

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Review Application No. 180/00030/2019

in

Original Application No. 180/00733/2016

Monday, this the 1st day of July, 2019

CORAM:

Hon'ble Mr. Ashish Kalia, Judicial Member

Dr. K.P.Hamzakoya, S/o. Late Sri Attakkoya, aged 62 years,
 Office in-charge, Airport Health Organization, Ministry of Health,
 Cochin International Airport, Nedumbassery, Airport Rd., Kochi,
 Kerala 683 111, residing at 9F, Trinity Castle, Opposite Lulu Mall,
 Edappally, Kochi – 682024.

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**Review
Applicant**

(By Advocate : Mr. M.R. Hariraj)

V e r s u s

1. Union of India, represented by the Secretary,
 Ministry of Health and Family Welfare,
 New Delhi, Pin – 110001.
2. The Secretary, Ministry of Finance, Government of India,
 New Delhi, Pin - 110 001.
3. The Director, Central Government Health Scheme,
 Nirman Bhavan, New Delhi - 110 002.
4. The Director General of Audit (Central Expenditure)
 Indraprastha Estate, New Delhi - 110 002
5. The Senior Audit Officer, Office of the Director of Medical
 and Health Services, Kavaratti Island,
 Union Territory of Lakshadweep.
6. Dr. M.K. Mohammed Aslam, Medical Officer-in-Charge
 Community Health Center, Androth Island,
 Union Territory of Lakshadweep.
7. Dr. K. Shamsudheen, Director, Health Services,
 Kavarathi, Union Territory of Lakshadweep

8. Dr. P. Sayed Koya, Chief Medical Officer
Community Health Centre, Androth Island,
Union Territory of Lakshadweep. **Respondents**

O R D E R (In circulation)

By Hon'ble Mr. Ashish Kalia, Judicial Member-

This review application is filed by the applicant No. 1 in the OA. The OA was filed by the applicants therein seeking following relief:

“(i) To issue a declaration that the applicants being the Head of the Institutions and in the pay band PB-4, are entitled to give option either to draw transport allowance at a higher rate of Rs.7,000/- per month plus DA or to avail office car provided between residence and office in view of Annexure A1 and A2 and the recovery pursuant to Annexure A3 to A6 initiated by the respondents are illegal, arbitrary, discriminatory and liable to be set aside.

(ii) To further declare that availing of staff car facility for official purpose is purely a different matter and the option to avail the transportation allowance of Rs.7,000/- per month plus DA in lieu of office car provided between residence has nothing to do with availing of staff car for official purpose and hence all further proceedings pursuant to Annexure A6 is illegal, arbitrary and liable to be set aside.

(iii) To declare that steps taken by respondents to effect recovery from the salary of the applicants pursuant to Annexure A3 to A6 are illegal and arbitrary and is against the dictum laid down by the Hon'ble Supreme Court of India, reported in 2015(1) KLT 429 and that the recovery if made from the applicants as suggested by Annexure A3 to A6, it would be iniquitous, harsh and arbitrary to such an extent as would far outweigh the equitable balance of the employer's right to recover.

(iv) To call for the records leading to Annexure A3 to A5 and set aside Annexure A3, Annexure A4 and Annexure A5 and all further proceedings pursuant thereto.

(v) To call for the records leading up to Annexure A6 and set aside Annexure A6 and all further proceedings pursuant thereto.

(vi) To direct the respondents to allow the applicants to draw transport allowance at a higher rate of Rs.7,000/- per month plus DA in lieu of office car provided between residence and office.

(vii) To issue such other orders as this Tribunal may deem fit and necessary in the interest of equity and justice.”

2. This Tribunal after hearing the counsel appearing for the parties and perusing the records rejected the OA holding that as per Annexure R2 it is stated that only Senior Administrative Grade Officers who are declared as Heads of Department are entitled for TA @ Rs. 7,000/- per month plus dearness allowance thereon. Applicant No. 1 is entitled for one facility but has opted both which is not permissible under law.

3. The apex court in *State of West Bengal & Ors. v. Kamal Sengupta & Anr.* - 2008 (2) SCC 735 has enumerated the principles to be followed by the Administrative Tribunals when it exercises the power of review of its own orders under Section 22(3)(f) of the Administrative Tribunals Act, 1985.

They 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 a 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.”

4. By the present Review Application the case put forth by the review applicant is for re-consideration of the factual circumstance of the case which is not envisaged in the principles for review of the order as enumerated by the apex court in the aforecited dictum. In short, the review applicant seek a re-hearing of the case which is not contemplated under the power review envisaged under Section 22(3)(f) of the Administrative Tribunals Act, 1985. Further no error apparent on the face of the record could be established by the review applicant.

5. In the light of the above decision and in view of the facts and circumstances of this case, this Tribunal do not find any error apparent on the face of the record which would warrant review of this Annexure RA1 order. Accordingly RA is dismissed.

(ASHISH KALIA)
JUDICIAL MEMBER

“SA”

Review Application No. 180/00030/2019
in
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REVIEW APPLICANT'S ANNEXURES

Annexure RA-1– True copy of the final order dated 25.2.2019 in OA 733/2016.

Annexure RA-2 - True copy of the order No. F. No. 36/3/2017-Fin/256 dated 17.1.2019.

RESPONDENTS' ANNEXURES

Nil

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