

**CENTRAL ADMINISTRATIVE TRIBUNAL
AMHEDABAD BENCH, AHMEDABAD**

**Review Application Nos.06/2018
in OA No.315/2017
Dated the 24th day of February, 2021**

CORAM :

**Hon'ble Shri Jayesh V Bhairavia, Member (Judicial)
Hon'ble Shri Dr A.K.Dubey, Member (Administrative)**

- 1 Union of India
Through: General Manager,
Western Railway, Churchgate, Mumbai – 400 020.
 - 2 The Divisional Railway Manager,
O/O. DRM-BRC, Western Railway,
Pratapnagar, Vadodara-390 002.
 - 3 The Addl. Divisional Railway Manager,
O/O. DRM BRC, Western Railway,
BRC Division, Vadodara – 390 002.
 - 4 The DEE (TRS) BRCY,
Divisional Office, Western Railway,
BRC Division, Vadodara – 390 002.
 - 5 The Asst. Electrical Engineer,
AEE (RSM) Divisional Office,
Western Railway, BRC Division,
Vadodara – 390 002
- ... Applicants

By Advocate Shri M J Patel

V/s

Smt Vinuben wd/o Shri Jaswant D Chavda,
Village: Tarkhanda, Ta. Halol,
Dist. Panchmahal-389 350.

... Respondents

By Advocate Shri Prabhatsinh Parmar

ORDER (ORAL)

Per Hon'ble Shri J V Bhairavia, Member(J)

1 Learned counsel for the applicant (Original Respondent) Shri M J Patel brings to the notice the fact that initially the Railway Department had

challenged the order passed by this Tribunal dated 21.07.2017 in OA No.315/2017 before the Hon'ble High Court vide SCA No.19657 of 2017. The said petition was disposed of as withdrawn with the liberty granted to the present applicant vide its order dated 30.11.2017 which reads as under:-

“Learned advocate Mr Ramnandan Singh for the petitioners seeks permission to withdraw this petition with a view to take out review application if permissible under law in order to point out the provision of Rule 48 of Railway Services Pension Rules, 1993 which could not be pointed out and also seeks permission to file a fresh petition in case review fails. Permission as prayed for is granted. The petition is disposed of as withdrawn with the aforesaid liberty.”

2 Hence this Review Application.

3 The learned counsel for applicant fairly submitted that the respondents Railway had not taken the plea of applicability of Rule 48 of Railway Services Pension Rules 1993 before this Tribunal at the time when OA 315/17 was taken up for final hearing. It is also not the contention of the original respondents in the said OA with regard to said provision of Rule 48 in their reply filed in the said OA. However, in the present review the counsel for the applicant mainly submitted that this Tribunal while deciding the OA 315/17 relied upon Rule 69(3) and Rule 107 of Railway Services (Pension) Rules 1993 and issued directions to the Railway for relaxation with regard to shortage of qualifying service of the Railway employee. But the Rule 48 of Railway Services (Pension) Rules 1993, does not permit such relaxation. The said rule stipulates that any deficiency in the qualifying service shall not be condoned. Therefore, the order passed by this Tribunal dated 21.07.2017 required to be recalled.

4 Heard the learned counsel for parties. We have perused the grounds stated in the present RA and considering the submission of standing counsel Shri M J Patel we notice that this Tribunal in its order in OA 315/2017 dated 21.07.2017 has recorded its findings as under:-

14. I have carefully perused various entries in the service book pointed out by Shri M.J.Patel and following particulars were ascertained :

- (i) Initial engagement as casual labour : 24-3-1987*
- (ii) Date of Confirm of Temporary status : 06.04.1989*
- (iii) Date of Absorption : 27.12.1989*

(iv) Date of compulsory Retirement : 25.5.1999.

15. On perusal of the service book, I find that the net qualifying service is determined as under :

QUALIFYING SERVICES :

| YEAR | MONTHS | DAY | |
|------|--------|-----|---------------------------------|
| 1999 | 05 | 20 | (D.O.R.) |
| 1987 | 03 | 24 | T.S. |
| 12 | 01 | 26 | |
| 01 | 03 | 18 | (468 L.W.P.) |
| 10 | 10 | 08 | |
| 01 | 04 | 16 | (50% service from T.S. to Reg.) |
| 09 | 05 | 22 | |

Referring to the above total qualifying service determined by the respondents with reference to the various entries made in the service book of the applicant, Shri M.J.Patel pointed out that the deceased is running short of six months and eight days for the purpose of granting pension on compulsory retirement.

16. In the circumstances, it is necessary for me to refer sub-rule (3) of Rule 69 of Railway Services (Pension) Rules, 1993, which reads as under :

"In calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated as a completed one-half year and reckoned as qualifying service."

Quoting the above rule, when a specific query was put to Shri M.J.Patel as to why fraction of a year shall not be reckoned as qualifying service, he pointed out that even if the above rules were to be pressed into service then also, the deceased did not qualify for pension for want of qualifying service of 10 years. He further pointed out even if six months were to be added to the total qualifying service, it would work out to be 09 years, 11 months and 22 days, and thereby, there is a shortage of 08 days.

It is clear that in terms of Railway Services (Pension) Rules, 1993, the applicant is not entitled to pension for want of qualifying service of just 08 days.

17. In the backdrop of the facts and circumstances of the case, it is necessary to quote Rule 107 of Railway Services (Pension) Rules, 1993 :

"Where the pension sanctioning authority is satisfied that the operation of any of these rules causes undue hardship in any particular case, that authority, may for reasons to be recorded in writing, approach the Ministry of Railways (Railway Board) for dispensing with or relaxing the requirements of that rule to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner. The Ministry of Railways (Railway Board) shall examine each such case and arrange to communicate the sanction of the President to the proposed dispensation or relaxation, as it may consider necessary keeping in view the merits of each case and keeping in view of another statutory provisions: Provided that no such order shall be made without concurrence of the Department of Pension and Pensioners' Welfare, in the Ministry of Personnel, Public Grievances and Pensions, Government of India."

18. In view of the above Rule, prima facie, I am of the opinion that the shortage of just 08 days causes undue hardship and therefore, it is

necessary for the Appointing Authority to approach the Railway Board for dispensing with or relaxing the requirement of the relevant rules to such an extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner. Therefore, in the fitness of the facts and circumstances of the case on hand, I am of the opinion that interest of justice would be served, if the respondents are directed to approach the Railway Board for dispensing with or relaxing the requirement of that rule, which demands the minimum qualifying service of 10 years for grant of pension within a month from the date of receipt of a copy of this order through necessary proposal. In turn, the Railway Board is directed to examine the proposal to be submitted by the DRM and arrange to communicate the sanction of the President to the proposed dispensation or relaxation by taking into account the fact that the shortage is very meager, negligible and causes undue hardship to the applicant, who is a widow, as soon as possible, but not later than three months from the date of receipt of the proposal from the DRM. Accordingly ordered. The whole exercise shall be completed within a period of four months from the date of receipt of a copy of this order.

19. *In the event of the Railway Board relaxing /dispensing with the requirements of relevant rules, then the pension of the Shri Jaswant D. Chavda shall be fixed within a month thereafter. It is made clear that benefits that accrue shall be restricted for a period of three years preceding the date of presentation of the OA i.e. on 07.06.2017. In other words, the arrears of pension shall be calculated only w.e.f. 07.06.2014. In view of the fact that there is shortage of qualifying service, the applicant is not entitled for any interest on such arrears.*

20. *It is made clear that in the process of relaxing or dispensing with the relevant rules, if the Railway Board forms a different opinion as to the claim of the applicant for pension, then they shall pass a reasoned and speaking order setting forth the grounds as to why the requirement of the relevant rules shall not be relaxed/dispensed in exercise of the powers conferred upon it under Rule 107 of the Railway Service (Pension) Rules, 1993. The DRM, Vadodara is expected to expedite the matter and to see that all the directions herein be complied with well within the said time limit prescribed herein.*

21. *With the aforesaid observations and directions, the OA stands disposed of. There shall be no order as to costs."*

- 5 From the aforesaid order it can be seen that this Tribunal in para 16 has clearly observed that in terms of Railway Services (Pension) Rules, 1993, the applicant is not entitled to pension for want of qualifying service of just 08 days and at the same time in para-17 referred to the provisions of Rule 107 of Railway Services (Pension) Rules, 1993 and accordingly this Tribunal has concluded observing in the event of the Railway Board relaxing/dispensing with the requirement of relevant rules, then only the pension of the

applicant shall be fixed. It is also observed in para-20 that “ *It is made clear that in the process of relaxing or dispensing with the relevant rules, if the Railway Board forms a different opinion as to the claim of the applicant for pension, then they shall pass a reasoned and speaking order setting forth the grounds as to why the requirement of the relevant rules shall not be relaxed/dispensed in exercise of the powers conferred upon it under Rule 107 of the Railway Service (Pension) Rules, 1993.* ”

Therefore, it is obvious from the order itself that this Tribunal directed the respondent Railway Board to take appropriate decision in terms of Rule 107 of the Railway Services (Pension) Rules 1993 which empowers to relax or dispense or otherwise the requirement of period of qualifying service for the purpose of grant of benefit of pension to the widow of the deceased employee.

- 6 The scope for a review application is clearly defined in various orders of the Hon’ble Supreme Court. The Hon’ble Supreme Court in the case of *State of West Bengal & others v. Kamal Sengupta and another* (2008) 3 AISLJ 209 has held that the Tribunal can exercise the powers of a Civil Court in relation to matters enumerated in clauses (a) to (i) of sub-section (3) of Section 22 of the Administrative Tribunals Act including the power of reviewing its decision. By referring to the power of a Civil Court to review its judgment/decision under Section 114 CPC read with Order 47 Rule 1 CPC, the Hon’ble Supreme Court laid down the principles subject to which the Tribunal can exercise the power of review. At para 28 of the said judgment the Hon’ble Supreme Court culled out the principles which 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.”*

7 The Hon’ble Supreme Court in an another judgment in the case of Union of India v/s Tarit Ranjan Das 2004 SCC (L&S) 160 while dealing with the order passed in Review Application at paragraph 13 observed as under:

“The Tribunal passed the impugned order by reviewing the earlier order. A bare reading of the two orders shows that the order in review application was in complete variation and disregard of the earlier order and the strong as well as sound reason contained therein whereby the original application was rejected. The scope for review is rather limited and it is not permissible for the forum hearing the review application to act as an appellate authority in respect of the original order by a fresh and rehearing of the matter to facilitate a change of opinion on merits. The Tribunal seems to have transgressed its jurisdiction in dealing with review petition as if it was hearing original application. This aspect has also not been noticed by the High Court.”

8 Bearing in mind the above principles laid down by the Hon’ble Supreme Court, existence of an error on the face of the record is *sine qua non* for review of an order. It is not permissible for the forum to here in the review application to act as an Appellate Authority in respect of the original order by a fresh re-hearing of the matter to facilitate a change of opinion on merits. We have examined the grounds urged by the review applicant in support of his prayer for reviewing the order and we find that the review applicant has failed to bring out any

apparent error on the face of order under review. So far as grievance of the applicant that this Tribunal has not considered the contention of the applicant, the judgments, rules quoted and infact the petitioner has reiterated the averments in the OA.

- 9 In view of the above we do not find any error apparent on the face of record in the order passed by the Tribunal, the reasons and grounds stated by applicant are not sufficient to exercise the power of review.
- 9 Thus, in view of above discussion and in light of the law laid down by Hon'ble Apex Court (supra), the applicant has failed to point out any error much less an error apparent on the face of record justifying the exercise of power under sub-clause (f) of sub-section (3) of Section 22 of the Administrative Tribunals Act, 1985. The review application deserves to be dismissed and accordingly, the same is dismissed.

(Dr A K Dubey)
Member(A)

(Jayesh V Bhairavia)
Member(J)

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