

Central Administrative Tribunal Lucknow Bench, Lucknow

Review Application No. 5/2011

**In
Original Application No. 541/2009**

This the 23rd day of September, 2011.

Hon'ble Shri S. P. Singh, Member (A)

Smt. Kusama Pandey, aged about 57 years, widow of Late Shri Prabha Shanker Pandey, resident of Village & Post-Neorana, District Unnao.

Applicant

By Advocate Shri R. C. Srivastava.

Versus

1. Union of India, through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Hazratganj, Lucknow.
3. Chief Mechanical Engineer, D.R.M. Office, Northern Railway, Hazratganj, Lucknow.
4. Dy. Mechanical Engineer (W), Carriage & Wagon Shop, Alambagh, Lucknow.

Respondents

Order(Under Circulation)

By Hon'ble Shri S. P. Singh, Member (A)

This Review Application is directed against the order passed by this Tribunal on 26.8.2011 in O.A. No. 541/2009.

2. I have gone through the Review Application and the order passed by this Tribunal in O.A. 541/2009 which is sought to be reviewed.

3. The scope of review under Section 22 (3) (f) of the Administrative Tribunal Act, 1985 read with Order XLVII Rule (1) and (2) of the CPC lies in a narrow campus. A review can be made only when there is an error apparent on the face of record or on discovery of any new and important material which even after exercise of due diligence was not available with the applicant. Any erroneous decision and a decision which can be characterized as vitiated by "error apparent" has been distinguished by Hon'ble Apex court by bench comprising three Hon'ble Judges in the case of **M/s Thungabhadra Industries Ltd. Vs. Govt. of Andhra Pradesh** reported in AIR 1964 Supreme Court, 1372.

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In this case, it was laid down that "A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. Where without any elaborate argument, one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the case of the record would be made out." **In 2002 Supreme Court Cases (L&S) 756 in the case of K.G. Derasari and Another Vs. Union of India and others**, it was observed by the Apex Court that any attempt, except to an attempt to correct an apparent error or an attempt not based on any ground set out in order 47, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment. The Tribunal cannot proceed to re-examine the matter as if it is Original Application before it in the light of the ratio given in **Subhash Vs. State of Maharashtra and other reported in AIR 2002 Supreme Court Cases, 2537.**

4. The order dated 26.8.2011 is as under:-

"The order of the Tribunal dated 20.5.2011 clearly states that the objection filed by the respondents regarding the applicant having concealed certain facts while filing the present O.A. It was further submitted by the respondents that the applicant's husband was removed from service, which was well within the knowledge of the applicant and thereafter the Tribunal rejected the M.P. No. 308 of 2011 for summoning the original records. The Tribunal was inclined to dismiss this O.A. on 20.5.2011 but the counsel for the applicant requested for an opportunity. Thereafter, the applicant was given several opportunities to produce the evidence to the fact that she is entitled for grant of family pension but could not produce any evidence despite several opportunities given to the applicant.



Since the applicant has not come with clean hands before this Tribunal as pointed out in order dated 20.5.2011 mentioned above and further the order of this Tribunal dated 15.7.2011 has not been complied with as yet, the O.A. is dismissed. No order as to costs."

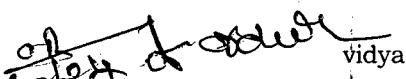
5. From the perusal of the aforesaid order, it comes out that the applicant had not come with the clean hands before this Tribunal as was also stated in the Tribunal earlier order dated 20.5.2011. The applicant was given several opportunities to comply with the said order dated 20.5.2011. The applicant fails to do so. The O.A. is therefore, dismissed on merit. There does not appear to be any apparent error on the face of record or discovery of any new and important material, which was not available with the applicant earlier even after exercise of due diligence.

6. According to the principle of law laid down by the apex court in the aforesaid case, of **M/s Tungabhadra(Supra) and K. G. Derasari (Supra)**, review cannot be sought merely for a fresh hearing or arguments or correction of erroneous view taken earlier. If the applicant is not satisfied with the orders passed by the Tribunal, remedy lies elsewhere. The scope of review is very limited and it is not permissible for the Tribunal to act as an Appellate Authority in respect of original order passing a fresh order and re-hearing of the matter to facilitate a change of opinion on merits. The same was laid down in the case of **Union of India Vs. Tarit Ranjan Das 2004 SCC (L&S) 160.**

7. In view of the above, this review application deserves to be dismissed in circulation stage itself.

8. In view of the above, the review application is rejected in circulation. MP 2370/20011 is accordingly dismissed.


(S.P. Singh)
Member (A)


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dated 23-9-11
B. K. S. D.
30-9-11