B.

Respondent (Applicant in the OA)

(BY: MR. M. K. BHATNAGAR, ADVOCATE)

(3) R.A.NO.063/00042/2018 IN O.A.NO.063/00295/2017

1. Union of India through the Secretary, Government of India, Ministry of Finance, Deptt. Of Revenue, South Block, New Delhi-110001.
2. Chairperson Central Board of Excise and Customs, Ministry of Finance, Deptt. Of Revenue, South Block, New Delhi-110001.
3. Commissioner of Customs (Preventive), The Mall, Amritsar-143001.

Review Applicants (Respondents in the OA)

(BY : MR. RAM LAL GUPTA, SR.CGSC)

Versus

Padam Dev Sharma (Supdt. Retired) aged 63 years, resident of 41 Chhereda P.O. Mohal, Distt. Kullu (H.P)-175126 (Group 'B').

Respondent (Applicant in the OA)

(BY MR. R.P. SHARMA, ADVOCATE)

(4) R.A. No.060/00020/2018 IN O.A. No.060/01270/2017

1. Union of India through the Secretary to the Government of India, Ministry of Communication and I.T. Department of Post, New Delhi.
2. Chief Postmaster General (Accounts), Haryana Circle, Ambala.

... Review Applicants (Respondents in the OA)

(BY : MR. RAM LAL GUPTA, SR.CGSC)

Versus

Suraj Parkash Dogra son of Late Sh. Ram Chand Dogra aged about 70 years, r/o 25/26, Block-B, Sunder Nagar, Near DRM Office, Ambala Cantt. (Group-C).

....Respondent (Applicant in the OA)

(BY MR. M.K. BHATNAGAR, ADVOCATE)

(5) R.A. No.060/00038/2018 IN O.A. No.060/00054/2018

1. Union of India through the Secretary, Ministry of Communications and Information Technology, Department of Posts, Dak Bhawan, New Delhi-110001.
2. Principal Chief Postmaster General, Haryana Circle, Ambala Cantt-133001.
3. Senior Superintendent of Post Offices, Ambala Division, Ambala-133001.

... Review Applicants (Respondents in the OA)

(BY : MR. RAM LAL GUPTA, SR.CGSC)

Versus

Des Raj son of Shri Nanak Chand, aged 64 years, Mail Overseer, (Group 'C'), (Retired), resident of # 91, Sainik Vihar, Jandli, Ambala City (Haryana).

(BY : MR. A.L. VOHRA, ADVOCATE)

.... Respondent (Applicant in the OA)

(6) R.A. No.060/00037/2018 IN O.A. No.060/00066/2018

1. Union of India through the Secretary, Govt. of India, Ministry of Post, New Delhi, Sansad Marg, New Delhi-110001.
2. Post Master General, Haryana Circle, Ambala Cantt.
3. Senior Superintendent Postal, General Post Office, Karnal.,
4. Senior Post Master, General Post Office, Karnal.

... Review Applicants (Respondents in the OA)

(BY : MR. RAM LAL GUPTA, SR.CGSC)

Versus

Madan Lal Kakkar son of Jattu Ram, age about 75 years, Post Group "C" House No. 217, 8 Marla Colony, Patel Nagar, Hisar.

(BY MR. J.P. SHARMA, ADVOCATE)

.... Respondent (Applicant in the OA)

(7) R.A. No.060/00036/2018 IN O.A. No.060/00145/2018

1. Union of India through the Secretary, Ministry of Communications and Information Technology, Department of Posts, Dak Bhawan, New Delhi-110001.
2. Principal Chief Postmaster General, Haryana Circle, Ambala Cantt-133001.
3. Senior Postmaster, Karnal-132001.

... Review Applicants (Respondents in the OA)

(BY : MR. RAM LAL GUPTA, SR.CGSC)

Versus

Som Dutt Sharma son of Shri Devki Nandan Sharma, aged 74 years, Deputy Postmaster Group 'B' (Retired), resident of # 19, Indira Colony, Vikram Marg, Karnal (Haryana).

(BY : MR. A.L. VOHRA, ADVOCATE)

.... Respondent (Applicant in the OA)

(8) R.A. No.060/00035/2018 IN O.A. No.060/00158/2018

1. Union of India through the Secretary to the Government of India, Ministry of Communication and I.T., Department of Post, Dak Bhawan, New Delhi.
2. Post Master General, Area-II, Sector-17, Chandigarh.
3. Senior Superintendent of Post Office, Amritsar Division, Amritsar.

... Review Applicants (Respondents in the OA)

(BY : MR. RAM LAL GUPTA, SR.CGSC)

Versus

Kanwar Chattar Singh son of Sh. Hamir Chand aged about 62 years, r/o H.No. 55, Gali No. 19, New Pawan Nagar, Batala Road, Amritsar (Group – D).

.... Respondent (Applicant in the OA)

(BY : MR. M. K. BHATNAGAR, ADVOCATE)

(9) R.A. No.060/00034/2018 IN O.A. No.060/00283/2018

1. Union of India through Secretary, Ministry of Information Technology, Department of Posts, Dak Bhawan, New Delhi.
2. Chief Post Master General, Punjab Circle, Sector-17, Chandigarh.
3. Superintendent of Post Offices, Jalandhar Division, Jalandhar (Punjab).

... Review Applicants (Respondents in the OA)

(BY : MR. RAM LAL GUPTA, SR.CGSC)

Versus

Dass Ram Leal S/o Sh. Chanda Ram, aged 72 years, r/o VPO Bilga District Jalandhar. Group "C".

(BY : MR. D.R. SHARMA, ADVOCATE)

.... Respondent (Applicant in the OA)

(10) R.A. No.060/00033/2018 IN O.A. No.060/00303/2018

1. Union of India through Secretary, Ministry of Telecommunications and Information Technology, Department

- of Posts, 415, Sanchar Bhawan, Ashoka Road, New Delhi-110001.
2. Chief Postmaster General, Punjab Circle, Sector 17-E, Chandigarh-160017.
 3. Superintendent of Post Offices, Ferozepur Division, Ferozepur-152001.

(BY : MR. RAM LAL GUPTA, SR.CGSC)

... Review Applicants (Respondents in the OA)

Versus

Naresh Kumar Jain son of Shri Madan Lal, aged 71 years, Senior Postmaster (Group 'B'- Retired) Resident of # 136, Ram Bagh Road, Ferozepur Cantt (Punjab).

(BY MR. MANOHAR LAL, ADVOCATE)

.... Respondent (Applicant in the OA)

(11) R.A. No.060/00032/2018 IN O.A. No.060/00305/2018

1. Union of India through Secretary, Ministry of Telecommunications and Information Technology, Department of Posts, 415, Sanchar Bhawan, Ashoka Road, New Delhi-110001.
2. Chief Postmaster General, Punjab Circle, Sector 17-E, Chandigarh-160017.
3. Superintendent of Post Offices, Ferozepur Division, Ferozepur-152001.

(BY : MR. RAM LAL GUPTA, SR.CGSC)

... Review Applicants (Respondents in the OA)

Versus

Harjinder Singh son of Shri Wazir Singh, aged 73 years, Public Relations Officer – Group 'C' (Retired), resident of # 42, Street No. VII, Ferozepur Cantt (Punjab).

(BY MR. A. L. VOHRA, ADVOCATE)

.... Respondent (Applicant in the OA)

(12) R.A. No.060/00031/2018 IN O.A. No.060/00353/2018

1. Union of India through Secretary, Ministry of Communication and IT, Department of Posts, Dak Bhawan, New Delhi.
2. The Chief Postmaster General, Haryana Postal Circle, 107, The Mall, Ambala Cantt.
3. The Senior Superintendent of Post Office, GPO Building, Ambala Cantt.

... Review Applicants (Respondents in the OA)

(BY : MR. RAM LAL GUPTA, SR.CGSC)

Mohan Lal Gupta S/o Late Sh. Ram Saroop, aged 66 years, Sub Postmaster (Retired) House No. 60B, New Milap Nagar, Ambala City, Group "C".

.... Respondent (Applicant in the OA)

(BY : MR. JAGDEEP JASWAL, ADVOCATE)

(13) R.A. No.060/00030/2018 IN O.A. No.060/00354/2018

1. Union of India through Secretary, Ministry of Communications, Department of Posts, Dak Bhawan, New Delhi.
2. Chief Postmaster General, Haryana Postal Circle, Ambala-133001.
3. Accounts Officer, ICO (SB), office of Chief Post Master General, Haryana Postal Circle, Ambala-133001.
4. Senior Superintendent of Post Offices, Ambala Division, Ambala-13300.

(BY : MR. RAM LAL GUPTA, SR.CGSC)

... Review Applicants (Respondents in the OA)

Versus

P.N. Behal S/o Late Shri Kala Ram Behal, aged 77 years, Ex-Postal Assistant (Group-C), presently resident of H. No. 63/1003, Baldev Nagar, Ambala City.

(BY MR. JAGDEEP JASWAL, ADVOCATE)

.... Respondent (Applicant in the OA)

(14) R.A. No.060/00029/2018 IN O.A. No.060/00355/2018

1. Union of India through Secretary, Ministry of Communications, Department of Posts, Dak Bhawan, New Delhi.
2. Principal Chief Postmaster General, Haryana Circle, Ambala Cantt-133001.
3. Superintendent of Post Offices, Ambala Division, Ambala-133001.

(BY : MR. RAM LAL GUPTA, SR.CGSC)

... Review Applicants (Respondents in the OA)

Versus

A.L. Anand S/o Late Shri Mora Mal Anand, aged 81 years, Ex-Deputy Post Master (Group-B), presently resident of H. No. 602, Inder Nagar, Ambala City.

(BY : MR. JAGDEEP JASWAL, ADVOCATE)

.... Respondent (Applicant in the OA)

(15) R.A. No.060/00028/2018 IN O.A. No.060/00359/2018

1. Union of India through Secretary, Ministry of Telecommunications and Information Technology, Department of Posts, 415, Sanchar Bhawan, Ashoka Road, New Delhi-110001.
2. Principal Chief Postmaster General, Punjab Circle, Chandigarh-160017.
3. Superintendent of Post Offices, Bathinda Division, Bathinda-151005.

(BY : MR. RAM LAL GUPTA, SR.CGSC)

... Review Applicants (Respondents in the OA)

Versus

Manohar Lal Bansal son of Shri Kishori Lal, aged 76 years, Postmaster (Group 'B'- Retired), resident of # 6363, Purana Thana Road, Bathinda – 151001 (Punjab).

(BY MR. A. L. VOHRA, ADVOCATE)

.... Respondent (Applicant in the OA)

(16) R.A. No.060/00027/2018 IN O.A. No.060/00383/2018

1. Union of India through Secretary, Ministry of Telecommunications and Information Technology, Department of Posts, 415, Sanchar Bhawan, Ashoka Road, New Delhi-110001.
2. Principal Chief Postmaster General, Haryana Circle, Ambala Cantt-133001.
3. Superintendent Post Offices, Bhiwani Division, Bhiwani – 127021 (Haryana).

(BY : MR. RAM LAL GUPTA, SR.CGSC)

... Review Applicants (Respondents in the OA)

Versus

Smt. Satya Devi, aged 70 years, widow and legal heir of late Shri O.P. Chawla, Postmaster (Group "C"), retired resident of House No. 33, Upkar Colony, Karnal-132001 (Haryana).

(BY : MR. A. L. VOHRA, ADVOCATE)

.... Respondent (Applicant in the OA)

(17) R.A. No.060/00026/2018 IN O.A. No.060/00387/2018

1. Union of India through Secretary, Ministry of Telecommunications and Information Technology, Department of Posts, 415, Sanchar Bhawan, Ashoka Road, New Delhi-110001.
2. The Principal Chief Postmaster General, Haryana Circle, Ambala Cantt.
3. Senior Postmaster, Head Office, Rohtak – 124001 (Haryana).

... Review Applicants (Respondents in the OA)

(BY : MR. RAM LAL GUPTA, SR.CGSC)

Versus

Smt. Sheela aged 70 years, widow and legal heir of late Shri D.P. Singh Rana, Senior Postmaster, Group 'B'(Retired), resident of # 1963, Sector 7, Urban Estate, Karnal-132001 (Haryana).

(BY : MR. RAM LAL GUPTA, SR.CGSC)

.... Respondent (Applicant in the OA)

(18) R.A. No.060/00025/2018 IN O.A. No.060/00392/2018

1. Union of India through the Secretary, Government of India, Ministry of Communications & Information Technology, Sanchar Bhawan, New Delhi.
2. Senior Superintendent of Post Offices, Chandigarh-160017.
3. Assistant Superintendent of Post Offices, Ropar Sub Division, Ropar-140001.

... Review Applicants (Respondents in the OA)

(BY : MR. RAM LAL GUPTA, SR.CGSC)

Versus

Harbans Lal S/o Charan Dass, aged 61 years, Retired Mail Overseer (Group "C"), Village Kheri, P.O., Barwa, via Nurpur Bedi, District Ropar-140117, Punjab.

**(BY: MR. JAGDIP JASWAL, ADVOCATE
FOR MR. ROHIT SHARMA, ADVOCATE)**

.... Respondent (Applicant in the OA)

(19) R.A. No.060/00024/2018 IN O.A. No.060/00402/2018

1. Union of India through Secretary, Ministry of Information Technology, Department of Posts, Dak Bhawan, New Delhi.
2. Chief Post Master General, Punjab Circle, Sector-17, Chandigarh.
3. Superintendent of Post Offices, Ferozepur Division, Ferozepur (Punjab).

(BY : MR. RAM LAL GUPTA, SR.CGSC)

... Review Applicants (Respondents in the OA)

Versus

Amrit Lal Chadha S/o Sh. Ram Lal Chadha, aged 88 years r/o House No. 143, Sector-12/A, Panchkula. (Group "B")

(BY MR. D.R. SHARMA, ADVOCATE)

.... Respondent (Applicant in the OA)

(20) R.A. No.060/00023/2018 IN O.A. No.060/00405/2018

1. Ministry of Health & Family Welfare, Room No. 348, A-Wing, Nirman Bhawan, New Delhi-110011.
2. Controlling of Defence Account, through Senior Accounts Officer, Ayudh Path Meerut Cantt (U.P)
3. Accountant Head, Defence Pension Disbursing Authority Office, Karnal.

(BY : MR. RAM LAL GUPTA, SR.CGSC)

... Review Applicants (Respondents in the OA)

Versus

Suraj Parkash Malik son of Late Shri Thane Ram Malik r/o House No. A-474, Sadar Majar, Karnal, Group B, Aged 63 years.

(BY : NONE)

.... Respondent (Applicant in the OA)

(21) R.A. No.060/00022/2018 IN O.A. No.060/00416/2018

1. Union of India through the Secretary to the Government of India, Ministry of Communications and I.T. Department of Post, Dak Bhawan, New Delhi.
2. Post Master General, Area-II, Sector – 17, Chandigarh.

3. Senior Supdt. Of Post Offices, Amritsar Division, Amritsar.

(BY : MR. RAM LAL GUPTA, SR.CGSC)

... Review Applicants (Respondents in the OA)
Versus

Krishan Lal Bhatia son of Late Sh. Banarsi Dass, aged about 69 years r/o 587, Gali No. 3, Preet Nagar, Batala Road, Amritsar-143001 (Group-C).

(BY : MR. M.K. BHATNAGAR, ADVOCATE)

.... Respondent (Applicant in the OA)

(22) R.A. No.060/00021/2018 IN O.A. No.060/00479/2018

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. The Joint Controller of Defence Accounts (Air Force), Vayusena Nagar, Nagpur-440007.
3. Air Officer Commanding, Civil Administration Department, 3 BRD Air Force, Sector 47, Chandigarh.

(BY : MR. RAM LAL GUPTA, SR.CGSC)

... Review Applicants (Respondents in the OA)

Versus

Smt. Asha Julka, aged 74 years, wife of late Shri Tilak Raj Julka, Draftsman – Group 'C' (Retired), resident of # 209, Sector 8, Panchkula (Haryana).

(BY : MR. M.K. BHATNAGAR, ADVOCATE)

.... Respondent (Applicant in the OA)

(23) R.A. No.060/00039/2018 IN O.A. No.060/01469/2017

1. Union of India through Secretary, Govt. of India, Ministry of Communication and Information Technology, Sanchar Bhawan, New Delhi.
2. Chief Postmaster General, Punjab Circle, Sector – 17, Chandigarh.
3. Senior Superintendent of Post Offices, Chandigarh Division, Chandigarh-160017.

(BY : MR. RAM LAL GUPTA, SR.CGSC)

... Review Applicants (Respondents in the OA)
Versus

Surinder Chakarvarti aged 73 years, son of late Sh. Labh Singh, resident of Village Majri & Post Office Sialba, Tehsil Kharar, District-SAS Nagar, Mohali, Group C.

(BY : MR. NARINDER SHARMA, ADVOCATE)

.... Respondent (Applicant in the OA)

ORDER

HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

1. In all these 23 cases, the official respondents have moved the instant individual Review Applications, for review of the common order dated 7.5.2018 (Annexure RA-1), vide which a bunch of 30 Original Applications was allowed by a co-ordinate Bench of this Tribunal.

2. The claimants in all these cases, who are retirees or their dependents, were held entitled to reimbursement of medical claim of amounts spent by them on their treatment. It was also held by the Court that any redundant rule or instructions or orders having the effect of denial of such reimbursement of medical claims were arbitrary, illegal, inoperative and hit by the constitutional provisions.

3. The grounds pleaded by the respondents in these Review Applications can be summarized as under :-

(a) That CS (MA) Rules, 1944, have never been held to be arbitrary and illegal by any court of law, much less by Hon'ble Punjab and Haryana High Court in **UNION OF INDIA & OTHERS VS. MOHAN LAL GUPTA & OTHERS**, 2018 (1) SCT, 686. They claim that vires of these rules were challenged in O.A. No. 686-HR-1999 titled Ram Dev Singh etc. Vs. Union of India & Others and other OAs which were decided by a Full Bench of this Tribunal on 17.3.2003, which had in fact upheld vires of these rules. Thus, a Division Bench, could not over rule view taken by a Full Bench, which would be judicial indiscipline and at most, it could have referred the matter to a Full Bench once again for taking a proper view.

(b) That a similar case in O.A.No.060/00526/2015 titled Satya Devi Vs. Union of India & Others, finding that there was divergent opinion on the issue by different Benches, the matter was referred to Full Bench. However, said order was recalled and ultimately bunched OAs were decided on 6.4.2017 and R.A. in said O.A. was also decided on 6.4.2017.

© That it is claimed that in none of the O.As decided by this Court, vires of CS (MA)Rules, 1944, were challenged by the applicants and that being so, the same could not be held to be inoperative.

(d) Neither Ministry of Health and Family Welfare, nor Department of Personnel Training, which were policy framing departments on issue of medical reimbursement were made a party and as such in absence thereof, rules could not be declared as illegal and arbitrary.

(e) Placing reliance on **Confederation of Ex-Servicemen Associations & Ors. Vs. UOI etc.** (2006) 8 SCC 399, it has been claimed that right to claim medical reimbursement is not a statutory or constitutional right and it is dependent upon policy decision to be taken by authorities.

(f) In terms Government of India (Allocation of Business) Rules, 1961, and Government of India (Transaction of Business) Rules, 1961, where subject of a case relates to more than one department, no decision can be taken unless concurrence of all departments and with authority of the Cabinet and without prior concurrence of Ministry of Finance.

(g) That O.M. dated 5.6.1998 has not been issued with approval of Cabinet or previous concurrence of Ministry of Finance and Department of Personnel and Training. Moreover, it was in the nature of departmental communication, which cannot be relied upon to allow a claim.

(h) The decision relied upon by Tribunal is per incuriam as relevant facts have not been considered. A decision which does not proceed on consideration of issue, cannot be deemed to be a law declared to have a binding effect and if there is a wrong decision it can be reviewed.

(i) The decision in the case of Shiv Kant Jha Vs. Union of India & Others, 2018 (2)SCT 529, is obiter dicta and cannot be followed in rem.

(j) They have also reproduced part of the written statement which has not been taken into consideration by this Tribunal and reference to certain judicial pronouncements has also been made in support of the grounds raised for review of the order under reference.

4. The respondents in review have filed in some of the cases and it is pleaded that the pleas taken by the respondents are nothing

but arguing the cases all over again and as such the petitions may be dismissed.

5. We have heard the learned counsel for the parties at quite some length and examined the material on the file minutely.

6. A perusal of the pleas taken by them in the Review Application and the pleadings of written statements in Original Applications would show that they are taking same grounds all over again to invite this Tribunal to hearing these cases once again on merit, which is not permissible. These are the same stand which were duly taken by them while opposing the decision in the case of **DHARMINDER SHARMA** (supra) and were rejected by coordinate Bench, in view of the latest law laid down by the Hon'ble Apex Court in the case of **SHIVA KANT JHA** (supra) and those cases were allowed in favour of the applicants therein.

7. A lot of hue and cry was raised by learned counsel for the Review Petitioners that in the absence of any challenge to legality of Rules of 1944, the same could not be declared as illegal or arbitrary by this Tribunal, more so when the same were held to be legal by Full Bench of this Tribunal. It is not in dispute that this Tribunal in para 26 of its decision has clearly held that import and applicability of CS (MA) Rules, 1944, and clarification dated 20.8.2004 were re-examined and were held to be arbitrary and illegal by the Hon'ble Punjab and Haryana High Court, leading case being CWP No. 26270 of 205 titled **UNION OF INDIA & OTHERS VS. MOHAN LAL GUPTA & OTHERS**, 20018 (1) SCT, 686. We have perused that decision.

8. In fact it is apparent that the Hon'ble Jurisdictional High Court noticed the plea taken by department therein that there is a clear

distinction between retired and the serving employees whose perks cannot be equated on the ground of any legitimate principle or any touch stone of law. He has placed reliance on judgments of the Hon'ble Supreme Court rendered in cases titled as **'CONFEDERATION OF EX-SERVICEMEN ASSOCIATIONS AND OTHERS VS. UNION OF INDIA AND OTHERS'** reported as 2006(4) SCT 128, **'STATE OF PUNJAB VS. RAM LUBHAYA BAGGA'** reported as 1998(1) SCT 716 and **'UNION OF INDIA AND OTHERS VS. S.K.SAIGAL AND OTHERS'** reported as 2007(1) SCT 286. After noticing the history of cases on the issue, the Court has held "We are thus of the opinion that given the judicial finality accorded in an identical petition which is not even remotely deviant from the present one, there is no reason for us not to take a similar view. The judgment relied upon by the learned counsel for the petitioners does not in any way enhance their case. It is pertinent to mention here that we are dealing with the cases of persons who have retired and are in dire need of medical attention in their old age. It is also an accepted fact by the petitioners themselves that CGHS facilities are not available in most of the areas where the respondents reside including an important town like Ambala. If that be so, then the observations extracted above would be attracted to the present cases in all ferocity." In fact, the Hon'ble High Court also relied upon decision of Hon'ble H.P. High Court in the case of **'UNION OF INDIA AND ANOTHER VERSUS SHANKAR LAL SHARMA'** reported as 2016(1) SCT 413, in which it was held that "Note 2 appended to Rule 1 is read down to extend the benefit of CS (MA) Rules, 1944 to retired Government officials residing in non-CGHS areas to save it from unconstitutionality and

to make it workable". Despite, this the respondents did not woke up and kept on placing reliance on said decision to reject the claim of the pensioners / retirees. The finding of this Tribunal is in consonance with the view taken by the Hon'ble High Court that any instructions, clarification of 2004 or the redundant rules, framed before enforcement of Constitution, are illegal, inoperative and deserve to be "ignored". In other words, these rules have not been quashed by the Tribunal. These are only to be ignored by the respondents. The Bench has only quashed the impugned orders. The declaration of rule as inoperative does not mean, that the same stands deleted from the statute book. If that makes the respondents happy, it can be kept therein as an ornament only in so far as the entitlement of retired employees to medical reimbursement is concerned. Moreover, the rules were also considered by Hon'ble Apex Court in the latest decision in **SHIVA KANT JHA VS. UNION OF INDIA & OTHERS**, W.P. (C) No. 694 of 2015 decided on 13.4.2018 and the Lordships have upheld entitlement of retired / pensioners to the medical reimbursement. Thus, in view of the higher courts of law having taken a view on the issue including the apex dispensation as well, this Tribunal had no other option but to concur with the same.

9. One fails to understand the plea taken by learned counsel for the respondents that the matter should have been referred to a Full Bench. Once, there is a decision of Hon'ble Jurisdictional High Court on the issue and that of Hon'ble Apex Court of the country, can a Tribunal, ignore the same and refer its earlier Division Bench decision to a Full Bench. The plea taken by the respondents on this issue, to say the least, is beyond the comprehension of a prudent

man and most unreasonable. The reliance placed by them on certain other decisions on judicial discipline and that it is a matter of policy decision and as such could not be interfered by this Tribunal or in the absence of two Ministries not being a party before this Tribunal are too farfetched and have to be rejected with full ferocity. Therefore, no ground, much less cogent, is made out to review the indicated order, in the obtaining circumstances of the case

10. What one cannot possibly dispute here is that an order can only be reviewed if the case squarely falls within the legal ambit of review and not otherwise. Order 47 Rule 1 CPC read with Section 22(3)(f) of the Administrative Tribunals Act, 1985 regulates the provisions of review of the orders. According to the said provision, a review will lie, only when there is discovery of any new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge, or could not be produced by the review applicant, seeking the review at the time when the order was passed or made on account of some mistake or error apparent on the face of the record.

11. It is now well settled principle of law 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 Authority, in respect of the original order by a fresh and re-hearing of the matter, to facilitate a change of opinion on merits. The reliance in this regard can be placed on the judgments of the Hon'ble Supreme Court in cases of **PARSION DEVI AND OTHERS VS. SUMITRI DEVI AND OTHERS** (1997) 8 SCC 715, **AJIT KUMAR RATH VS. STATE OF ORISSA** (1999) 9 SCC 596, **UNION OF INDIA VS. TARIT**

RANJAN DAS (2003) 11 SCC 658 and **GOPAL SINGH VS. STATE CADRE FOREST OFFICERS' ASSOCIATION & OTHERS** (2007) 9 SCC 369.

12. An identical question came up to be decided by Hon'ble Apex Court in case **STATE OF WEST BENGAL AND OTHERS VS. KAMAL SENGUPTA AND ANOTHER** (2008) 8 SCC 612. Having interpreted the scope of review and considering the catena of previous judgments mentioned therein, the following principles were culled out to review the orders:-

(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."

13. Meaning thereby, an order can only be reviewed if case strictly falls within the pointed domain of Order 47 Rule 1 CPC read with Section 22(3)(f) of the Administrative Tribunals Act, 1985 and not otherwise, which is not available in the case in hand. The applicants in R.A have neither pleaded nor urged any error on the face of record warranting review of the order in question.

14. In the light of the aforesaid prismatic reasons, as there is no merit, the RAs are dismissed. The connected M.As also stand disposed of accordingly. No costs.

(MS. P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Place: Chandigarh.
Dated:14.09.2018

HC*