

Central Administrative Tribunal, Lucknow Bench, Lucknow

Review Application No. 332/00011/2014 in O. A. No. 114/2012

Reserved on 25.7.2014

Pronounced on 08/08/2014

Hon'ble Sri Navneet Kumar, Member (J)

1. Union of India through Secretary, Ministry of Defence, New Delhi.
2. H.Q. Engineer-in-Chief, Army Headquarters, DHQ Post Office, New Delhi.
3. DQ. Commander Works Engineer, 229 M.G. Road, Lucknow Cantt.
4. PCDA (Pension) Draupati Ghat, Allahabad

Applicants

By Advocate: Sri Pankaj Kumar Awasthi for Sri R. Mishra

Versus

Ashok Kumar Gupta aged about 64 years son of late Sri Ram Dayal Gupta, r/o 363/182/1, Hasanganj, Bawsali, P.O. Awas Vikas, Lucknow.

By Advocate: Sri Santosh Kumar Gupta

Respondents

ORDER

BY HON'BLE SRI NAVNEET KUMAR, MEMBER (J)

The present Review Application is preferred by the applicant u/s 22(3)(f) of AT Act, 1985 for reviewing the order dated 13th August, 2013 passed in O.A. No. 114 of 2012 by the Tribunal only to the extent that the interest of 18% awarded by the Tribunal may be reduced. The review applicant preferred the review on the ground that the rate of interest as awarded by the Tribunal on the delayed payment of retiral dues is quite excessive whereas normally the rate of interest on the delayed payment of retiral dues is the interest prevailing in GPF, may be awarded. It is also argued by the learned counsel for the applicant that the interest so awarded is based on the Hon'ble Apex Court decision in the case of **Vijay L. Mehrotra Vs. State of U.P. and others reported in (2001) 9 SCC 687** which is on totally different facts, as such the ratio laid down in the cited case will not be applicable in the present case. The learned counsel for applicant has relied upon a decision of Chandigarh Bench of the Tribunal on the identical situation, where the Tribunal has allowed only 6% interest on the

difference of arrears of pension , gratuity and commuted pension which has been affirmed by the Hon'ble High Cort and the same has already been complied with by the respondents.

2. The review applicant taken a ground that there was no intentional delay on the part of the review applicant, as such the interest awarded by the Tribunal on the delayed payment of retiral dues is quite excessive and is not legally sustainable.

3. On behalf of the respondents i.e. the O.A. applicant, objections were filed and through objection, it is indicated that the present review application is liable to be dismissed as delay in filing the review application has not been explained and the interest was awarded by the Tribunal as per the decision of the Hon'ble Apex Court. Apart from this, the learned counsel has also relied upon decision of the Hon'ble Apex Court in the case of **Dr. Sursari Tarang Misra Vs. U.P. Sainik School Society, Sarojini Nagar, Lucknow and others reported in 2014 (32) LCD 775** and submitted that by means of review application, the Tribunal cannot re-write its judgment.

4. Heard the learned counsel for parties and perused the record.

5. The O.A. was decided by the Tribunal vide order dated 13th August, 2013 wherein the Tribunal considering the decision of the Hon'ble Apex Court Vijay L. Mehrotra Vs. State of U.P. (supra) directed the respondents to make payment of simple interest for the delay in making payment of retiral dues @ 18%. The learned counsel appearing on behalf of the review applicant has relied upon a decision of Chandigarh bench of this Tribunal where only 6% interest was allowed which was confirmed by the Hon'ble High Court. Not only this, the review applicant has also relied upon the provision of GPF interest rates.

6. On behalf of the respondents, the objection to the delay as well as objection to the review is filed. It is also argued by the review respondents that the Tribunal cannot proceed to re-examine the

matter as if it is an original application. The review respondent has also indicated that the scope of review is very limited.

7. As observed by the Hon'ble Apex Court in the case of **Meera Bhanja v. Nirmala Kumari Choudhury reported in (1995) 1 SCC 170**, the Apex Court has decided the issue of review and has observed that "**review proceedings are not by way of an appeal and have to be strictly continued to the scope and ambit of Order 47 Rule 1 of CPC and review petition is required to be entertained only on the ground of error apparent on the face of record.**"

8. As categorically pointed out by the Hon'ble Apex Court that who has decided the matter cannot re-appraise the entire issue afresh. Only the typographical error or the error apparent on record can be rectified in the Review Application.

9. In another case of **Parson Devi and Others Vs. Sumitri Devi and Others reported in (1997) 8 SCC -715**, the Hon'ble Apex Court has been pleased to observe as under:-

"9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has limited purpose and cannot be allowed to be "an appeal in disguise."

10. The Hon'ble Apex Court in the case of **Rajendra Kumar and Others Vs. Rambhai and Others reported in (2007) 15 SCC 513**, has dealt with the question of review and its maintainability and has been pleased to observe as under:-

6. The limitation on exercise of the power of review are well settled. The first and foremost requirement of entertaining a review petition is that the order review of which is sought, suffers from any error apparent on the face of the order and permitting the order to

stand will lead to failure of justice. In the absence of any such error, finality attached to the judgment/order cannot be disturbed.

7. Coming to the merits of the case, suffice it to say that on perusal of the order, which has been reviewed by the order under challenge did not suffer from any serious illegality, which called for correction by exercise of review jurisdiction.

8. It is relevant to note here that the deceased was holding the post of Supervisor in Women and Child Welfare Department, Government of Karnataka at the time of her death and she was aged about 48 years at that time. The Salary drawn by the deceased, as evident from the salary certificate produced as additional evidence was Rs. 2570 p.m. The multiplier, which had been accepted by the Division Bench in the previous order, was 10. In the circumstances of the case, Multiplier of 10 was rightly taken. Thus, on merit also no interference with the order was called for.”

11. **Inder Chand Jain(Dead) Through Lrs, Vs. Motilal (Dead) Through Lrs.** Reported in (2009) 14 SCC 663

10. It is beyond any doubt or dispute that the review court does not sit in appeal over its own order. A rehearing of the matter is impermissible in law or pronounced, it should not be altered. It is also trite that exercise of inherent jurisdiction is not invoked for reviewing any order.

11. Review is not appeal in disguised. J In Lily Thomas Vs. Union of India this Court held (SCC P. 251, Para 56)

“56. It follows, therefore, that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise.”

12. The scope and ambit of review is very clear as observed by the Hon'ble Apex Court in the case of **M/s. Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh represented by the Deputy Commissioner of Commercial Taxes, Anantapur, AIR 1964 SC 1372**, The Apex Court held 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. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that 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 face of the record would be made out.”

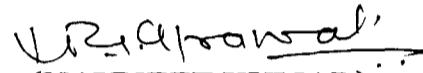
13. Hon'ble the Apex Court in **Subhash Vs. State of Maharashtra & Another, AIR 2002 SC 2537**, the Apex Court emphasized that “Court should not be misguided and should not lightly entertain the review application unless there are circumstances falling within the prescribed limits for that as the Courts and Tribunal should not proceed to re-examine the matter as if it was an original application before it for the reason that it cannot be a scope of review.”

14. The Hon'ble High Court in the case of **Bhagwant Singh Vs. Deputy Director of Consolidation and Another reported in AIR 1977 All. 163** rejected the review application filed on a ground which had not been argued earlier because the counsel , at initial stage, had committed mistake in not relying on and arguing those points , held as under:-

“It is not possible to review a judgment only to give the petitioner a fresh inning. It is not for the litigant to

judge of counsel's wisdom after the case has been decided. It is for the counsel to argue the case in the manner he thinks it should be argued. Once the case has been finally argued on merit and decided on merit, no application for review lies on the ground that the case should have been differently argued.”

15. Considering the facts of the case and law laid down by the parties, I do not find any ground to interfere with the present review petition. Review petition lacks merit and as such it deserves to be dismissed. Accordingly, Review Petition is dismissed. No order as to costs.


(NAVNEET KUMAR)
MEMBER (J)

HLS/-