

**(2018) 02 CAT CK 0018**

**In the Central Administrative Tribunal**

**Case No :** Review Application No. 25 Of 2018, Miscellaneous Application No. 774 Of 2018, Original Application No. 2901 Of 2015

Union Of India And Ors

APPELLANT

Vs

Dilip Wagheshwari

RESPONDENT

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**Date of Decision :** 21-02-2018

**Acts Referred:**

Administrative Tribunals Act, 1985 — Section 22(3)(f)  
Code Of Civil Procedure 1908 — 114 Order 47 Rule 1  
Central Civil Services (Pension) Rules, 1972 — Rule 9

**Citation :** (2018) 02 CAT CK 0018

**Hon'ble Judges :** Permod Kohli, J;Uday Kumar Varma, Member (A)

**Bench :** Division Bench

**Final Decision :** Dismissed

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**Judgement**

Uday Kumar Varma, Member (A)

MA No.774/2018

For the reasons mentioned in this Miscellaneous Application seeking condonation of delay, the M.A. stands allowed.

RA No.25/2018

1. This Review Application has been moved by the review applicants (respondents in the OA) to seek review of our order dated 01.12.2017 passed in OA No.2901/2015. The basic ground for seeking review of the order is that the original applicant has since retired from service and the departmental enquiry being conducted against him has now been deemed to be proceeded under Rule 9 of the CCS (Pension) Rules, 1972. They have further contended that the Tribunal may review the order to the extent that since the departmental enquiry against the applicant has not been finally decided and the regularization of applicant's period of suspension is still under consideration of the respondents, therefore, the increments to be granted to the applicant as per Tribunal's order

may be kept pending till final decision is taken in the departmental enquiry as well as on the issue of regularization of period of suspension of the applicant.

2. First of all, these grounds do not amount to the basic satisfaction for review of our order that the order so made suffers from any error apparent on the face of the record. The review applicants (respondents in OA) were free to raise this plea at the time when the OA was decided. This being not the case, a fresh plea cannot be raised as the order of the Tribunal was passed well after retirement of the applicant. Moreover, no rules or instructions support the contention of the review applicants that increments to be granted to the original applicant should be held in abeyance till decision in department enquiry and regularization of his suspension period is taken by the competent authority.

3. The *sine qua non* for reviewing the order is existence of an error apparent on the face of the record. The review applicants have failed to point out any such error apparent on the face of the order. Their submission that our order should be modified to the extent that the direction to the respondents to grant increments due to the applicant during his period of suspension may be kept pending till a final decision in the departmental enquiry and on the issue of regularization of his period under suspension is taken by the respondents, has no legal basis.

4. In the case of West Bengal & Ors Vs. Kamalsengupta & Anr. [2008(8) SCC 612], Hon'ble Supreme Court observed 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 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."

It is apparent from the above that the scope of the review lies in a very narrow compass. We have no hesitation in observing here that this review application in fact contains no material which could establish that there is any error apparent on the face of the order.

5. Having considered the submissions of the review applicants and in view of above discussion, we find no merit in the instant Review application and the same stands dismissed in circulation. No costs.