

Central Administrative Tribunal, Lucknow Bench, Lucknow

Review Application No.26/2008 in O.A. No. 533/2007

This the 19th day of September, 2008

HON'BLE DR. A.K. MISHRA, MEMBER (A)

Syed Asmat Ali (Handicapped mentally retarded) age about 38 years unmarried son of late Syed Hasmat Ali, ex-Guard, N.E. Railway, Gonda. R/o 53, Rakabganj, P.O. Gonda District, Gonda through his elder brother Syed Azmat Ali, r/o 53, Rakabganj, Gonda, U.P.

Applicant

By Advocate: Sri M.A. Siddiqi

Versus

1. Union of India through the General Manager, North Eastern Railway, Gorakhpur.
2. The D.R.M., N.E. Railway, Ashok Marg, Lucknow.
3. The Senior DPO, N.E. Railway, Ashok Marg, Lucknow.
4. The Senior Divisional Accounts and Finance Manager, N.E. Railway, DRM Office, Ashok Marg, Lucknow.

Respondents

ORDER (under circulation)

BY HON'BLE DR. A.K. MISHRA, MEMBER (A)

This is an application filed under Section 22(3)(f) of AT Act, 1985 for review of judgment and order dated 8.8.2008 in O.A. No. 533/2007.

2. The main contention in the review application is that the father of the applicant who was an employee of the Railways retired on 30.6.1997 when the Railway Service (Pension) Rules, 1993 was not in existence. Therefore, explanation (1) (6) of the aforesaid Rules on which reliance had been placed in the order of this Tribunal was not applicable. It was only after the death of his mother that the applicant could have any right to apply for family pension. After the death of his father on 12.3.97, his mother was in receipt of family pension till her death on 4.9.2001. The case of the applicant for pension arose only after the death of his mother.

3. From the Original Application, it is seen that the applicant applied for family pension as per provisions of Rule 75 of Railway Service (Pension) Rules, 1993. Therefore, it does not stand to reason that he should at the



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same breath say that explanation 1 of said Rule 75 would not apply to him. In any case, a review application can be taken up for consideration only on the limited grounds as per Order 47 of the Code of Civil Procedure and here the applicant is taking the ground of error apparent on the face of the record. Since the applicant had applied for pension under Rule 75 of the aforesaid Rules, 1993, his eligibility had to be considered as per specific provisions of those rules. In consideration of the expressed provision of Rule 75 (6) (Explanation 1), it was held that the applicant was not eligible for family pension. Under those circumstances, his application was dismissed as devoid of merit.

4. I do not find any error apparent on the face of record. It is open for the applicant to seek relief by way of an appeal against the order of this Tribunal dated 8.8.2008 in case he was not satisfied with the order. But he can not utilize review facility available under Section 22 (3) (f) of the AT Act, 1985 when, in fact, he wants to file an appeal on merits against the order of this Tribunal. The settled position of law is that this Tribunal cannot sit in appeal against its own order. No new facts have been brought in this review application which were not available in the O.A. Neither can this Tribunal allow a review application merely on the assumption that, in the facts and circumstances of the case, a different view could have been taken.

5. In the result, this Review Application is dismissed as not maintainable.


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

HLS/-

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dated 19-9-2008
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