

**CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH**

R.A.54/04

In O.A. 234/97

22-0 Dec 2006

Lucknow this the January, 2007

**HON. SHRI M. KANTHAIH, MEMEBR (J)**

Mrs. Tripata Kumari Khurana, aged about 67 years, wife of Mr. S.P. Khurana, R/o Adarsh Nagar, Alambagh, Lucknow.

**Applicant.**

By Advocate Shri Alok Trivedi.

**Vs.**

1. Union of India through Seceretary to the Govt. of India, Ministry of Defence, South Block, New Delhi.
2. The Director, General, Medical Services (Army) DGMS-3, Army Headquarters L Block, New Delhi.
3. The Commandant, Command Hospital, Central Command, P.O. Dilkusha, Lucknow.

**Respondents.**

By Advocate Shri S.P. Singh

**Order**

**By HON. SHRI M. KANTHAIH, MEMEBR (J)**

1. This is a Review Application filed by the applicant in O.A. No. 234/97 with a prayer to review the order of the Tribunal dated 28.5.04 on the ground that the Tribunal dismissed the Original Application on the ground of principle of res judicata which was not at all applicable and also stated that the issues involved in his Original Application and earlier O.A. No. 266/93 are different. He further contended that earlier O.A. 266/93 was dismissed only on the ground of limitation and no issues were decided therein and further the issues involved in the <sup>subsequent</sup> present O.A. No. 234/97 are entirely different and thus, sought review of the orders of the Tribunal dated 28.5.04.
2. The respondents have filed Counter Affidavit disputing the contentions raised by the applicant for review of the order and thus, prayed to dismiss the Application.
3. Heard both the sides.
4. The point for consideration is as to whether the applicant is entitled for the relief of review of the order of O.A. No. 234/97 dated 28.5.04 as prayed for.

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5. The admitted facts of the case are that the applicant filed earlier O.A. No. 266/93 to quash the impugned order dated 19<sup>th</sup> February, 1993, whereby the applicant has been ordered to be retired on 31.8.93 according to date of birth as recorded in her Service Book as 7.8.1935. The said O.A. was dismissed on 30.8.93. Thereafter, the applicant filed O.A. No. 234/97 on 15.5.97 claiming relief to direct the respondents to decide the representation pending with them and return the original documents and treat her still in service upto 31.5.97 with consequential benefits. In the said O.A., the respondents have filed their Counter Affidavit and after completion of pleadings, the Tribunal has disposed of the said O.A. on 20.5.04 with an order of dismissal. While disposing of the said O.A. the Tribunal has given a finding that the objections taken by the respondents that claim in this application and her claim in earlier O.A. No. 266/93 are one and the same and as such the principles of resjudicata applies. The Tribunal has not given finding on any other aspect and dismissed the O.A. on the ground that the O.A. is barred by resjudicata.
6. Now, it is the contention of the applicant that the issues involved in two of these O.A.s are different and there was no finding in respect of her claim in the subsequent O.A. No. 234/97 and thus contends that the order of the Tribunal in O.A. 234/97 has to be reviewed to consider all the claims made by her against the respondents. Admittedly, the subsequent O.A., 234/97 was dismissed mainly on the ground of bar of resjudicata and in such circumstances, the claim of the applicant in both the matters and also finding of the Tribunal are necessary for interference of this Tribunal by way of reviewing the latest order. For the sake of convenience O.A. 266/93 is called as 93 O.A. whereas subsequent O.A. 234/97 is referred as 97 O.A.
7. The claim of the applicant in 93 O.A. is as follows: to quash the impugned order dated 19.2.93 whereby the applicant has been ordered to be retired on 31.8.93 on the ground that her date of birth was wrongly recorded in her Service Book as

7.8.1935 instead of correct date of birth as 15.5.1939 and also for declaring her correct date of birth as 15.5.1939 and allow her to continue in service upto the age of superannuation.

8. Coming to the finding of the Tribunal dated 30<sup>th</sup> August, 1993 shows that there was no cogent reason to disbelieve entries regarding the date of birth of the applicant as 7.8.1935 as recorded in Annexures CA-1, CA-2, CA-3 and CA-4 and also further stated that after pondering over all aspects of the matter and keeping in view all the facts and circumstances of the case, it was dismissed. On a perusal of the judgment it clearly shows that the finding given by the Tribunal on all aspects, but not on the sole ground of limitation as contended by the review applicant herein.
9. In the subsequent 97 O.A., the applicant made the claim to issue direction to the respondents to decide the representation pending with them and return the original documents to the applicant and treat her still in service upto 31.5.1997 and allow her full back wages w.e.f. 1.9.93 to 31.5.97 and also other consequential benefits. Subsequently, she also amended her claim with a prayer to quash the impugned order dated 12.3.98 (Annexure-3) and to issue direction to the respondents to correct the date of birth of the applicant as 15.5.1939 and treat her to be in service till 31.5.1997 and pay full salary alongwith consequential benefit alongwith interest etc.
10. Admittedly, the Tribunal has given finding only in respect of the principles of res judicata and dismissed the said application of the applicant which is O.A. 234/97.
11. On perusal of the claims of the applicant in both these O.As, her main claim was that her correct date of birth was 15.5.1939 and the date of birth recorded in the service record as 7.8.1935 was wrongly recorded. No doubt, the applicant also made other claims in both these applications, but they are all connected and interlinked with the findings of correct date of birth of the applicant and also

recording of her date of birth in service record at the time of joining. Admittedly, the Tribunal, in earlier O.A. of 1993, gave finding against the applicant and also disbelieved her version that her date of birth was wrongly entered either in School register or in service book and thus gave finding.

12. Though the applicant made other relief including questioning the rejection of her representation, vide impugned order dated 12.3.90, her claim was also for correction of her correct date of birth in Service Book and for deciding all the claims of the applicant in the subsequent O.A., it is the duty of the applicant to establish her claim for correction of correct date of birth and also the circumstances how there was mistake recorded while entering into service. Admittedly, no finding has been given by the Tribunal on all these aspects and dismissed the claim of the applicant on the ground of bar of resjudicata. Admittedly, in the 1993 O.A., the Tribunal has given finding on the main claim of declaration of her correct date of birth and basing on it, it has negatived all other consequential reliefs. When there was such finding of the Tribunal in the earlier O.A., which is the substantial point or issue involved in the subsequent 97 O.A. and in such circumstances, again giving of any finding on the earlier decided fact of correct date of birth and correction of date of birth of the applicant does not arise. In view of the above circumstances, the applicant seeking review of the order of the Tribunal dated 28.5.04 in O.A. 234/97 is nothing but beyond the scope of review as contemplated under order 47, rule 1 of the C.P.C. which reads as under:

“... 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 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.”

13. From the claim of the review applicant, none of the requirement as contemplated under order 47, rule 1 of C.P.C. are attracted. Further, the pleas taken by the

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applicant are almost by way of appeal and such scope is not permissible to entertain the claim of the applicant by way of this petition for review.

14. Though the learned counsel for applicant relied on the following decisions, but they are not applicable to the present case, as none of the ingredients of order 47, rule 1 of C.P.C. are attracted to entertain this application.

- i) (2005) 4 SCC, 741 Board of Control for Cricket in India and another vs. Netaji Cricket Club and others.
- ii) (1999) 5 SCC 590, Hope Plantations Ltd. Vs. Talik Land Board, Peermade and another.

15. In view of the above, there are no justified grounds to allow the claim of the applicant of review of the order of this Tribunal dated 28.5.04 passed in O.A. No. 234/97 and thus it deserves for dismissal. In the result, ~~review application~~ the review application is dismissed. No costs.

  
Member (J)

22.12.06

s.a.