

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:44.2001

DATE OF DECISION: 24.1.2002

Shri Zahid Khan Habib Khan Applicant.

Shri V.N. Tayade Advocate for
Applicant.

Verses

Union of India and others Respondents.

Shri V.S. Masurkar Advocate for
Respondents

CORAM

Hon'ble Shri S.L.Jain Member(J)

(1) To be referred to the Reporter or not? *yes*

(2) Whether it needs to be circulated to
other Benches of the Tribunal? *no*

(3) Library. *yes*

S.L.Jain
(S.L.Jain)
Member(J)

NS

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO: 44/2001

THURSDAY the 24th day of JANUARY 2002.

CORAM: Hon'ble shri s.L.Jain, Member (J)

Zahid Khan Habib Khan
R/o C/o, K.G.N. Centre
Shop No.10, Comet Building
Opposite Bandra Lake,
Turner Road, Bandra (West)
Mumbai.

...Applicant

By Advocate shri V.N. Tayade.

V/s

1. The Union of India
Ministry of Railways
(Railway Board)
Railway Bhavan, New Delhi.
2. The General Manager
Western Railway
Churchgate, Mumbai.
3. The Financial Advisor and
Chief Accounts Officer,
Western Railway,
Churchgate, Mumbai.

By Advocate Shri V.S. Masurkar.

ORDER (ORAL)

{Per S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act 1985 for revision of the applicant's pension made by the respondents pursuant to the option dated 5.4.1984 for liberalised revision of pension filed by the applicant and payment thereof with effect from 1.4.1979 alongwith costs.

S.L.J.
...2...

:2:

2. The applicant retired as Clerk grade I on 31.12.1977. At the time of his retirement his total emoluments were Rs. 837.40 per month out of which Rs. 530/- was basic pay and rest was Dearness Pay.

3. The grievance of the applicant is that his pension is not properly fixed by the respondents. He claims that 27% of the Dearness Pay subject to minimum of Rs. 108/- and maximum of Rs. 247/- is the criteria for fixation of pension. On perusal of the Civil Servant Pension Ruls 1972 which came into force, Rule 33 and 34 it is clear that in the case of persons who retired between 31.9.1977 to 28.2.1978 one half of Dearness Pay proportionate to the pay equivalent to such average emoluments shall be added to the average emoluments. The amount of Dearness Pay is distinct than the amount of pension or gratuity which the applicant is entitled. As stated above the applicant retired on 31.12.1977 his case is covered by provisions which are noted below:

(a)(i) In the case of persons who retired between 30.9.77 and 28.2.78.

50% of the DP appropriate to the pay equal to such average emoluments shall be added to the average emoluments.

4. I have perused the written statement filed by the respondents, particularly para 13 of the said written statement. On perusal of para 13 and 14, I am of the considered opinion that there is no error on the part of the respondents in calculating pension of the applicant.

Sign

...3...

:3:

5. The applicant claims that 27% of the Dearness Pay should be counted for pensionary purposes. The said claim cannot be accepted in view of clear instructions on the point. As such I do not find any merit in the OA. It is liable to be dismissed and is dismissed accordingly with no order as to costs.

P.S. Jain
(S.L.Jain)
Member (J)

NS

21/24/11/02
Order/Judgement despatched
to Applicant/Respondent (s)
on 11/2/02

W

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

REVIEW PETITION NO:7/2004
IN O.A.NO:44/2001

DATED: 9 /12/2004

CORAM:HON'BLE SHRI ANAND KUMAR BHATT, MEMBER(A)

Zahid Khan S/o.Habib Khan
Resident of C/o.K.G.N.Center,
Shop No.10, Comet Building,
Opp.Bandra Lake, Turner Road,
Bandra (West),
Mumbai - 400 050.

... Applicant

By Advocate Ms.Shubhangi Bhosale

V/s.

1. The Union of India,
Ministry of Railways (Railway Board),
Railway Bhavan, New Delhi.
2. The General Manager,
Western Railway,
Churchgate, Mumbai.
3. The Financial Advisor and
Chief Accounts Officer,
Western Railway, Churchgate,
Mumbai.
Union Bank of India,
Manikpur Branch,
Vasai Road(W), Dist.Thane.

... Respondents

By Advocate Shri V.S.Masurkar

(ORDER)

In this case, the order was passed by a Single Member Bench on 24/1/2002 whereby the OA was dismissed. The applicant had gone to the Hon'ble High Court where the applicant was allowed to withdraw the petition with liberty to approach CAT for review of its order in view of the alleged claim of certain errors apparent on the face of record and the petitioner was also permitted to file fresh calculation before the Tribunal.

2. Accordingly, the applicant has come in review petition no.7/2004. In view of the liberty given by the Hon'ble High

...2.

Court, the question of limitation is not being considered. The following prayer has been made by the applicant in the review petition.

- "a. that the order dated 24th January 2002 (Ex.A) be recalled and F.A. & C.A.O. Churchgate be directed to issue revised PPO for Rs.364/- on 1/4/1979 for Rs.954/- on 1/1/1986 and Rs.2894/- on 1/1/1996 in favour of Pensioner and struck down the erroneous pension recorded through Union Bank of India. The revised pensions due as per revised PPO's be given to the Pensioner with retrospective effect from 1/4/1979 till finalization.
- b. Hon'ble Judge may expedite the Review Petition on humanitarian grounds since your Honour, petitioner is in advanced age of 85 years.
- c. Any further and final relief be granted in favour of the Petitioner he is entitled to."

3. The applicant also gave a fresh calculation chart on which reply was obtained from the respondents. The applicant has claimed Rs.364/- as Pension from 1/4/1979 to 31/12/1985. The respondents have very clearly shown that as per the existing rules, permissible pension was Rs.291/- for the period. The applicant has prayed for Rs.954/- as pension from 1/1/1986 to 31/12/1995. The respondents have stated that the mistake committed by the applicant in his calculation is that he has included 100% Dearness Pay (DP) whereas only 50% of DP is to be taken for pension and therefore his calculation is incorrect. Similarly, the applicant has prayed for Rs.2895/- per month w.e.f. 1/1/1996. The respondents have stated that as per correct calculation the amount comes to Rs.2033/- per month. This calculation chart in reply ^{it has been signed} by the Senior Divisional Finance Manager, Mumbai Central, Western Railway and we find no reason to disagree from it.

4. The applicant has given written arguments. We have perused it. However, it is nowhere mentioned that the said calculation chart made by the respondents is incorrect. As per provisions under order 47 Rule (1) of CPC, review is permissible on the ground of the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the party or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason. This is not the case of discovery of any new or important evidence which was not brought before the Tribunal when the original order was passed. Similarly, in view of calculation chart submitted by the applicant, examined and replied to by the respondents, we do not find that there is any error apparent on the face of the record in the order of the Tribunal. The applicant has failed to point out as to how the original order of the Tribunal dated 24/1/2002 suffers from any patent error. In AIR 1964 SC 1372, Thungabhadra Industries Ltd v. The Government of Andhra Pradesh it has been held by the Apex Court that "review is not 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

:4:

the face, and there could reasonably be no two opinion entertained about it, a clear case of error apparent on the face of the record would be made out."

The applicant evidently wants us to re-hear the OA which has been considered and decided earlier by the Tribunal. In view of this, the Review Petition cannot be entertained and is dismissed. *Costs easy.*



(ANAND KUMAR BHATT)
MEMBER(A)

abp