

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

**R.A. No.88/2017 In
O.A. No.2287/2012**

New Delhi this the 22nd day of February, 2019

**HON'BLE MS. NITA CHOWDHURY, MEMBER (A)
HON'BLE MR. S.N. TERDAL, MEMBER (J)**

Shri Narotam Sharma,
Asstt. Director (Vig.)
Vikas Sadan, INA,
New Delhi
R/o C-3/160, Brij Puri,
Delhi-110094
Aged about 59 years
Applicant

(By Advocate: Mr. Nipur Sharma for Mr. Malaya Chand)

Versus

Delhi Development Authority,
Through its Vice Chairman,
Vikas Sadan, INA,
New Delhi

- Respondent

(By Advocate: Mr. Manish Garg)

ORDER (Oral)

Hon'ble Ms. Nita Chowdhury, Member (A):

This RA came up for consideration on 28.01.2019 in which proxy counsel appeared and sought an accommodation. As this is an old matter, and as it was made clear on 28.01.2019 that no further opportunity shall be given to the applicant of this RA to plead his case.

2. Today also, only proxy counsel appears for the applicant. Counsel for the respondent strongly opposed the RA and said that the applicant of this RA has sought to challenge the decision in the OA on the grounds of wrong interpretation of law and that the respondent has passed the impugned order, which is bad in law and the applicant has been victimized. He has neither been able to show any mistake in interpretation of law nor has he been able to show any mistake in the record of the decision rendered in the OA. The respondent draws our attention to the detailed order pronounced on 21.02.2017 in which they have considered the submission of both the parties and thereafter, considering all the points, and have observed as follows:-

“5.1 A mere reading of these Instructions would make it abundantly clear that an officer undergoing penalty can be promoted only after expiry of the penalty and that in such cases his eligibility for next promotion shall also commence from the date of actual promotion and shall not be related even notionally to the date of promotion of the junior in the panel. This stands to reason as a government servant undergoing penalty cannot be treated in the same manner as Government servant, who has an unblemished record. Thus, the decision of the respondents was in accordance with DoP&T Instructions.

5.2 The applicant has also questioned the decision on the grounds that the same has been taken without issuing a show cause notice to him and,

therefore, there has been denial of natural justice to him. It is not disputed by the respondents that no show cause notice was indeed issued to the applicant. However, we find that the decision in the instant case was taken on the basis of factual matrix of this case. Even if a show cause notice had been issued to the applicant, there was nothing that he could have said in reply to the same, which would have altered the factual matrix of this case. In such a situation, show cause notice would have served no purpose and would have remained an empty formality. We are, therefore, of the opinion that non issue of such a notice has not caused any prejudice to the applicant and thus there has been no violation of principles of natural justice.”

3. The respondent especially draws our attention to para 6 of the aforesaid decision 22.02.2017 in which it has been recorded as under:-

“6. No other point was raised before us by learned counsel for the applicant. We are, therefore, of the opinion that there is no merit in this O.A. Accordingly, the same is dismissed. No costs.”

4. It is now well settled principle of law that the earlier 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.** 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 ***Parson 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.***

5. 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”.

6. Meaning thereby, the original order can only be reviewed if case strictly falls within the domain of Order 47 Rule 1 CPC read with Section 22(3)(f) of the Administrative Tribunals Act, 1985 and not otherwise. In the instant RA, the review applicant has not pointed out any error apparent on the face of record warranting a review of the order dated 22.02.2017. Moreover, the issues now sought to be urged, were subject matter of the OA and have already been adjudicated upon by the Tribunal.

7. In the light of the aforesaid reasons, as there is no apparent error on the face of record, so no ground is made out to entertain the present Review Application, which is accordingly dismissed. No costs.

(S.N. TERDAL)
Member (J)

(NITA CHOWDHURY
Member (A)

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