

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
REVIEW PETITION NO,57/2000 IN OA-1052/98
DATED THE 10TH DAY OF OCT.,2000**

CORAM:HON'BLE SHRI B.N.BAHADUR, MEMBER(A)

1. Union of India (Through)
General Manager, Central Railway
Mumbai CST.

2. Divisional Railway Manager,
Central Railway, Solapur.

... Review Petitioners
Original Respondents

V/s.

Mrs.Nalini Keshav Athawale,
Ex.Primary Teacher,
Central Railway High School,
Daund.

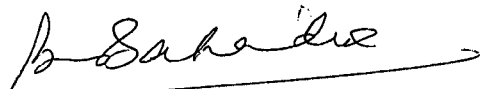
... Respondent
Original Applicant.

O R D E R

This Review Petition has been perused by me. The contention made at paras - 2 & 3 do certainly not constitute errors apparent on the face of the record. The argument taken in the order may constitute a grievance on merit. If the Review Petitioner has a grievance on this account, he can take recourse as per law, but that cannot be a basis on which the matter can be agitated in a Review Petition.

2. Also there is no new fact which has come to light.

3. In view of the above discussion, this Review Petition is not sustainable and is hereby rejected. No costs.



**(B.N.BAHADUR)
MEMBER(A)**

abp.

M.P./No: 57/100
By Circulation
le 07/9

30-11-2000 (28)

None for the applicant.
Respondents by shri R.R. Shetty.
Adjourned to 4-1-2001.

M.P./No: 899/2000
for extension of time,
heard on 30-11-2000

A. (M) /
(S.L. Jain)
MCD

22/11

15/11/2

4.1.2001. (2)

Applicant by shri S.V. Marne.
R-182 by shri R.R. Shetty. R-384
by shri V.S. Masurkar.

M.P. No. 899/2000 is filed for
implementing extension of time
for implementing the judgement.
Time extended upto 28-2-2001.
M.P. stands disposed of.

(0)

mjs

A. (M) /
(S.L. Jain)
MCD

314/0/
M.P./No:
for extension of time
heard on 26-4-01 (26/4/)

1/4
07/4

on ~~order/judgment~~ despatched
to Applicant/Respondent (s)
~~on 10/10/00~~

order/judgment despatched
to Applicant/Respondent (s)
on 9/11/2000

to
211

order/judgment despatched
to Applicant/Respondent (s)
on 16/11/01
Qu
2211

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

M.P.NO.314/2000.

IN QA.1052/98.

DATED :26/4/2001.

Heard Shri S.V.Marne for Applicant, and
Shri R.R.Shetty for Respondents.

This is a matter regarding refixation of
Pension by taking into account the qualifying service.

Respondents have^h filed review petition
against order of this Tribunal. The same was rejected.
The respondents have^h further approached the High Court,
where also the petition was dismissed. The orders were
passed in August, 2000. The High Court judgement is
of March, 2001. The respondents are now seeking further
time of three months to implement the judgement.

I am afraid the respondents have already
been given enough time. MP-314/2000 is therefore
dismissed.

Shanta
(SHANTA SHASTRY)
MEMBER (A)

abp.

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.1052/1998

Tuesday, this the 8th th Day of August 2000

Mrs. Nalini Keshav Athavale Applicant.

(Applicant by Shri S.V. Marne, Advocate)

Versus

Union of India & Ors.... Respondents

(Respondents by V.S. Masurkar, Advocate)

CORAM

Hon'ble Shri B.N. Bahadur, Member (A)

(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. No

B.N.B.
(B.N. Bahadur)
Member (A)

sj*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.1052/98

DATED: Tuesday, this the 8th DAY OF AUGUST, 2000.

CORAM:

HON'BLE SHRI B.N.BAHADUR, MEMBER (A)

Mrs. Nalini Keshav Athavale,
Former Primary Teacher,
Central Railway High School
Daund
Dist:Pune.

Residing at
Flat No.105,
Shikshak Society,
Sane Wadi,
Aundh,
Pune 411 007

.... Applicant

(Applicant by Shri S.V. Marne, Advocate)

vs.

1. The Union of India
through General Manager,
Central Railway,
Mumbai C.S.T.,
Mumbai 400 001.
2. Division Railway Manager,
Central Railway,
Sholapur Division,
Sholapur.
3. The Secretary,
Ministry of Education
Govt. of Maharashtra,
Mantralaya,
Mumbai - 400 032.
4. The Education Officer,
(Primary)
Zilla Parishad,
Pune.

.... Respondents

(Respondent 1 & 2 by Shri R.R.Shetty, Advocate)
(Respondent No.3 and 4 by Shri V.S. Masurkar, Advocate)

O R D E R

[Per: B.N.Bahadur, Member (A)]

This is an application made by Mrs.Nalini K Athavle,
Former Teacher in the Central Railway High School at Daund,

...2/-

125

seeking the relief, in substance, for a direction to the respondents to count her service from 1/7/65 to 26/9/75 as qualifying service for pensionary benefits, and to provide her revised pensionary benefits, accordingly.

2. The case of the Applicant is as follows:-

The Applicant is aggrieved that the respondents have refused to take into consideration the aforesaid period of over nine years service rendered applicant with respondent No.4, and hence over that this has adversely affected the pensionary benefits received by the Applicant. The Applicant had, earlier on, filed an OA which was dismissed by this Tribunal on 25/8/1992 on the ground that this service of Applicant as Assistant Teacher under the Zilla Parishad could not be counted.

3. The Learned Counsel for the Applicant, Shri S.V.Marne, took me over the facts of the case, and over the relelvent papers, including the judgement in the OA No.710/87. He made the point that he was depending on the instructions of the Government of Maharashtra issued vide their Resolution dated 19/7/93, a copy of which has been annexed at R-1. Learned Counsel argued that this decision of the State Government, made in accordance with the proposal of the Government of India, entitled the Applicant to the benefits being sought in the present OA, and that, importantly, this decision came on 19th July,1993 i.e. after the decision in the OA-710/87 was rendered on 25/8/92. The Learned



...3/-

Counsel then made the point that this Bench of the Tribunal had decided in OA-770/96 on 18/9/97 that a similarly placed person was entitled to the benefit.

4. Learned Counsel, Shri Marne, stated that the only defence being taken by the Respondents is that the Applicant's case is hit by the principles of *res judicata*, and on this he argued the case in detail. Referring to section-11 of CPC, he drew special attention to the phrase "matter directly and substantially in issue" and sought support from *Explanation-III*. He also argued that he would not be hit by *Explanation-IV* since the Resolution of 19/7/93 gave him a fresh cause of action. Since the matter was otherwise fully covered, and the objection relating to *res judicata* was not sustainable, the Learned Counsel pleaded, the OA be allowed.

5. Respondents No 1 and 2 i.e. official respondents have filed a written statement where the main plea taken is one relating to *res judicata*. Learned Counsel Shri R.R.Shetty asserted that this was the only ground they had, but that this was a strong enough ground for denial of the benefits to the Applicant, even though she may be eligible on merits as per the Resolution of the State Government. Shri Shetty argued that once a particular demand has been made, and that demand is rejected by a Tribunal, the Applicant can only go in Appeal and thus even though the present applicant is eligible on merits she is barred from approaching this Tribunal. He cited the case of *Chief Administrator & Anr. vs. Dr.A.C.Mishra [(1999) SCC (L&S) 660]* to reiterate the point that the claim of the Applicant is barred by the principles of *res judicata*.

...4/



6. Respondents No.3 & 4 have filed a reply where basically it is stated that they have no comment regarding the case of the Applicant, and that they are not concerned. They have stated that it is true that the Applicant has served the Respondent No.4 for 9 years, two months and twentysix days. Their Learned Counsel, Shri V.S.Masurkar also took the same plea.

7. Now we note that the only question to be decided in this OA is whether the application is hit by the principles of *res judicata* since this is the main, or rather the only, defence, taken by Respondents. On all other facts, there is no dispute. It is clear from all the papers and arguments, and it is indeed admitted that she is eligible to revised pensionary benefits in terms of the reliefs sought in terms of the Resolution of Maharashtra Government dated 19/7/93. Thus, I proceed to examine the point relating to *res judicata*. Section-11 of CPC reads as under:-

"11. No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court."

Further Explanation - III and Explanation -IV to this section are also reproduced below:-

Explanation III: The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or or impliedly, by the other.

Explanation IV: Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

...5.

128

8. Now one fact that is clear is that although the same relief was sought *per se* in the OA No.710/87, it is also true that the ground that is now being taken became available to the Applicant only on 19/7/93. i.e. after the judgement in the aforesaid OA was delivered on 25/8/92. *Explanation-III* above thus provides direct support to the case of the Applicant. This demand could not have been alleged, expressly or impliedly, when the OA was being decided, because the ground became available on a subsequent date, through what can clearly be discerned as a change in policy by the Government concerned. There is thus full strength in the argument made by Shri Marne to the effect that a fresh cause of action had become available to the Applicant. The examples given by Learned Counsel for Applicant with reference to the Rent Control Act to press home the stand taken can certainly be considered impressive.

9. The Learned Counsel for the Respondents had referred to the case of Dr. A.C. Mishra (1999) SCC L&S 660. I have seen the judgement in this case and find that it relates to the point raised in *Explanation V* to Sec.11 of CPC. That is not the relevant point in the case before us and hence this judgement cannot help the cause of the present Applicant.

10. The argument of Counsel for Applicant that *Explanation-IV* also cannot come to the help of the Respondents has merit. The Government Resolution dated 19/7/93 did not exist when the first O.A. was decided and a change of intention of Government to provide the relief of counting of service in Zilla Parishad came later as a result of a conscious decision. Thus the Applicant is clearly not hit by the contents of *Explanation-IV* under Sec.11 of CPC.

Bs

...6/-

11. Therefore, it can firmly be concluded that the Applicants case is not hit by the principles of *res judicata*, in the face of the facts and circumstances of the case. Verily a fresh ground has become available to the Applicant and so also a fresh cause of action. And since the Applicant is eligible on merits to the counting of the disputed period of service, the relief of counting of service with the Zilla Parishad has to be made available to her for the purpose of providing pension and all pensionary benefits to which she is eligible as per rules.

12. This OA is therefore allowed and the Respondents are directed to count the service of the applicant rendered with the Zilla Parishad and also directed to recalculate the pension and all pensionary benefits for which she is eligible on this basis. The difference of the revised benefits for which she is eligible shall be communicated to her and payments thereof made to the Applicant within a period of three months from the date of receipt of a copy of this order. There will be no orders as to costs.

B. N. Bahadur

(B.N. BAHADUR)
MEMBER (A)

08/8/2000

sj*