

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

**RA No. 4 of 2019
OA No. 1078 of 2012
CP No. 42 of 2019**

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)

1. Union of India represented through the General Manager, East Coast Railway, Bhubaneswar, Dist. Khurda.
2. Divisional Railway Manager, East Coast Railway, Khurda Road Division, At/PO-Jatni, Dist.-Khurda.
3. Sr. Divisional Personnel Officer, East Coast Railway, Khurda Road Division, At/PO-Jatni, Dist.Khurda.
4. Senior Divisional Accounts Officer, East Coast Railway, Khurda Road Division, At/PO/PS-Jatni.

.....Applicants
(Respondents in OA)

VERSUS

Bainsab Naik, son of Late Gopi Naik, At. Meramundai, PO-Limbabahali, PS-Motanga, Dist.-Dhenkanal.

.....Respondent
(Applicant in OA)

For the applicant : Mr.S.K.Ojha, counsel

For the respondents: Dr.J.K.Lenka, counsellor

Heard & reserved on : 13.1.2020 Order on : 26.2.2020

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicants have filed this Review Application(in short RA) with the following prayer :

“Under the facts and circumstances of the case, this Hon’ble Tribunal may be graciously pleased to issue notice to the Respondents. After hearing the respective parties be pleased to allow this Review Application, recall the order dtd. 19.6.2017 passed in OA No. 1078 of 2012 and further be pleased to dismiss the Original Application filed by the present Respondent for the ends of justice.

And pass any further or other order/orders as this Hon'ble Tribunal may deem fit and proper.

And for this act of kindness the applicants are duty bound shall every pray."

2. The RA has been filed by the respondents of the OA No. 1078/12, being aggrieved by the order dated 19.6.2017 (Annexure- RA/3) of the Tribunal passed in OA No. 1078/2012. A Misc. Application (in short MA) has also been filed to condone delay in filing the RA since it has been filed after the 30 days from the date of receipt of the order dated 19.6.2017.

3. The reason mentioned in the MA is that after receipt of the impugned order on 10.10.2017, it was placed before the competent authority and it was decided to file the Review Application on 20.10.2017 when learned counsel was advised to draft the RA. The RA was filed on 6.12.2017. The reason for which it could not be filed before 30 days from the date of receipt of the impugned order on 10.10.2017 have not been mentioned in the MA.

4. Following main grounds have been urged in the RA for challenging the order dated 19.6.2017:-

i) The question of maintainability of the OA taking into the aspect of delay was not considered while passing of the OA on merit. It was also pointed out by the respondents that the applicant had filed another OA with same prayer for which the OA is heat by adjudicate.

ii) The reply furnished by the respondents in the counter was not considered by the Tribunal while passing the impugned order treating the applicant is eligible for the pension, although he had not completed the minimum qualifying service of 9 years 9 months for the purpose. The Tribunal accepted the calculation furnished by the applicant without taking into account of the entries made in the service review certificate which indicated that the period of service from 12.05.1990 to 18.07.1994 was in temporary status for which 50% of that period will taken into consideration for the purpose of qualifying service.

iii) The finding of the Tribunal in the impugned order that no reason has been furnished for not counting the period of 3 years, 6 months and 1 day as qualifying service, is not as per the Rule-14 of the Railway Service (Pension) Rules, 1993 and Master Circular No. 54 of the Railway Board which specified the service which can be treated as qualifying service.

iv) The Tribunal considered the facts which were not the part of the proceedings while passing the impugned order dated 19.06.2017.

5. Regarding the application for condoning delay in filing the RA, it is seen that the rule 17 of the CAT (Procedure) Rules, 1987 stipulates a time limit of 30 days to file the RA. In this case, the review applicants have filed the RA beyond 30 days from the date of receipt of the impugned order dated 19.6.2017 as stated in the MA. It is noticed that the approval of the competent Authority to file the RA was taken on 20.10.2017 as stated in the MA. Still the RA could not be filed within 30 days from the date of receipt of a copy of the order. In the circumstances, the reasons for which the RA could not be filed within 30 days from the date of receipt of the impugned order have not been properly

explained in this case. Hence, the MA filed for condoning the delay in filing the RA is liable to be dismissed.

6. On merit, it is noticed that the grounds mentioned in the RA do not reveal any error or mistake apparent on the face of the record. The grounds mentioned in the review application to challenge the impugned order dated 19.6.2017 of the Tribunal relate to appreciation of the facts on record or point of law, which cannot be said to be the mistake or error apparent on the face of the record. No apparent error or mistake or any new facts which could not be produced before the Tribunal earlier. The Scope of reviewing an order of the Tribunal is limited to the grounds specified in the Rule 1 of the order 47 of Civil Procedure Code, which states as under:-

“1. Application for review of judgement

(1) Any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but from 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 face 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 judgement to 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 judgement 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 judgement 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 judgement.]”

7. In the case of **Kamlesh Verma v. Mayawati And Others reported in 2013 AIR SC 3301**, Hon'ble Apex Court has laid down the following principles regarding review of Tribunal's order as under:-

“18. Review is not rehearing of an original matter. The power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. A repetition of old and overruled argument is not enough to reopen concluded adjudications. This Court in Jain Studios Ltd. v. Shin Satellite Public Co. Ltd. 2006 5 SCC 501, held as under: (SCC pp. 504-505, paras 11-12)

“11. So far as the grievance of the applicant on merits is concerned, the learned counsel for the opponent is right in submitting that virtually the applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negatived. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. It is settled law that the power of review cannot be confused with appellate

power which enables a superior court to correct all errors committed by a subordinate court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases.

12. When a prayer to appoint an arbitrator by the applicant herein had been made at the time when the arbitration petition was heard and was rejected, the same relief cannot be sought by an indirect method by filing a *review* petition. Such petition, in my opinion, is in the nature of 'second innings' which is impermissible and unwarranted and cannot be granted."

19. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of order 47 rule 1 cpc. In review jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible under the review jurisdiction...."

8. Similarly, in the case of **State of West Bengal And Others v. Kamal Sengupta and another reported in (2008) 8 SCC 612**, it was held by Hon'ble Apex Court as under:

- "(i). The power of the Tribunal to review is akin to order 47 Rule 1 of CPC read with Section 114.
- (ii). The grounds enumerated in order 47 Rule 1 to be followed and not otherwise.
- (iii). "that any other sufficient reasons" 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 the record.
- (v). An erroneous decision cannot be corrected under review.
- (vi). An order cannot be reviewed on the basis of subsequent decision / judgment of coordinate Larger bench or a superior Court.
- (vii). The adjudication has to be with regard to material which were available at the time of initial decision subsequent event / developments are not error apparent.
- (viii). Mere discovery of new / important matter or evidence is not sufficient ground for review. The party also has 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 earlier before the Tribunal."

9. The grounds mentioned in the RA included delay in filing the OA and maintainability of the OA No. 1078/12 were not considered by the Tribunal while passing the impugned order. It is the settled position of law that for claim of pension will be a recurring cause of action. Further, it is seen that the applicant in the OA had earlier filed another OA No. 298/2009, which was disposed of vide order dated 21.08.2019 (Annexure-A/3 of the OA) without recording any finding on the issues raised by the applicant in the OA. The OA No. 298/2009 was disposed of with a direction to the respondents to consider the representation of the applicant. In pursuance to the order, respondents had passed the order dated 26.03.2010 (Annexure-A/4) of the OA which was challenged in the OA 1078/12, in which delay was not cited as one of the

reason for rejecting the applicant's claim. Hence, it cannot be said that the OA No. 1078/12 was not maintainable on the ground of delay or because of the principle of res judicata.

10. As per the order dated 26.3.2010 impugned in OA No. 1078/12, one of the ground mentioned for rejecting the applicant's claim was that his qualifying service was less than the minimum service required for pension since the service of 3 years, 6 months and 1 days was deducted as non-qualifying service from the applicant's regular service from 18.07.1994 31.07.2004. This ground of the respondents was not accepted since no reason for treating the period of 3 years 6 months 1 day as non-qualifying was mentioned in the impugned order or in the pleadings of the respondents in OA No. 1078/12. The fact that such period could not have been treated as qualifying service in view of the rules will not eliminate the requirement for communicating to the applicant the reasons for doing so by the competent authority. It is observed in the impugned order dated 19.06.2017 that only on the basis of the regular service, the applicant had more than 10 years of qualifying service, with the observations as under:

"It is noted here that the detailed reasons for which a period of 3 years 6 months and 1 day has been decided to be non-qualifying are not specified in the impugned order. This is an important point which should have been clarified. It is especially important in view of the fact that because of the non-qualifying period, the applicant has been held to be not entitled to pension. Otherwise, from his regular service of 10 years, he would have been entitled for pension, without even adding 50% qualifying service from the casual service of the applicant."

11. For the reasons as discussed above, we are of the considered view that no valid ground has been made for reviewing the impugned order dated 19.06.2017 of this Tribunal.

12. Therefore, the RA is liable to be dismissed being devoid of merit. The MA filed for condoning delay in filing the RA is dismissed for the reasons mentioned above and the Review Application is dismissed both the ground of limitation and merit. There will be no order as to cost.

CP No. 42/2019

13. List this C.P filed for non-compliance of the order dated 19.6.2017 on 19.3.2020. The respondents are to file compliance report before next date.

14. Copy of this order to learned counsels for both the parties.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

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