

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

R.A./100/74/2018  
O.A./100/1399/2016

Reserved on: 26.08.2019  
Pronounced on: 03.09.2019

**Hon'ble Mrs. Jasmine Ahmed, Member (J)  
Hon'ble Ms. Aradhana Johri, Member (A)**

1. Pradeep  
Age 50 years  
Section Officer  
S/o Shri S.S. Agarwal  
R/o 68-B, DG-II, Vikaspuri  
New Delhi -18.
2. S.C. Pal  
Age 50 years  
Section Officer  
S/o Shri Prasadi Lal Pal  
R/o RZ-60 C/1, Kamal Park  
Palam Colony, New Delhi -45.
3. Rajesh Kumar  
Age 48 years  
Section Officer  
S/o Shri Shankar Prasad  
R/o A-65/202, Shalimar Garden, Ext. II  
Sahibabad, Ghaziabad, UP.
4. Subhom Rakshit  
Age 50 years  
Section Officer  
S/o S.C. Haripad Rakshit  
R/o Flat no.9, E-55, Krishna Park  
New Delhi-80.
5. Prabhat Kumar  
Age 52 years  
Section Officer  
S/o Late Shri Shiv Kumar Pathak  
R/o BD 1056, Sarojini Nagar  
New Delhi -23.
6. Nematullah  
Age 51 years  
Section Officer

S/o Late Shri Mohibullah  
R/o DG-986, Sarojini Nagar  
New Delhi- 23.

7. Rajiv Kumar  
Age 52 years  
Section Officer  
S/o Late R.B.Saxena  
R/o 515-A, Sec.3, R.K.Puram  
New Delhi -22.
8. Pritam Kumar  
Age 53 years  
Section Officer  
S/o Shri Sunder Lal  
R/o 170, Pocket 2, Sec 12  
Dwarka  
New Delhi -78.
9. V.V.Gupta  
Age 54 years  
Section Officer  
S/o Late Shri N.C. Gupta  
R/o C-130/19, Noida (UP).
10. M.M. Venkataraman  
Age 55 years  
Section Officer  
S/o Late Shri M.M. Mahalingam  
D-17-D, MIG Flats, Vatika Apartments  
Harinagar, New Delhi.
11. Prahat Kumar  
Age 53 years  
S/o ModNarayan Singh  
R/o Plot No.167A, Block-A  
Shalimar Bagh Ext.II  
Shahibabad, Ghaziabad.
12. S.C. Adhikari  
Age 53 years  
S/o Shri Late Shri G.N. Adhikari  
R/o WZ 10, Nasirpur Road  
New Delhi -45.
13. Praveen Kumar  
Age 52 years  
S/o Shri Ramjee Jha  
R/o RZ-F 1/176, Street No.1-A  
Mahavir Enclave  
New Delhi – 45.
14. A.K.Singh  
Age 55

S/o Shri Yamuna Singh  
R/o B-507, Plot No.39/C  
Sec 6, Dwarka  
New Delhi -75.

15. Arvind Kumar  
Age 48  
Section Officer  
S/o Bindeshwari SV  
R/o 5-1/757, Shalimar Garden Ext.1  
Ghaziabad, UP.
16. K. Chakarborty  
Age 49  
Section Officer  
S/o Shri N.K. Chakarborty  
R/o 63/2B, Kalibari Marg  
New Delhi -1.
17. Devender Kumar  
Age 48  
Section Officer  
S/o Shri Durga Prasad  
R/o IX/6070, Kashyap Marg  
Gandhi Nagar, Delhi.
18. Shiv Pujan Mishra  
Age 49 years  
Section Officer  
S/o Late Shri Bir Bahadur Mishra  
R/o H. No.4016, Sector 4C  
Vasundhara (Ghaziabad).
19. Sanjay Nagpal  
Age 57 years  
S/o Shri J.K. Nagpal  
R/o C-424, Sarojini Nagar  
New Delhi -23.
20. A.K. Mani  
Age 55 years  
S/o Shri P.R. Mani  
R/o H. No.546, Sec-3, R.K.Puram  
Delhi -22.
21. Sanjay Kumar  
Age 52 years  
Section Officer  
S/o Shri Udai Singh Pal  
R/o 192, Mansi Vihar, Sec 23  
Raj Nagar, Gaziabad (UP).
22. Shree Niwas Singh  
Age 47 years

Section Officer  
S/o Shri Rajendra Prasad Singh  
R/o A-4, Patel Dham, Manas Marg  
Chanakyapuri, New Delhi -21.

23. K.K. Kanth  
Age 47 years  
Section Officer  
S/o Shri R.B Kanth  
R/o Block-2, Sec.2, Rajinder Nagar  
Sahibabad, Ghaziabad, UP.
24. Chander Dev Bhatia  
Age 53 years  
Section Officer  
S/o Late Shri P.P. Bhatia  
R/o Bhatia Bhawan, Panthaghati  
Kasumpti, Shimla, H.P.
25. Pranay  
Age 48 years  
S/o Late Chandra Shekhar Prasad  
R/o A-47, Sai apartment, Rohini  
Sector 13, Delhi – 85.
26. Anshu  
Age 54 years  
S/o Shri Divendra Singh  
R/o 33 M, CPWD Colony  
Vasant Vihar  
New Delhi.
27. T.K. Thakur  
Age 58 years  
S/o Shri Bangali Thakur  
R/o H. No.72, Pocket 16  
Sec 24, Rohini, Delhi.
28. Sanjay Kumar Gupta  
Age 48 years  
Section Officer  
S/o Shri Chandra Pd. Gupta  
R/o Flat No.37, T-7, Shalimar Garden Ext.1  
Sahibabad, Ghaziabad, UP.
29. Sudhir Kumar  
Age 49  
Section Officer  
S/o Late Shri Gopanand Das  
R/o F1/B86, Shalimar Garden Ext.2  
Sahibabad, Ghaziabad, UP.
30. Arindam Mukherjee  
Age 49

Section Officer  
S/o Late Shri Amulya Kr. Mukherjee  
R/o 52/4D, Sec.2, Kalibari Marg  
New Delhi.

....Applicants

(Through Shri Padma Kumar S., Advocate)

Versus

1. Charan Singh Chauhan  
s/o Shri Prem Singh Chauhan,  
H.No.40, Engineers Enclave,  
(Phase III), GMS Road,  
Dehradun
2. Union of India through Secretary  
Ministry of Home Affairs,  
Government of India,  
North Block, New Delhi-110001
3. Director  
Intelligence Bureau,  
Ministry of Home Affairs,  
Government of India, North Block,  
New Delhi-110001
4. Secretary,  
Ministry of Personnel, Public Grievances & Pensions  
Department of Personnel & Training,  
North Block, New Delhi-110001
5. Secretary,  
Union Public Service Commission,  
Dholpur House, Shahjahan Road,  
New Delhi-110011
6. Tracius Kujur (serial no.31 in the impugned  
Seniority List dated 15.07.2014  
Working as Section Officer in Intelligence Bureau  
35, S.P. Marg, New Delhi-110021
7. Babu Lal Meena (serial no.32 in the impugned  
Seniority list dated 15.07.2014  
Working as Section Officer in Intelligence Bureau  
35, S.P. Marg, New Delhi-110021
8. Niranjan Chandra Das (serial no.29 in the impugned  
Seniority list dated 15.07.2014  
Working as Section Officer in Intelligence Bureau  
35, S.P. Marg, New Delhi-110021
9. Vinod Kumar Singh (serial no.59 in the impugned

Seniority list dated 9.06.2015  
Working as Section Officer in  
Subsidiary Intelligence Bureau  
110, Mall Road, Lucknow-226001

10. Anil Kumar Agrawal S/o Shri B.S. Agrawal  
Presently posted as Section Officer,  
Intelligence Bureau,  
35, S.P. Marg, New Delhi-110021  
R/o H-24, Green Park, New Delhi
  
11. Vikram Pal Batra S/o Shri Som Nath Batra  
Presently posted as Section Officer,  
Intelligence Bureau,  
35, S.P. Marg, New Delhi-110021  
R/o A-602, New Rajput CGHS  
Plot No.23, Sector-12, Dwarka,  
New Delhi-78

(Through Shri A.K. Behera and Shri R.K. Jain, Advocates)

## ORDER

Mrs. Jasmine Ahmed, Member (J)

This Review application, seeking to review of the order dated 21-02-2018 in OA No. 1399 of 2016 has been filed by the Review Applicants who are not parties to the aforesaid O.A. **K. Ajit Babu and others Vs. Union of India and others**, (1997) 6 SCC 473 affords the requisite passport to non parties to file review application. In the said case the Apex Court has held as under:-

“What remedy is available to such affected persons who are not parties to a case, yet the decision in such a case adversely affects their rights in the matter of their seniority. In the present case, the view taken by the Tribunal is that the only remedy available to the affected persons is to file a review of the judgment which affects them and not to file a fresh application under Section 19 of the Act. Section 22(3)(f) of the Act empowers the Tribunal to review its decisions.

Rule 17 of the Central Administrative Tribunal (Procedure) Rules (hereinafter referred to as “the Rules”) provides that no application for review shall be entertained unless it is filed within 30 days from the date of receipt of the copy of the order sought to be reviewed. Ordinarily, right of review is available only to those who are party to a case. However, even if we give wider meaning to the expression “a person feeling aggrieved” occurring in Section 22 of the Act whether such person aggrieved can seek review by opening the whole case has to be decided by the Tribunal. The right of review is not a right of appeal where all questions decided are open to challenge. The right of review is possible only on limited grounds, mentioned in Order 47 of the Code of Civil Procedure. Although strictly speaking Order 47 of the Code of Civil Procedure may not be applicable to the tribunals but the principles contained therein surely have to be extended. Otherwise there being no limitation on the power of review it would be an appeal and there would be no certainty of finality of a decision. Besides that, the right of review is available if such an application is filed within the period of limitation. The decision given by the Tribunal, unless reviewed or appealed against, attains finality. If such a power to review is permitted, no decision is final, as the decision would be subject to review at any time at the instance of the party feeling adversely affected by the said decision. A party in whose favour a decision has been given cannot monitor the case for all times to come. Public policy demands that there should be an end to law suits and if the view of the Tribunal is accepted the proceedings in a case will never come to an end. We, therefore, find that a right of review is available to the aggrieved persons on restricted ground mentioned in Order 47 of the Code of Civil Procedure if filed within the period of limitation.”

2. While affording the locus to the non parties for filing the review, the Apex Court has also equally emphasized that the right of review is available on restricted ground mentioned in Order 47 of the Code of Civil Procedure, if filed within the period of limitation.

3. While granting the latitude to non parties to file the Review, the Apex Court has also laid down that the restrictions – (a) the grounds shall be as mentioned in Order 47, and (b) the filing of the Review application should be within the period of limitation.

4. The Review applicants have filed the RA on 10-04-2018 and the order sought to be reviewed upon is dated 21-02-2018. The limitation prescribed by Rule 17 of the CAT (Procedure) Rules read with Sec. 22(f)(3) of the A.T. Act 1985 is 30 days from the date of the order under review, which in this case expired by 22-03-2018. However, the Review applicants have stated that the said order came to their knowledge only on 07-03-2018 and the Review application has been filed on 10-04-2018.

5. As regards grounds for review, while three broad grounds (a) to (c) have been set out, the grounds specifically indexing as “errors apparent on the face of the record” as set out in Ground (c) has the following contentions:-

(a) The order under review substantially relies upon the earlier order in Shiv Charan (OA No. 1227/2016) whereas, the ratio in the said order is entirely different. That order only held that the promotee Section Officers promoted during 2006, 2007, 2008 and 2009 should be treated as ad hoc till the

applicant therein became available as LDCE. [grounds (i) to (iii) under Ground (c)] and, the said decision in the above OA is under challenge before the Hon'ble High Court [Ground (iv)].

(b) The finding of this Tribunal in the decision in the above OA that the LDCE is direct Recruitment is per incuriam as the earlier decisions in OA No. 2883/2015 and OA No. 2891/2091 held that LDCE is of Promotional category. [Ground No. (v)]. Reliance of an order which is per incuriam makes the order under review as per incuriam as also non-est in law. [Ground No. (vi) and (vii)] Even when compared with the decision of the Apex Court in N. Ravindran, which has held that LDCE is promotion and not direct recruitment, the order under review is per incuriam [Ground No. viii)]

(c) Even the Nodal Ministry has clarified that LDCE is one of promotional category and not otherwise. [Ground No. (ix)]

(d) NFSG is in no way related to seniority which is related to approved service or eligibility service. [Ground No. (x)]

(e) Seniority and eligibility are two independent aspects as held by the Apex Court in "*R. Prabha Devi*". [Ground No. (xi)]

(f) Reliance upon the decision in “*N.R. Parmar*” has no applicability in this case as the said decision deals with inter-se seniority between Direct Recruit and Promotees [Ground No. (xii)]

6. The learned counsel for the private respondents Shri A.K. Behera has contested the R.A. *inter alia* on the ground that the Review Applicants have full knowledge of the entire progress in the case and its decision by virtue of their position and thus they cannot pose ignorance about the delivery of judgment as on 12-02-2018 and it is only with a view to prolonging the judicial process that there has been suppression of information. Again, it has been contended by the Respondents to the RA that the grounds of review do not adhere to the parameters specified for errors apparent on the face of records and if at all, the grounds could be considered only as grounds of appeal.

7. Counsel for the parties have presented their case, by and large on the basis of their pleadings. Counsel for the private respondents has invited the attention of the decision of the Apex Court in **State of West Bengal and others Vs. Kamal Sengupta and another**, (2008) 8 SCC 612, which exclusively deals with the aspect of review by the Tribunal.

8. Arguments were heard and documents perused. First as to locus of the Review Applicants, “K. Ajit Babu” clinches the issue. Hence, the Review applicants are entitled to move the R.A.

9. Next is limitation. The limitation period ordinarily reckons from the date of issue of the order under review, which in this case is 12-02-2018 and the period of limitation is 30 days, which in this case expired on 22-03-2018. However, taking into account the submission of the Review Applicants that the order under review came to their notice only on 07-03-2018, according to the Review applicants, the RA has been filed within time. Though the fact of knowledge by the Review Applicants of the order under Review has been vehemently contested by the Private Respondents by referring to the dealing with the file in their administrative capacity etc., there is nothing to prove that the order came to their knowledge immediately on pronouncement of the judgment. Thus, dealing with the case on merit would be more appropriate.

10. Coming to the grounds for review, as summarized in one of the earlier paragraphs, the grounds set out are first to be tested on the touch stone of the law laid down by the Apex Court in the case of Kamal Sengupta (supra) where the following parameters have been laid down by the Apex Court. The Apex Court in that case, has held as under:-

*“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.*

*(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. Telescoping the above on the grounds of review in the RA herein, if the case is analysed, the following would emerge:-

(a) Decision in Shiv Charan held that promotees under seniority quota were to be treated as ad hoc till such time the LDCE comes to hold the post. The purpose

of treating the promotees as ad hoc is obviously, to make the LDCE above them in seniority. The effect thus is one and the same. Assuming that the ratio in the case of Shiv Charan is entirely different, then again, the same cannot be taken as a ground under "error apparent on the fact of record". We had to agree with the counsel for the private respondent when he had argued with regard to this ground that the Tribunal in its wisdom has passed the order under Review, without overruling the coordinate bench judgment. It is a matter of interpretation. The judgment may, perhaps, become an erroneous one and the forum to challenge the same is not under Review domain.

(b) As regards the case being pending before the Hon'ble High Court, the same too cannot be a ground for review, for there appears no stay against the said order. Again, even if there be a stay, the position is that the order under stay is only kept in abeyance, as held by the Apex Court in the case of **Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Assn.**, (1992) 3 SCC 1, wherein the Apex Court has held as under:

"While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of

an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate Authority continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending.”

(c) As regards per incuriam, it has to be held that those judgments which may make the impugned order as per incuriam have not been brought to the notice of this Tribunal at the time of arguments. It is a new discovery which cannot be pressed into service under the Review Jurisdiction, when tested on the touchstone of the law laid down by the Apex Court in the case of Kamal Sengupta (supra).

(d) That the LDCE is one of promotional post and consequently, the decision in N.R. Parmar or for that matter, in view of the clarification by the Nodal Ministry, the order under review has become per

incuriam, is again the subject matter of challenge before the higher court and not under Review.

(e) Other grounds, vide Ground No. (x) and (xi) as well, do not fill the bill of grounds for review.

12. In view of the above, the Review application lacks in merit and is hence dismissed, however, with no order as to cost.

(Aradhana Johri)  
Member (A)

(Jasmine Ahmed)  
Member (J)

/dkm/