

**IN THE WEST BENGAL ADMINISTRATIVE TRIBUNAL
BIKASH BHAVAN, SALT LAKE CITY
K O L K A T A – 7 0 0 0 9 1**

Present :-

Hon'ble Justice Ranjit Kumar Bag.

Judicial Member.

-AND-

Hon'ble Dr. Subesh Kumar Das.

Administrative Member.

J U D G M E N T

Case No. : RA 10 of 2019 (O.A. 1154 of 2016)

**THE CHIEF SECRETARY TO THE GOVERNMENT OF WEST BENGAL & ANOTHER
V. CONFEDERATION OF STATE GOVERNMENT EMPLOYEES, WEST BENGAL &
OTHERS**

For the Review Petitioner :-

Mr. K. Dutta,

Learned Advocate General.

Mr. G.P. Banerjee,

Mr. B.P. Roy,

Mr. S. Ghosh,

Learned Advocates.

For the Respondents No. 1 & 3 :-

Sardar Amjad Ali,

Learned Senior Advocate.

M. Ali Sardar,

Learned Advocate.

For Respondent No. 2 :-

Mr. S. Dasgupta,

Mr. B. Banerjee,

Learned Advocates.

For Respondent No. 2A :-

Mr. Bikash Ranjan Bhattacharya,

Learned Senior Advocate.

Mr. F. Samim,

Learned Advocate.

Hearing concluded on : March 03, 2020.

Judgment delivered on : July 08 , 2020.

JUDGMENT

The delay of about four months in delivery of judgment is due to intervention of the lockdown of the entire country to prevent outbreak of Corona Virus and consequential non-functioning of the Tribunal during the aforesaid period.

2. The petitioners have prayed for review of the judgment and order passed by this Tribunal on July 26, 2019 in OA No. 1154 of 2016 (Confederation of State Government Employees and Others v. State of West Bengal and Others).

3. It is relevant to point out briefly the backdrop of filing the present memorandum of review by the petitioner No. 1, the Chief Secretary to the Government of West Bengal and the petitioner No. 2, the Additional Chief Secretary to the Government of West Bengal, Department of Finance. The Confederation of State Government Employees represented by its General Secretary and Others approached this Tribunal by filing OA No. 1154 of 2016 praying for direction upon the State of West Bengal (i) for release of 50% Dearness Allowance payable till January, 2016, (ii) for compliance with the directions of the report of 5th Pay Commission set up by the Government of West Bengal, (iii) for release of arrears of Dearness Allowance before being forfeited due to setting up of 6th Pay Commission by the Government of West Bengal and (iv) other ancillary reliefs. On February 16, 2017, the Tribunal dismissed the said original application by an order dated February 16, 2017. The Confederation of State Government Employees, West Bengal and Others challenged the order passed by this Tribunal in OA No. 1154 of 2016 by preferring writ petition being WPST No. 45 of 2017 before the Hon'ble High Court at Calcutta. On August 31, 2018, Learned Division Bench of the Hon'ble High Court disposed of WPST No. 45 of 2017 by delivery of judgment and order, whereby Learned Division Bench quashed the previous order passed by the Tribunal in OA No. 1154 of 2016 and observed that the claim of the employees serving under the Government of West Bengal for Dearness Allowance is based on legally enforceable right to such extent of the recommendations of 5th Pay Commission, which has been accepted by the Government of West Bengal by framing of the West Bengal Services (Revision of Pay and Allowances) Rules, 2009 read with clarificatory memorandums No. 1691-F and No. 1692-F – dated February 23, 2009 issued by the Finance Department,

Audit Branch, Government of West Bengal. However, Learned Division Bench of the Hon'ble High Court remitted the case back to the Tribunal for fresh decision on (i) whether the claim of the employees serving under the Government of West Bengal for Dearness Allowance at a rate equivalent to that of the employees of the Central Government is justified and (ii) whether the discrimination in the matter of payment of Dearness Allowance to the employees of the State of West Bengal with their counterparts serving in Banga Bhawan at New Delhi and Youth Hostel in Chennai is justified. The Tribunal was called upon to take fresh decision on the above two issues on merit without being influenced by the observations made in the judgment of the Hon'ble High Court after exchange of reply and rejoinder between the parties. The State of West Bengal prayed for review of the judgment and order passed in WPST No. 45 of 2017 by filing RVW No. 159 of 2018 after superannuation of one of the Hon'ble Judges who delivered the judgment. However, on March 7, 2019, the said RVW No. 159 of 2018 along with CAN 8729 of 2018 were disposed of by Learned Division Bench of the Hon'ble High Court by delivery of judgment, whereby the memorandum of review and the interim application were dismissed, but the period for exchange of reply and rejoinder before the Tribunal was extended. Ultimately, reply and rejoinder were exchanged between the parties before the Tribunal. On July 26, 2019, this Tribunal disposed of OA 1154 of 2016 by delivery of judgment and order in terms of the direction given by the Hon'ble High Court. Now, the petitioners have filed memorandum of review seeking for review of the judgment and order dated July 26, 2019 passed by the Tribunal in OA No. 1154 of 2016.

4. The issue for consideration of the Tribunal is whether memorandum of review filed by the petitioners should be admitted for final hearing after exchange of reply and rejoinder between the parties.

5. Mr. Kishor Dutta, Learned Advocate General appearing on behalf of the petitioners, has submitted that non-consideration of a relevant judgment of the Hon'ble Supreme Court at the time of decision of the Tribunal is a good ground for review of the judgment and order passed by the Tribunal. He has elaborated the submission by stating that non-consideration of the relevant judgment of the superior Court is not only an error apparent on the face of record justifying exercise of power of review, but the same is also covered under the expression

“any other sufficient reason” appearing in Order 47 Rule 1 of the Code of Civil Procedure. Relying on the judgment of the Hon’ble Supreme Court in “K.G. Derasari and Another v. Union of India and Others” reported in (2001) 10 SCC 496 and “State of West Bengal and Others v. Kamal Sengupta and Another” reported in (2008) 8 SCC 612, Mr. Dutta has tried to fortify his argument that review is the only remedy when the Tribunal did not consider relevant judgment of the superior Court at the time of taking decision in the case in hand.

6. Mr. Dutta has contended that he would like to refer to many other decisions of the Hon’ble Supreme Court for consideration of the Tribunal at the time of final hearing, if the memorandum of review is admitted. For the time being, he has referred to paragraphs 4, 8 and 9 of “State of Madhya Pradesh v. C. Mandawar” reported in AIR 1954 SC 493 in support of his contention that the grant of Dearness Allowance is not justiceable right and thereby direction cannot be given by the Tribunal for payment of Dearness Allowance to the employees of the State Government. According to Mr. Dutta, the decision of the Apex Court in “C. Mandawar” could not be placed before the Tribunal at the time of hearing of the original application and thereby the Tribunal did not get the opportunity to consider this relevant decision of the Apex Court, which is a good ground for review of the judgment and order passed by the Tribunal. Again, by referring to paragraphs 5 and 8 of the judgment of “India General Navigation and Railway Company Limited v. Workmen” reported in AIR 1960 SC 1286, Mr. Dutta has tried to impress upon us that the payment of Dearness Allowance to the employees depends upon the discretion of the State and this relevant decision was not placed before the Tribunal at the time of hearing of the original application, and thereby the Tribunal was deprived of the opportunity to consider the same. According to Mr. Dutta, non-consideration of the above two judgments of the Apex Court is a good ground for review of the judgment and order passed by the Tribunal.

7. Sardar Amjad Ali, Learned Senior Counsel, appearing on behalf of the respondents No. 1 and 3 has contended that the petitioners have failed to place on record any new and important matter or evidence for which the judgment and order passed by the Tribunal can be reviewed by invoking the provisions of Order 47 Rule 1 of the Code of Civil Procedure. According to Mr. Ali, the decision of

“India General Navigation and Railway Company Limited” (supra) has no relevance in the present case, as the reported case dealt with an award under the Industrial Disputes Act, whereas the Tribunal dealt with the claim of the Government employees of State of West Bengal who asserted their rights in terms of the Rules framed under proviso to Article 309 of the Constitution of India. He has further pointed out that the decision of the Apex Court in “Mandawar case” (supra) was placed by Learned Advocate General before Learned Division Bench of the Hon’ble High Court at the time of hearing of WPST 45 of 2017 and also at the time of hearing of memorandum of review preferred by the State of West Bengal seeking for review of judgment and order passed in WPST 45 of 2017. The gist of submission of Mr. Ali is that Learned Division Bench of the Hon’ble High Court considered the judgment of “C. Mandawar” (supra), distinguished the same on facts, quashed the previous order of the Tribunal and remanded the original application to the Tribunal for fresh decision on specific issues within specific period of time. Mr. Ali has emphatically pointed out that the filing of memorandum of review is a ploy on the part of the petitioners to delay payment of arrears of Dearness Allowance admissible to the employees of State of West Bengal.

8. Mr. Bikash Ranjan Bhattacharya, Learned Senior Counsel representing the respondents No. 2 and 2A has referred to various grounds enumerated in the memorandum of review and submitted that those grounds can be taken up for challenging the judgment and order of the Tribunal by filing writ application before the Hon’ble High Court, but those grounds do not come within the ambit of Order 47 Rule 1 of the Code of Civil Procedure for review of the decision of the Tribunal. Mr. Bhattacharya has also relied on the judgment of the Hon’ble Supreme Court in “State of West Bengal and Others v. Kamal Sengupta and Another” (supra) in order to emphasise that the Tribunal can exercise the power of review only in accordance with the procedure laid down in Order 47 Rule 1 of the Code of Civil Procedure. He has urged this Bench to consider that “any other sufficient reason” appearing in Order 47, Rule 1 of the Code of Civil Procedure for review must be construed in the light of other grounds for review under Order 47, Rule 1 of the Code of Civil Procedure and as such the grounds put forward by Learned Advocate General for review do not fall within the ambit of Sec 22(3)(f) of the Administrative Tribunals Act, 1985 as interpreted in “Kamal Sengupta case”

(supra). He has also emphatically pointed out that filing of the memorandum of review is a mere ploy to delay payment of balance amount of Dearness Allowance to the employees of State of West Bengal.

9. Before taking up the specific issue as to whether memorandum of review filed by the petitioners should be admitted for final hearing, we would like to discuss about the power and jurisdiction of the Tribunal to deal with the review of its own judgment and order. This Tribunal established under Section 4 of the Administrative Tribunals Act, 1985 has the power to regulate its own procedure, and shall be guided by the principles of natural justice, but subject to other provisions of the Act as laid down in Section 22(1) of the said Act. The other provisions laid down in Section 22(3) of the Administrative Tribunals Act, 1985, have enumerated the matters with regard to which the Tribunal will have to exercise the powers of a Civil Court under the Code of Civil Procedure, 1908. Therefore, the matters which are enumerated in clause (a) to (i) of Sub-Sec (3) of Sec 22 of the Administrative Tribunals Act, 1985, can be dealt with by the Tribunal only by exercising the power vested in the Civil Court under the Code of Civil Procedure, 1908 while trying a suit. It is relevant to quote Section 22 of the Administrative Tribunals Act, 1985, which is as follows :

“22. Procedure and powers of Tribunals

(1) A Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908, (5 of 1908) but shall be guided by the principles of natural justice and subject to the other provisions of this Act and of any rules made by the Central Government, the Tribunal shall have power to regulate its own procedure including the fixing of places and times of its inquiry and deciding whether to sit in public or in private.

(2) A Tribunal shall decide every application made to it as expeditiously as possible and ordinarily every application shall be decided on a perusal of documents and written representations and after hearing such oral arguments as may be advanced.

(3) A Tribunal shall have, for the purpose of discharging its functions under this Act, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, (5 of 1908) while trying a suit, in respect of the following matters, namely:-

- (a) *summoning and enforcing the attendance of any person and examining him on oath;*
- (b) *requiring the discovery and production of documents;*
- (c) *receiving evidence on affidavits;*
- (d) *subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, (1 of 1872) requisitioning any public record or document or copy of such record or document from any office;*
- (e) *issuing commissions for the examination of witnesses or documents;*
- (f) *reviewing its decisions;*
- (g) *dismissing a representation for default or deciding it ex parte;*
- (h) *setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and*
- (i) *any other matter which may be prescribed by the Central Government.”*

10. On perusal of the above provisions of Section 22(3)(f) of the Administrative Tribunals Act, 1985, it is crystal clear that even though the Tribunal is not bound by the procedure laid down in the Code of Civil Procedure, it is vested with the power of the Civil Court in relation to matters enumerated in Clause (a) to (i) of Sub-Section (3) of Section 22 including power of reviewing its own decision. Ergo, the Tribunal can exercise power of review of its judgment and order as a Civil Court by following the procedure laid down in Order 47 Rule 1 of the Code of Civil Procedure read with Section 114 of the Code of Civil Procedure. While Section 114 of the Code of Civil Procedure has enumerated the decree or decision which can be reviewed by the Civil Court, the provisions of Order 47 Rule 1 of the Code of Civil Procedure have enumerated the grounds on which review can be sought for by the aggrieved party. It is pertinent to quote the provisions of Order 47 Rule 1 of the Code of Civil Procedure, which are as follows :

“1.Application for review of judgment.-(1) Any person considering himself aggrieved-

- (a) *by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,*
- (b) *by a decree or order from which no appeal is allowed, or*
- (c) *by a decision on a reference from a Court of Small Causes,*

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the fact of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment of the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

Explanation.- The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment."

11. On a reading of the grounds enumerated in Order 47 Rule 1 of the Code of Civil Procedure, we find that the Tribunal can exercise the power of review under Section 22(3)(f) of the Administrative Tribunals Act, 1985 only on the above grounds which are enumerated for review of the judgment and order of the Civil Court. In other words, the Tribunal can review its judgment/order/decision on the discovery of new and important matter or evidence, which the petitioners could not produce at the time of decision in spite of exercise of due diligence, or the same was not within the knowledge of the petitioners or if the judgment and order suffers from some mistake or error apparent on the face of record or there exists some other reasons, which in the opinion of the Tribunal is sufficient for reviewing the earlier decision. These grounds have been meticulously interpreted by the Hon'ble Supreme Court in paragraphs No. 21 and 22 of the judgment of "Kamal Sengupta case" (supra), which are as follows :

"21. At this stage it is apposite to observe that where a review is sought on the ground of discovery of new matter or evidence, such matter or evidence must be relevant and must be of such a character that if the same had been produced, it might have altered the judgment. In other words, mere discovery of new or important matter or evidence is not sufficient ground for review ex debito-justitiae. Not only this, the party seeking review has also to show that such additional 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 earlier.

22. The term “mistake or error apparent” by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that the different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision.”

12. On perusal of the above two paragraphs of the judgment of the Apex Court in “Kamal Sengupta case” (supra), we find that the aggrieved party seeking for review of judgment and order of the Tribunal will have to establish that the new and important matter or evidence which is sought to be placed for review must be relevant and that the same could not be produced even after exercise of due diligence at the time of initial decision. The effect of new and important material or evidence must have the capacity to alter the judgment and order which has already been pronounced. It has also been clarified by the Hon’ble Supreme Court that if the error or mistake is not self-evident and for detection of that error or mistake if a long process of reasoning is required, then the same can never be treated as error apparent on the face of record for the purpose of review of judgment and order of the Tribunal. The Hon’ble Supreme Court has summarised the grounds on which the Tribunal can review its judgment and order in paragraph 35 of the judgment of “Kamal Sengupta case” (supra), which are as follows :

“35. The principles which can be culled out from the abovenoted 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."

13. Now, we would like to consider whether the grounds enumerated in memorandum of review filed by the petitioners and the grounds put forward by Learned Advocate General in course of his argument fall within the ambit of the principles laid down by the Hon'ble Supreme Court in paragraph 35 of the judgment of "Kamal Sengupta case" (supra) for review of judgment and order passed by this Tribunal. Relying on the judgment of the Hon'ble Supreme Court in "K G Derasari case" (supra), Learned Advocate General has argued that review is the only remedy when the Tribunal did not consider relevant judgment of the superior Court at the time of taking initial decision. In "K G Derasari case" (supra), the Hon'ble Supreme Court had to decide whether the Tribunal can issue fresh directions in contempt proceeding relying on judgment of the superior Court which could not be placed before the Tribunal at the time of taking initial decision. The Hon'ble Supreme Court has held that the Tribunal cannot issue fresh directions on the basis of judgment of the superior Court in a contempt proceeding, even when that judgment was not placed before it at the time of taking initial decision. The only remedy available to the aggrieved party is to seek for review of the earlier decision of the Tribunal on the basis of the judgment of the superior Court, if the said judgment could not be placed before it in spite of due diligence at the time of taking initial decision by the Tribunal. This decision of

the Hon'ble Supreme Court has not laid down the principles for review of the judgment and order of the Tribunal.

14. The specific submission of Learned Advocate General is that two important decisions of the Hon'ble Supreme Court viz. judgment of "India General Navigation and Railway Company Limited" (supra) and "State of Madhya Pradesh v. C. Mandawar" (supra) could not be placed before the Tribunal at the time of taking decision and thereby non-consideration of these two important judgments are good grounds for review of judgment and order passed by the Tribunal.

15. Let us consider the above two judgments of the Hon'ble Supreme Court as new and important material which could not be placed before us by Learned Counsel representing the respondents of the original application (i.e. the petitioners of the present memorandum of review) in spite of due diligence. Non-consideration of the above two judgments may be good ground for review of the decision of the Tribunal, (i) if the judgments are found to be relevant, (ii) if the decision of the Tribunal would have been altered by consideration of these two judgments and (iii) if the judgments were not within the knowledge of the petitioners and thereby could not be placed before the Tribunal even after exercise of due diligence. So, the issue for our determination is whether the petitioners have been able to fulfil the above criteria for review of earlier decision of the Tribunal.

16. In "India General Navigation and Railway Company Limited" (supra), the dispute between the Steamer Company and its Workmen was referred to the Industrial Tribunal, as they were governed under the Industrial Disputes Act, 1947. The Flat and Steamer Clerks claimed the rate of Dearness Allowance payable to the staff of the Steamer Company working in the headquarters at Calcutta. The Industrial Tribunal awarded the rate of Dearness Allowance in favour of the said Clerks of the Steamer Company, which was payable to the staff of the Company working in the headquarters at Calcutta. By way of Special Leave to Appeal, the award of the Industrial Tribunal was challenged before the Hon'ble Supreme Court. The Hon'ble Supreme Court modified the award passed by the Industrial Tribunal to the extent that the rate of Dearness Allowance payable to the staff of the Steamer Company working in the headquarters at Calcutta will be payable to those flat and steamer Clerks of the Steamer Company, whose

members of family have been residing within the area of greater Calcutta. The issue decided by the Hon'ble Supreme Court in this case is whether any discrimination was made in payment of Dearness Allowance between the staff of the headquarters and the flat and steamer Clerks of the Steamer Company, in spite of residing in the same locality. The concept of payment of Dearness Allowance for the Workmen under the Industrial Disputes Act is totally different from the concept of payment of Dearness Allowance to the employees of the Government, whose conditions of service are governed by the Rules framed under Article 309 of the Constitution of India. The facts of the reported case of "India General Navigation and Railway Company Limited" (supra) are clearly distinguishable from the facts of the present case and thereby the ratio of the said reported case has no manner of application in the facts of the present case. In other words, the reported case of "India General Navigation and Railway Company Limited" (supra) can never be construed as new and important material for review of the decision of the Tribunal, as the decision of the Tribunal would not have been altered, had it been placed before us at the time of taking initial decision.

17. In "State of Madhya Pradesh v. C. Mandawar" (supra), the Central Pay Commission recommended for grant of Dearness Allowance on a specified scale to the employees of the Central Government on May 3, 1947. Similarly, the Pay Committee set up by the Government of Central Provinces and Berar (now Madhya Pradesh) for fixation of scale of pay and Dearness Allowance of its employees submitted the report on June 22, 1948. The Pay Committee recommended for adoption of identical pay structure and Dearness Allowance in respect of the employees drawing salary above Rs.400/- per month, as that of the Central Pay Commission, while less amount of Dearness Allowance was granted in favour of the employees drawing salary of Rs.400/- and less per month. The issue which came up for consideration before the Hon'ble Supreme Court is whether the resolution of the State Government fixing a scale of Dearness Allowance to be paid to its employees at different rate depending on salary is repugnant to Article 14 of the Constitution of India. The Hon'ble Supreme Court held that the scale of Dearness Allowance recommended by the Central Pay Commission and sanctioned by the Central Government for its employees can furnish no ground for holding that different rate of Dearness Allowance cannot be recommended by

the State Pay Committee and granted by the State Government for different classes of employees depending on the amount of salary drawn by each class of employees per month and as such the said fixation of rate of Dearness Allowance for the State Government employees cannot be repugnant to Article 14 of the Constitution of India. The Hon'ble Supreme Court had taken the above view on consideration of the provisions of Rule 44 of the Fundamental Rules, whereby discretion was given to the State (local) Government to grant the amount of Dearness Allowance to its employees. Since it was the discretion of the State Government to grant the scale/rate of Dearness Allowance to its employees in terms of the provisions of Rule 44 of the Fundamental Rules, the resolution of the State Government for payment of Dearness Allowance to its employees at different rates depending on salary drawn by each class of employee per month was not hit by Article 14 of the Constitution of India.

18. In the present case, the right of the employees working under Government of West Bengal to get Dearness Allowance on the revised pay scale in terms of the provisions of West Bengal Services (Revision of Pay and Allowances) Rules, 2009 read with the provisions of clarificatory memorandum No. 1691-F and No. 1692-F dated February 23, 2009 issued by the Finance Department, Audit Branch, Government of West Bengal was already decided by the Learned Division Bench of the Hon'ble High Court in WPST No. 45 of 2017 and the said decision of the Learned Division Bench of the Hon'ble High Court has not been challenged by the State of West Bengal before the Hon'ble Supreme Court. While in the reported case of "C. Mandawar" (supra), the Hon'ble Supreme Court decided the issue of discrimination in payment of Dearness Allowance to a class of State Government employees in terms of the provisions of Rule 44 of the Fundamental Rules, in the present case the employees of the Government of West Bengal have claimed their right under the provisions of West Bengal Services (Revision of Pay and Allowances) Rules, 2009 and two clarificatory memorandums issued thereunder by the Finance Department, Audit Branch, Government of West Bengal. Accordingly, the facts of the present case are clearly distinguishable from the facts of "C. Mandawar" (supra). The logical inference is that the reported judgment of the Hon'ble Supreme Court in "C. Mandawar" (supra) cannot be construed as relevant material for review of the judgment and order of the Tribunal. Had this reported judgment of "C. Mandawar" (supra) been

placed before us at the time of taking initial decision, the same would not have altered the judgment and order passed by us in the original application.

19. We cannot be oblivious of the fact that the judgment of “C. Mandawar” (supra) was placed by Learned Advocate General before Learned Division Bench of the Hon’ble High Court at the time of hearing of WPST No. 45 of 2017 and in paragraph 63 of the judgment Learned Division Bench distinguished the facts of the present case with that of “C. Mandawar” (supra) and held that that said reported decision did not help the State of West Bengal in deciding the issues involved in the writ petition. Again, Learned Advocate General referred to the said decision of “C. Mandawar” (supra) before Learned Division Bench which took up the memorandum of review (RVW No. 159 of 2018) for hearing. Learned Division Bench has reiterated in paragraph 10 of the judgment of RVW No. 159 of 2018 that the said reported judgment was considered and distinguished by previous Learned Division Bench of the Hon’ble High Court in WPST No. 45 of 2017. Thus, it passes our comprehension to believe that Learned Counsel representing the State respondents in the original application (i.e. the petitioners of the present memorandum of review) were not aware of the judgment of “C. Mandawar” (supra) and as such the said judgment could not be placed before us at the time of taking initial decision. Since the judgment of the Hon’ble Supreme Court in “C. Mandawar” (supra) cannot be construed as new and important material for review of earlier decision and since the petitioners were well aware of the said judgment at the time of hearing of the original application, we cannot persuade ourselves to hold that non-consideration of the said judgment of “C. Mandawar” (supra) is a ground for review of the earlier judgment and order of the Tribunal as contended by Learned Advocate General.

20. Lastly, we would like to decide whether the grounds taken up in the memorandum of review can justify review of our judgment and order passed in the original application. Out of twenty grounds enumerated in memorandum of review, the same point has been repeated in more than one ground. However, the main grounds enumerated in the memorandum of review may be summarised as follows : (i) that the Tribunal erred in deciding that the State Government paid Dearness Allowance in an arbitrary manner after 2010, (ii) that the Tribunal erred in directing the State Government for payment of Dearness

Allowance in accordance with AICPI, (iii) that the Tribunal acted as legislature in calculating Dearness Allowance and giving direction to the State Government for payment by framing scheme, (iv) that the Tribunal granted relief to the employees of the State Government indirectly which could not be given directly in terms of the provisions of law, (v) that the direction of the Tribunal for evolving the principles/norms for payment of Dearness Allowance is illegal and unjustified, (vi) that the Tribunal did not consider the financial capacity of the State Government in giving direction for payment of Dearness Allowance, (vii) that the Tribunal has decided the issue of discrimination between the State Government employees working within the State of West Bengal and State Government employees working in New Delhi and Chennai without availability of any material on record and (viii) that the Tribunal has delivered judgment by giving direction to the State Government which is beyond the scope of the original application.

21. On consideration of the above grounds put forward by the petitioners for review of the decision of the Tribunal, we find that all the above grounds can be taken up by the petitioners for challenging the judgment and order before the superior Court, but the same can never be agitated before us for review of the earlier decision. Those grounds by no stretch of imagination fall within the ambit of Order 47 Rule 1 of the Code of Civil Procedure read with Section 22(3)(f) of the Administrative Tribunals Act, 1985 for review of the earlier decision of the Tribunal. Accordingly, we are constrained to hold that the petitioners have miserably failed to establish any ground for review of the judgment and order passed by the Tribunal in the original application.

22. As a result, the memorandum of review is not admitted for hearing, and as such the same is dismissed.

23. The urgent Xerox certified copy of the judgment and order, if applied for by either of the parties, may be supplied on priority basis on fulfilment of all necessary formalities.

S. K. DAS
MEMBER(A)

R. K. BAG
MEMBER(J)

