CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH JABALPUR

Review Application No.200/00028/2018

(in OA 200/00062/2018)

Jabalpur, this Monday, the 19th day of November, 2018

HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER

Prakash Chandra Katare, S/o Late Kamal Kishore Katare, DOB: 07.03.1959, Working as Deputy Director (Contract), O/o – CE, MES Bhopal Zone, Bhopal, R/o-Quarter No.P-1 47, MES Officers Enclave, Gandhi Chowk, Sultania Infantry Line, Bhopal, District Bhopal 462001 (M.P.) **-Applicant**

V e r s u s

1. Union of India through its Secretary, Ministry of Defence, South Block, New Delhi – 110001.

2. Engineer-In-Chief, Military Engineering Services, Integrated Head Quarter of Ministry of Defence (Army), Kashmir House Defence Head Quarter, New Delhi 110010.

3. Chief Engineer, Bhopal Zone, Head Quarter Bhopal 462001 (M.P.) **-Respondents**

O R D E R (In Circulation)

By Navin Tandon, AM.

This Review Application has been filed by the applicant seeking review of the finding recorded in Para 20 of the order dated 06.09.2018 passed by the Tribunal in Original Application No.200/00062/2018 on the ground stated in the Review Application.

2. From perusal of the order under review it is found that the aforesaid OA was dismissed after hearing the learned counsel of both sides and after perusal of the pleadings of the respective parties including the rejoinder as well as additional reply filed by the respondents.

3. In the present RA, it has been stated that since the applicant has worked with Shri R.K. Yadav at Bhopal and he has collected information from Shri R.K. Yadav and his posting was changed on the basis of his request that is why he has pleaded in the rejoinder that twice Shri R.K. Yadav has been given choice/compassionate posting. He has, therefore, prayed that the finding recorded in Para 20 of the order be reviewed.

4. It is pertinent to mention that the finding recorded in Para 20 of the order imposing cost of ₹1000/- on the applicant for misleading the Tribunal was based on the observations made in Para 13.4 to 13.7 and 14 of the order, which read thus:

> "13.4 During the argument stage, learned counsel for the applicant failed to show that transfer orders dated 30.07.2012 (Annexure RJ/2) of Shri Ramesh Kumar Yadav was changed from Bhatinda to Bhopal on Compassionate Ground, as stated in rejoinder. It was clearly in the interest of State.

13.5 Of course, transfer orders of Shri R.K. Yadav dated 13.06.2016 (Annexure RJ/3) from Porbandar to Bhopal are on Compassionate Ground.

13.6 Annexure RJ/4 is incomplete document with only two pages being filed. However, it is immaterial, as the order is presumably of Shri R.K. Yadav being transferred from Bhopal to Porbandar. The first time of the order reads, "The following postings are hereby ordered in the interest of organisation".

13.7 It has not been demonstrated that the respondent department has extended the tenure of Shri Ramesh Kumar Yadav.

14. We take exception to the fact that the applicant has tried to mislead this Tribunal by making false statement in the rejoinder that Shri Ramesh Kumar Yadav has been transferred twice on compassionate ground, or his tenure has been extended."

5. The applicant has failed to submit any document/averment in support of his prayer that the conclusion arrived at by this Tribunal in Para 13 and 14 are based on wrong facts.

6. We may note that scope of review under the provisions of Order 47 Rule 1, CPC, which provision is analogous to Section 22 (3) (f) of Administrative Tribunals Act, 1985, as held by the Hon'ble Supreme Court is very limited. Hon'ble Supreme Court in 1995 (1) SCC 170 **Meera Bhanja (Smt.)** Vs. **Nirmala Kumari Choudhury (Smt.)** referring to certain earlier

judgments, observed that an error apparent on the face of record must be such an error which must strike one on mere looking at the record. An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established by lengthy and complicated arguments, such an error can not be cured in a review proceeding.

7. The power of review available to this Tribunal is the same as has been given to a Court under Section 114 read with Order 47 Rule 1 of the Civil Procedure Code. The apex court has clearly stated in **Ajit Kumar Rath** Vs. **State of Orissa and others**, (1999) 9 SCC 596 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". This Tribunal can not review its order unless the error is plain and apparent. It has clearly been further held by the apex court in the said case that: "[A]ny other attempt, except an attempt to correct an apparent

error or an attempt not based on any ground set out in Order 47, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment".

8. It is also settled principle of law that the Tribunal cannot act as an appellate court for reviewing the original order. This proposition of law is supported by the decision of the Hon'ble Supreme Court in the case of **Union of India** Vs. **Tarit Ranjan Das**, 2004 SCC (L&S) 160 wherein their lordships have held as under:

> "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 order and ***rehearing of the matter to facilitate a change of opinion on merits.*** The Tribunal seems to have transgressed its jurisdiction in dealing with the review petition as if it was hearing an original application".

9. Hon'ble Supreme Court in the matters of **State of West Bengal and others** Vs. **Kamal Sengupta and another**, (2008)2 SCC (L&S) 735 scanned various earlier judgments and summarized the principle laid down therein, which reads thus:

> "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 CPC.
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> (ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 CPC.

(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."

10. We are, therefore, of the considered view that the law noticed hereinabove is squarely applicable in the present case and since no error apparent on the face of record has been pointed out or established, the present Review Application is misconceived and is liable to be dismissed.

11. Before parting, we may observe that before filing this R.A, the applicant has approached the Hon'ble High Court in MP No.4487/2018. However, the same was disposed off with

liberty to approach the authorities afresh without interfering with the orders of this Tribunal.

12. In the result, the Review Application is dismissed at the circulation stage itself.

(Ramesh Singh Thakur)	**(Navin Tandon)**
Judicial Member	**Administrative Member**

am/-