

**Central Administrative Tribunal  
Principal Bench: New Delhi**

RA No.207/2016  
MA 94/2016  
MA 3988/2015  
MA 4022/2015  
In  
OA No.4383/2015

New Delhi, this the 11<sup>th</sup> day of February, 2019

**Hon'ble Ms. Nita Chowdhury, Member (A)**  
**Hon'ble Mr. S.N. Terdal, Member (A)**

1. Kirori Lal, Inspector,  
Aged about 58 years,  
S/o Sh. R.S. Yadav,  
R/o No.C-2/145, Raju Park,  
Devli, Khanpur, New Delhi.
  
  2. Ram Avtaar, Inspector,  
Aged about 57 years,  
S/o Sh. Bhana Ram,  
R/o H.No.883, H-Block,  
Raj Nagar-II, Palam,  
New Delhi.
- ... Applicants

(By Advocate: Mr. Amit Sinha for Mr. R.V.Sinha)

**VERSUS**

Union of India through:

1. The Secretary,  
Ministry of Home Affairs,  
North Block, New Delhi.
  
2. The Joint Secretary (U.T.),  
Ministry of Home Affairs,  
North Block, New Delhi.
  
3. The Commissioner of Police,  
PHQ, I.P. Estate, New Delhi.

4. Ravinder Kumar,  
Inspector (D-1/103)  
Complaint Branch, Central District,  
Darya Ganj, Delhi.
5. Ramesh Kumar,  
Inspector (D-1/104)  
Special Staff, South West District,  
Dwarka, New Delhi.
6. Bakshi Ram,  
Inspector (D-1/1010)  
IIIrd Bn, Vikas Puri,  
New Delhi.
7. Suresh Pal,  
Inspector (D01/1005)  
SPUWAC, Nanakpura,  
New Delhi.
8. Netrapal,  
Inspector (D-1/105)  
Security Police Line  
Vinay Marg, New Delhi. ...Respondents

(By Advocates: Shri Nilansh Gaur with Mr. Karan Chawla,  
Mr. Virendra Kumar for Mr. Gyanendra  
Singh and Mr. Amit Anand.

### **ORDER (ORAL)**

**By Hon'ble Mr. S.N. Terdal, Member (J):**

The instant Review Application has been filed by the applicants against Tribunal's order dated 12.08.2016 passed in OA No.4383/2015.

2. The grounds raised by the applicants are that the Tribunal has erred in dismissing the OA by observing that

OM dated 21.01.2002 is not a subject matter of challenge in the present OA which, as per the applicants, is against the dictum of the decision of Hon'ble Supreme Court in S. Paneer Selvem & Ors. vs. Govt. of Tamil Nadu & Ors. [2015(9) SCALE 350]. He further submitted that the validity of catch up rule has already been tested by the Apex Court in M.Nagraj & Ors. vs. UOI & Ors. [2006 (8) SCC 212]. It is further averred that perusal of OM dated 21.1.2002, it is evident that Government has decided to negate the effect of DOP&T OM dated 30.01.1997 by amending Article 16A of the Constitution with a view to retain seniority in case of promotion by virtue of rule of reservation. It has again submitted that the respondents have failed to fulfill the conditions laid down in M.Nagraj (supra). He further submitted that the judicial discipline and decorum require to follow the binding precedents as held by the Apex Court in Uttar Pradesh Power Corporation Ltd. vs. Rajesh Kumar [2012 (7) SCC 1], which has not been taken into consideration while dismissing the OA.

3. The respondents contended that the decision rendered in S. Paneer Selvem & Ors. vs. Govt. of Tamil Nadu &

Ors.(supra) has been taken into consideration by the Tribunal, which reads as under:-

*“In the absence of any provision for consequential seniority in the rules, the ‘catch-up rule’ will be applicable and the roster point reserved category promotees cannot count their seniority in the promoted category from the date of their promotion and the senior general candidates if later reach the promotional level, general candidates will regain their seniority. The Division Bench appears to have proceeded on an erroneous footing that Article 16 (4A) of the Constitution of India automatically gives the consequential seniority in addition to accelerated promotion to the roster-point promotees and the judgment of the Division Bench cannot be sustained.”*

4. Heard the learned counsel for the parties and perused the records of the case.

5. The sole question for our consideration is that as to whether the DOP&T OM dated 21.01.2002 has given a go-by to the catch-up rule?

6. We notice that the Hon'ble Apex Court in S. Paneer Selvem & Ors. vs. Govt. of Tamil Nadu & Ors.(supra) has clearly held that the catch-up' rule would apply only in the absence of any provision for consequential seniority in the rules. In this context, it is pertinent to mention here that Rule 10 of the Delhi Police (Promotion and Confirmation) Rules, 1980 clearly lays down that reservations in promotions shall be made in accordance with the

rules/orders issued by the Government from time to time and the DOP&T OM dated 21.02.2002 followed by the respondents has given a go-by to the 'catch-up' rule, paragraph 3 whereof reads as under:-

*“The Government have now decided to negate the effects of the DOP&T OM dated 30th January, 1997 by amending Article 16(4A) of the Constitution right from the date of its inclusion in the Constitution i.e. 17th June, 1995, with a view to allow the Government servants belonging to SCs/STs to retain the seniority in the case of promotion by virtue of rule of reservation. In other words, the candidates belonging to general/OBC category promoted later will be placed junior to the SC/ST Government servants promoted earlier even though by virtue of the rule of reservation.”*

7. In view of the above, we are in agreement with the Tribunal's decision in the OA that OM dated 21.01.2002 has given a go-by to the 'catch-up' rule and also that the said OM is not a subject matter of challenge in the OA. The applicants have also not been able to convince the Tribunal as to which are the guidelines/conditions which have not been followed by the respondents. Since the applicants have not been able to raise any new grounds before us which may warrant review of the Tribunal's order dated 12.08.2016, they cannot be allowed to re-argue the case afresh under the garb of review application.

8. 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.

9. Existence of an error apparent on the face of the record is *sine qua non* for reviewing the order. The review applicant has failed to bring out any error apparent on the face of the order under review.

10. 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 in the fact 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.”*

11. In view of the above discussion, we find that the Review Application has no merit and is accordingly dismissed. There shall be no order as to costs.

**(S.N. Terdal)**  
**Member (J)**

**(Nita Chowdhury)**  
**Member (A)**

‘sk’

...