

Central Administrative Tribunal, Lucknow Bench, Lucknow

Review Application No. 15 of 2010

In

Original Application No. 114/2008

This the 14th day of July , 2010

Hon'ble Dr. A.K. Mishra, Member-A)

1. Union of India through the General Manager, N.R., Baroda House, New Delhi.
2. The DRM, N.R., Hazratganj, Lucknow.
3. Sr. Divisional Personnel Officer, N.R., Hazratganj, Lucknow.

..... Review Applicants.

Versus

Basant Lal Tiwari, Aged about 63 years, S/o Sri R.G. Tiwari,
R/o C-3275, Rajajipuram, Lucknow.

.....Respondent

ORDER (Under Circulation)

This Review Application has been filed against the order dated 4.9.2009 in O.A. no. 114 of 2008 in which respondent-authorities, in O.A., were directed to grant the applicant (respondent in Review Application) full pensionary benefits.

2. This Review Application has been filed beyond the limitation period after delay of about 09 months. An application for condonation of delay has been filed, it says that the delay was on account of bureaucratic processing of the matter and the need for obtaining second opinion from the another Advocate. It is further stated that the present counsel got hold of the file alongwith service records on 6.4.2010 and the Review Application was prepared expeditiously thereafter. Since the delay was not intentional, it is prayed that it should be condoned.

3. One does not appreciate why it has taken three months even after file and service records were made available to the present counsel when the limitation period for Review application is well known to be only 30 days. Be that as it may, in the interest of justice,

the delay is condoned and Review Application is taken up for consideration.

4. The grounds taken are that the Review Applicants could not file Counter Affidavit in the O.A. as records relating to respondent no.1 were not traceable; that the Rule on which reliance was placed should have been applied prospectively and not with retrospective effect. According to Review Applicants, the Railway Service (Pension) Rules, 1993 was not applicable for the period prior to 1993.

5. Admittedly, Railway (Pension) Rules, 1993 applies to all the Railway employees who retired after Rules came into force. It is the admitted case that the applicant in the O.A. retired on 1.8.2005 when the aforesaid Rules were in force; therefore, there is no legal ground to say that Rule 32 of the said Rule will not apply to him.

6. As per averments made in paragraph 5, the railway servant had worked as a casual employee from 24.9.1967 to 8.8.1967 (apparently it is a typographical error) for a period of 711 days and the Review Applicants have attached the relevant extract of service record at Annexure-2 to the Review Application. On careful examination of Annexure-2, it is seen that the service records starts from 13.8.1974 when he was appointed as a regular railway employee. There is no fresh evidence in the Review Application in support of the contention that the respondent no.1 had worked in broken spells for 711 days. Both at paragraphs 5 and 13(b) of the Review Application the period is mentioned to be 24.9.1967 to 8.8.1967 which is patently erroneous. Neither does it indicate the details of breaks, if any, during the tenure of the respondent as casual employee. Therefore, it cannot be held that any new fact has been produced which was not available to the Review applicants earlier. At paragraph 13(c) of Review Application, it is stated that as per Railway Board's order No. E(NG)11-80/CL/25 dated 14.5.1984 circulated vide P.S. no. 8523 the broken periods of casual labour services are to be counted towards conferment of temporary status. At paragraph 13(b), it is admitted that the employee concerned had worked for 711 days in different broken periods. In view of Railway Board's circular cited by the Review Applicants, according to their own admission, the applicant, in O.A., had acquired temporary status and as such was eligible to get the benefit of casual employee with temporary status. The order under review is a reasoned



one and has dealt with the facts as available on case records as well as the law on the subject. There is no error apparent on the face of the record. The Supreme Court in the case of **State of West Bengal and Others Vs. Kamal Sengupta and Another reported at (2008) 8 SCC 612** has examined the issue "error apparent on the face of record" in great detail. The relevant portion of this judgment is extracted below:

"The term "mistake or error apparent" by its very condition 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 a 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."

7. In view of the foregoing discussion, I do not find any merit in this Review Application, which is accordingly dismissed.


(Dr. A.K. Mishra)
Member-A

Girish/-

OK
copy to member
glucose/14-7-2010
Rajendra
15-7-2010