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CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

Lucknow this the 5th day of Oct., 1994.

Review Application No. 288/91

HON. MR. JUSTICE B.C. SAKSENA, V.C.

HON. MR. V.K. SETH, MEMBER (A)

Mubarak Ali Siddiqui, aged about 59 years, residing in Quarter No. L-31, T, Haider Canal Colony, Lucknow.

Applicant.

By Advocate Shri C.A. Bashir.

versus

1. General Manager, Northern Railway, Baroda House, New Delhi.

2. Divisional Railway Manager, Northern Railway, Hazratganj, Lucknow.

Respondents.

By Advocate Shri A.K. Chaturvedi.

O R D E R

(HON. MR. JUSTICE B.C. SAKSENA, V.C.)

This Review Application arises out of order passed on the 15th April, 1991 rendered in O.A. No. 52/91 'M.A. Siddiqui vs. Union of India and others'. The copy of the order passed by Division Bench in the said O.A. is on record as Annexure R-1. After noting that the applicant has relied upon rule 2046 of the Railway Establishment Code, Volume II on the basis that he had entered the railway service prior to 1.12.62 in class IV and therefore, he is entitled to continue upto the age of 60 years, the Division Bench quoted the said rule as follows:

"Railway servants in class IV service or post who prior to 1.12.62 were entitled to serve upto the age of 60 years including the new entrants to those categories shall continue to serve upto the age of 60 years."

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2. The Division Bench proceeded to analyse the said provision and came to <sup>the</sup> conclusion that "the opening phrase makes it clear that it applies only to those railway employees who are in class IV service on the date when the question of superannuation arises. Such an employee would continue upto the age of 60 years either if prior to 1.12.62 he was entitled to continue upto that age or came as a new entrant, i.e. after 1.12.62."

3. The applicant, in the opinion of the Tribunal did not belong to that category. Reference was also made to the Railway Board Circular dated 18.12.82, copy of which is Annexure -2 and it was held that the said circular also lays down the same position.

4. At the hearing of the review petition the learned counsel for the applicant strenuously urged that subsequent to the decision in the O.A. filed by the applicant, a different view has been taken by various High Courts and Hon'ble Supreme Court as also by this Tribunal. The scope of review petition is very limited. The learned counsel for the applicant has not been able to satisfy us that the review on the basis that the decision given in the O.A. preferred by the applicant is not in accordance with the subsequent decisions, will ~~not~~ fall within the parameters laid down in order 47 rule 1 C.P.C. It may be noted that the provisions of order 47 rule 1 is by practice followed by the Tribunal in deciding review petitions. Since none of the grounds indicated in order 47 rule 1, C.P.C. arises in the instant case, the order passed in the O.A. calls for no review by us. We cannot permit the applicant to re-agitate the same question which was canvassed before the Division Bench which

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decided the O.A. We cannot substitute our own view about the correctness of the order passed by the Division Bench. We are exercising concurrent jurisdiction. The Review petition lacks merit and is accordingly rejected.

5. The learned counsel for the applicant also submitted that in view of the subsequent decision by the Tribunal, there is a diversity in the opinion of interpretation of rule 2046 and we may refer the matter to the larger Bench. We are dealing with the review petition, it is not that the O.A. has come up for final hearing before us. It already stood decided. If the O.A. itself was being heard, it may be that we may have agreed to follow one of the other divergent view and in view of the conflicting opinion, we may have referred the matter to the larger bench. No such contingency arises while deciding the review petition.

*W. K.*  
ADMN. MEMBER

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VICE CHAIRMAN.

Lucknow; Dated; 5-10-94

Shakeel/-