

Central Administrative Tribunal Lucknow Bench Lucknow

Review Application No. 33/09 in Original Application No.129/2006

This, the 1st day of July 2009

**HON'BLE MR. M. KANTHAIAH, MEMBER (J)
HON'BLE DR. A.K. MISHRA, MEMBER (A)**

Virendra Mohan Tewari son of late Kripa Shanker Tewari c/o Mahavir Prasad Pandey, 322/3, Moti Nagar, Unnao.

.....Applicant

By Advocate: Applicant in person

Versus

1. Union of India through the Secretary, Ministry of Commerce, Udyog Bhawan, New Delhi.
2. Zonal Joint Director General of Foreign Trade, 6-7 Asif Ali Road, New Delhi.
3. Director General of Foreign Trade, Udyog Bhawan, New Delhi.

Respondents.

ORDER (Under Circulation)

By Hon'ble Dr. A. K. Mishra, Member (A)

This application has been made for a review of order dated 19th May, 2008 in O.A. No. 129/2006.

2. The ground taken in this application is that the appreciation of the facts and rules made in the impugned order is not correct. It has been stated that compulsory retirement is not the same as pre-mature retirement. Compulsory retirement is provided for under CCS (Pension)Rules, 40 whereas pre-mature retirement is discussed at Rule 48 (1) of the aforesaid Rules. Further, it has been stated that fundamental rules 56 (J) deals with the subject of pre-mature retirement.

3. We notice that this review application has been made under misconception of facts and law. In the O.A., we were dealing with the subject of treatment of period of suspension of an employee who was compulsorily retired by way of the penalty during the pendency of the suspension period. In the O.A. No. 129/2006, the applicant had taken

W

the plea that since an order under Fundamental Rules 54 B has been made as to how the period of suspension should be treated , it should be deemed that this order would mean reinstatement of the applicant in service. This contention was dealt with in the impugned order. It was clarified that an order under 54-B is made by the competent authority as to how the period of suspension should be treated and what pay and allowances are to be paid to the Govt. servant during this period, no matter whether suspension ends with reinstatement or with his retirement including pre-mature retirement. It was held that his compulsory retirement by way of a penalty had already reached a finality in view of the fact that his earlier challenge to this order was dismissed by the Allahabad Bench of the Tribunal in O.A. No. 470/2003. His review application and writ petition against this order of Allahabad Bench also had ended in failure. In the circumstances, he could not challenge his compulsory retirement any further.

4. The order under FR 54(1) was merely to clarify as to how the period of suspension would be treated and what pay and allowances could be paid to him.

5. Pension Rules as quoted by the applicant in this review application are about determination of pension amount payable to a retired employee. These rules have nothing to do with an order passed under Fundamental Rules 54-B during this period.

6. In any case, the scope of review is very limited in nature. The Hon'ble Supreme Court has lucidly explained the scope of review in the recent case of **State of West Bengal and others Vs. Kamal Sengupta and another reported at (2008) 8 SCC 612**, where the phrase 'error apparent on the face of record' has been discussed. Paragraph 22 of this judgment is extracted below:-



"22. The term "mistake or error apparent "by its very connotation 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 position of law pronounced by the Supreme Court on the subject, it is not open for the Tribunal to review its own order, even if there is an error in appreciation of facts, or law. Review application is not the remedy for the applicant. They have to approach the appropriate judicial forum , in case they are still aggrieved with the order of the Tribunal.

8. In the circumstances, Review Application is dismissed under circulation.

A. Mishra
(Dr. A.K.Mishra) 01/07/09
Member (A)

HLS

M. Kanthaiah
(M. Kanthaiah)
Member (J)
1.7.09

*all copy to aman
dated 1-7-09
Recd 3-7-09*