

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH
LUCKNOW**

**Review Application No. 16 OF 2013
In
Original Application No: 409 of 2010**

This, the 2nd day of December, 2013.

HON'BLE MR. NAVNEET KUMAR MEMBER (J)

Abdul Sattar aged about 66 years S/o Sri Sadulla R/o Village Gavahia
P.O. Kamlapur District Sitapur.

Applicant

By Advocate Sri R. S. Gupta.

Versus

1. Union of India through the Secretary Department of Post New Delhi.
2. Chief Postmaster General U.P. Lucknow.
3. S.P.Os Sitapur.

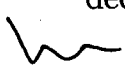
Respondents

ORDER (Under Circulation)

By Hon'ble Mr. Navneet Kumar, Member (J)

The present Review Application is preferred by the applicant for reviewing the order dated 24.10.2013 passed in O.A. No. 409 of 2010. While deciding the O.A., the Tribunal dismissed the O.A. The learned counsel for the applicant while preferring the present review application has pointed out that applicant's total service under the respondents from 15.12.1968 to 14.4.1999 is 30 years and 4 months whereas on the post of Postman, he has served only for 8 years 8 months and 15 days which is short of one year one month for grant of minimum pension to the applicant. The learned counsel for the applicant has also pointed out that he has submitted a representation to the CPMG and when the said representation was not decided, he has preferred the O.A. before the Tribunal.

2. The learned counsel for the applicant has also taken shelter of another order which is passed in O.A. No. 125 of 2011 where the services rendered by the applicant on the post of Postman was 9 years, 8 months and 19 days which was only short of one month, and 11 days. While deciding the O.A. 125 of 2011, the Tribunal observed as under:




"The first respondent is directed to consider the case of the applicant in a proper perspective and formulate a scheme as has been formulated by the DPO&T in their scheme issued in the O.M. dated 12.4.1991 as also in the Railways by giving weightage for certain percentage or service rendered as an ED Agent for reckoning the same as a qualifying service for purpose of pension in respect of persons who get absorbed or promoted against regular Group D posts in the department, which would enable such employees to get the minimum pension. This exercise shall be completed within four months from the date of receipt of a certified copy of this order by the respondents. With the above observation, O.A. is disposed of. No costs."

3. The learned counsel for the applicant fail to appreciate that in O.A. No. 125 of 2011, the service rendered by the applicant was 9 years, 8 months and 19 days which was only short of one month and 11 days whereas, in the instant case, i.e. O.A.No. 409 of 2010, the applicant has served for 8 years and 8 months and 15 days which is short of approximately one year and 4 months. So there is a substantial difference of service rendered by the present applicant than the applicant of O.A. No. 125 of 2011. The judgment referred by the applicant of the Madras Bench passed in O.A. No. 1264 of 2001 was in respect of special relief to the applicant i.e. Mr. Palany Swamy was given and it is ordered that at least the minimum pension by making up the short fall in service to the extent of short fall by taking into account the EDA period of employment was approved. Learned counsel for the applicant is trying to reopen the entire issue afresh. As per provision of Pension Rules, no pension is admissible to a permanent employee who retires before 10 years of qualifying service.

4. That by means of the present Review Application the applicants tried to reopened the entire issue afresh. The applicant once again tried to point out the averments which was duly considered by the Tribunal while passing the order on 16.8.2013.

5. The Hon'ble Supreme Court in the matter of **Meera Bhanja v. Nirmala Kumari Choudhury reported in (1995) 1 SCC 170** has decided the issue on review and has observed that review proceedings are not by way of an appeal and have to be strictly continued to the scope and ambit of Order 47 Rule 1 of CPC. The review petitions has to be



entertained only on the ground of error apparent on the face of record. The Hon'ble Apex Court has also observed as under:

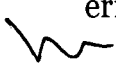
"8. It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1, CPC. In connection with the limitation of the powers of the court under Order 47 Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court, in the case of *AribamTuleshwar Sharma v. AribamPishak Sharma*, speaking through Chinnappa Reddy, J., has made the following pertinent observations: (SCC p. 390, para 3).

"It is true as observed by this Court in *Shivdeo Singh v. State of Punjab*, there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court."

9. Now it is also to be kept in view that in the impugned judgment, the Division Bench of the High Court has clearly observed that they were entertaining the review petition only on the ground of error apparent on the face of the record and not on any other ground. So far as that aspect is concerned, it has to be kept in view that an error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-down process of reasoning on points where there may conceivably be two opinions. We may usefully refer to the observations of this Court in the case of **Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale** wherein, K.C. Das Gupta, J., speaking for the Court has made the following observations in connection with an error apparent on the face of the record;

An error which has to be established by a long-down process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue a writ."

6. As categorically pointed out that the Court who has decided the matter cannot re-apprise the entire issue afresh. Only the typographical error or the error apparent on record can be rectified in the Review



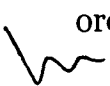
Application. By means of the present Review Application the applicant tried to reopen the entire matter afresh. The Tribunal while deciding the R.A. No. 34 of 2011 has relied upon the decision of the Hon'ble Apex Court in the case of **State of West Bengal and Ors. -vs- Kamal Sengupta and Another, 2008 (3) AISLJ 231,**

"5. In the matters concerning review the Tribunal is guided by Rule 47(1) of CPC. Also the decision of the Apex Court in Kamal Sengupta would be applicable in review matter being dealt with by the Tribunal. The parameter of a review application is limited in nature. The Apex Court has laid down the contours of a review application in the **State of West Bengal and Ors. -vs- Kamal Sengupta and Another, 2008 (3) AISLJ 231.** At para 28 the Apex Court has laid down eight factors to be kept in mind which are as follows:

- (1) The power of the Tribunal to review is akin to order 47 Rule 1 of CPC read with Section 114.
- (2) The grounds enumerated in order 47 Rule 1 to be followed and not otherwise.
- (3) "that any other sufficient reasons" in order 47 Rule 1 has to be interpreted in the light of other specified grounds.
- (4) 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.
- (5) An erroneous decision cannot be correct under review.
- (6) An order cannot be reviewed on the basis of subsequent decision/judgement of coordinate/ larger bench or a superior Court.
- (7) 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.
- (8) 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.

6. It is clear that the ruling of the Supreme Court in **Kamal Sengupta(supra)** is that the crucial point is error on the face of the record. No such error on the face of the record has been shown by the applicants."

7. Even if the decision of the Tribunal in the OA is erroneous it cannot be corrected in a Review Application nor can a Tribunal write a second order since it can not sit as an appellate authority over its own earlier order. Considering the facts of the case and the law of the land as is laid



down by the Hon'ble Apex Court I am of the view that the Review Application lacks merit as such fit to be dismissed.

8. The RA is dismissed. No costs.

U. R. Agrawal
(Navneet Kumar)
Member (J)

vidya

O/R
Copy of order
Received 12-12-13
Prabha
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