

**Central Administrative Tribunal
Lucknow Bench**

**RA-1/2011
MA-68/2011 in
OA-154/2010**

This the 27th day of January, 2011.

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

U.O.I. & Anr.

Vs.

Smt. Manju

ORDER (By CIRCULATION)

This Review Application has been made for recall of the judgment/order dated 19.08.2010 passed in OA-154/2010 in which a direction was granted to the respondent authorities to release family pension regularly in favour of the applicant in the said O.A.

2. The review applicants, namely, the respondent authorities have taken the same grounds which were advanced by them at the time of hearing of the OA and were elaborately discussed in the impugned judgment/order.

2.1 It is their contention that the deceased employee had not disclosed the fact of his marriage to Smt. Manju applicant in OA-154/2010 in his service record. They have contested the claim of Smt. Manju that her marriage took place on 17.06.1995 on the grounds that the deceased employee had availed of LTC facilities on subsequent dates stating that his first wife was alive on those dates. It is alleged by the respondents that according to the certificate issued by Gram Pradhan on 10.07.2005, the first wife died on 17.04.1999 not during 1993 as claimed by the applicant.



Although the Civil Judge has declared Smt. Manju as the legal heir of late deceased employee, this judgment was not binding on the department in the matter of finalization of the pension case as the department was not a party in the Civil Suit. The late employee had one more son whose claim could not be completely ignored. This fact had not been brought out in the OA.

3. I find that full opportunity had been granted to the respondent authorities to file all relevant documents for proper adjudication of the case. Even now the respondents have annexed copies of the provisional pension order granted in favour of Smt. Manu (Annexure No. RA-6) in which Smt. Manju had been mentioned as the wife of late Sh. Rom Sumer, the deceased employee. In other words, the respondents themselves had sanctioned provisional family pension in favour of Smt. Manju and they are filing the same documents in the present review application.

4. The contention in respect of LTC claim of the deceased employee has been discussed in the impugned order. The fact of the death of the first wife having taken place on 17.04.1993 was accepted in the finding of the Judge of the Civil Court in his judgment while granting succession certificate issued in favour of Smt. Manju. The respondents have stated that the death certificate was tampered and the year 1999 has been changed to 1993. This averment was made in the O.A. itself and in the impugned order it was observed that the tampered document had not been produced before the Tribunal. Although the same allegation is



being repeated in this R.A., I find that the respondents have not taken care to file a copy of the Death Certificate even in spite of the aforesaid observations.

4.1 The claim of the respondents is that the first wife of the deceased employee died in the year 1999 not during 1994. In support of this contention they have filed LTC claims of the deceased employee for the year 1995 to suggest that the first wife was alive during 1995. I find that Annexure-RA5 (page-25 of RA) is also a similar LTC claim of the deceased employee made in 2003 showing as if his first wife was alive in 2003. It is surely no one's case that she was alive in 2003. The LTC claim of the employee is at best to be treated as a false one. The applicant had taken a similar position in O.A. by stating that she could not explain how the deceased employee made such a claim, now that he was no more.

5. The facts of the case have been stated clearly: that Smt. Manju was granted provisional family pension and was asked to produce succession certificate. She produced the succession certificate in which her claim as the legally wedded wife of the deceased employee at the time of his retirement from service has been upheld. The only additional documents which have now been produced by the review applicants are in respect of statements which were given on 21.05.1992 and 12.05.1995 by the deceased employee stating that he had one more son, namely, Ramu. But this fact was not brought to light by them at the time of hearing of OA No. 154/2010. It is not known whether the said Ramu,



or any one on his behalf has now come forward with a claim for a share of the family pension. Neither the respondent authorities have enclosed a copy of any such application of said Ramu. Nor was there any such claim before the Civil Judge who heard the petition for issue of succession certificate. It is not their case whether they have verified the claim for any such person called Ramu about his birth and relationship with the deceased employee. Besides, the fact of pending Suit before the Civil Court was within the knowledge of the respondents. This fact has been mentioned in the impugned order.

5.1 As per the statement annexed at RA-1 (Page-19) the age of Ramu as on 21.05.1992 was 6 years. In other words, he was a major (19 years old) when the Provisional Pension dated 19.09.2005 (vide Annexure RA-6) was issued. Therefore, presence of a major son from the first wife would not make any difference as regards the claim for family pension of a widow.

5.2 The Civil Court upheld the petition of Smt. Manju and declared her to be a lawful successor to the deceased employee. The respondents have also treated her as the wife of the employee in the Provisional Pension order. It is on these grounds that O.A. was allowed. I do not find any error apparent on the face of the record.

6. It is trite law that review application cannot be treating it to be an appeal against an order which is sought to be challenged. The respondents are merely trying to reargue the case in the garb of RA, which is not permissible in law. Since the scope of RA is very limited. I cannot sit in appeal over my own orders. It has been held



by the Hon'ble Supreme Court in Union of India vs. Tarit Ranjan Dass

(2004 SCC (L&S) 160) as under:

"13. The Tribunal passed the impugned order by reversing the earlier order. A bare reading of the two orders shows that the order in review application was in complete variation and disregard of the earlier order and the strong as well as sound reasons contained therein whereby the original application was rejected. The scope for review is rather limited and it is not permissible for the forum hearing the review application to act as an appellate authority in respect of the original order by a fresh order and hearing of the matter to facilitate a change of opinion on merits. The Tribunal seems to have transgressed its jurisdiction in dealing with the review petition as if it was hearing an original application. This aspect has also not been noticed by the High Court."

7. In **State of West Bengal and Others Vs. Kamal Sengupta and**

Another reported in 2008 (8) SCC 612 the Hon'ble Supreme Court

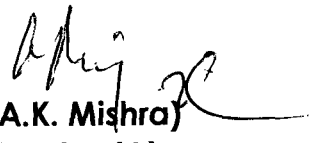
has in Para 15 thereof observed as under:-

"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 concerned Court/Tribunal cannot sit in appeal over its judgment/decision.

8. In the circumstances, I do not find any scope for entertaining this review application. If the review applicants have any

grievance, they should seek redressal in appropriate forum. The

R.A. is accordingly dismissed in circulation.


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

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OR
copy forward
dated 27-1-2011
Pragat
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