

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 31st May, 2005

RA No.11/2005 (OA No.40/2004)

Kumari Vinita Sharma
D/o Late Shri Brij Mohan Sharma,
Aged about 30 years,
Resident of 1300/B, Hazari Bagh
Colony, Ajmer.

.. Applicant

(By Advocate: Shri Amit Mathur)

Versus

1. Union of India
through General Manager,
North Western Railway,
Opposite Station Road,
Jaipur.
2. The Divisional Railway Manager,
North Western Railway,
Hasan Pura,
Jaipur.
3. The Deputy Chief Engineer (Electrical),
Power House,
Nagar Road,
Ajmer.

... Respondents

ORDER (By circulation)

This Review Application has been filed for reviewing the order dated 15th April, 2005 whereby the Original Application of the applicant was dismissed.

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2. Few facts may be noticed. The applicant has initially filed OA No.40/2005 in this Tribunal for quashing Ann.A8 and A9 and issuing appropriate directions to the respondents to release the DCRG amount and also that the applicant be not dispossessed from the house which was in the occupation of her father late Shri Brij Mohan Sharma, who died during his service. The basis of the said claim was that she is adopted daughter of late Shri Brij Mohan Sharma. This Tribunal after considering the matter held that the applicant had attained more than 15 years of age when she was adopted and Adoption Deed was executed. Thus, as per provisions contained in Section 5 of the Hindu Adoptions and Maintenance Act, 1956, no adoption shall be made after the commencement of this Act by or to a Hindu except in accordance with the provisions contained therein, any adoption made in contravention of the said provisions shall be void. No right, therefore, can be accrued to the applicant on the basis of aforesaid provision especially when the applicant was not below 15 years of age at the time of adoption and was 25 years of age. As such, she could not have been legally adopted daughter of late Shri Brij Mohan Sharma in terms of Sec. 10 of the Hindu Adoptions and Maintenance Act, 1956.

3. Now the applicant has filed this Review Application on the ground that in terms of Railway

Board Circular No. RB/F(E)/iii/90 PNI/36 dated 20.12.1991 which provide that "in case there is no family member and also nomination has also not been made in favour of any family member or person, amount of death cum gratuity will vested to Government. However, in such cases the retirement or death gratuity as the case may be, be paid to the person in whose favour succession certificate has been granted by court of law, ^{if she is entitled to relief} In para 6 of the Review Application, the following averments have been made:-

"That at the time of passing of the judgment by the learned Tribunal, the aforesaid circular was not in the knowledge of the counsel of the applicant. However, under such circumstances, where a legal status came into the knowledge subsequently, the review application is maintainable."

It is on this basis that the applicant has sought review of the order dated 12.4.2005 passed in OA No.40/2004.

4. I have considered the submissions made on behalf of the review applicant and according to me the present Review Application is wholly misconceived. The power of review available to the Tribunal is the same as has been given to a Court under Section 114 read with Order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of a person on the discovery of new and important matter or

evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or, for any other sufficient reasons. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier that is to say the power of review can be exercised only for correction of a patent of law or fact which stares in the face without any elaborate arguments being needed for establishing it. This being not a case of such nature, the present Review Application is, therefore, misconceived and the same deserves dismissal. It may be pointed out that the expression 'any other sufficient reason' used in Order 47 Rule 1 means a reason sufficient analogous to those specified in the Rule. Any other attempt, except 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.

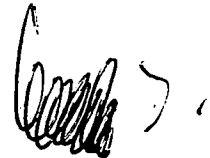
5. Viewing the matter from the aforesaid legal position, it is to be seen whether the applicant has made out a case for reviewing the judgment. As already noticed above, the applicant is not claiming a review of the judgment on the ground that there is some

mistake or error apparent on the face of the record which warrants reviewing the judgment. The case pleaded by the applicant is that she was not aware about the Railway Board circular dated 20.12.1991 which provide that in case there is no family member and also nomination has not been made in favour of any family member or person, the amount of gratuity will be vested to the Government. However, in such cases, the retirement or death gratuity, as the case may be, be paid to a person in whose favour succession certification is granted by the Court of law. According to me, this fact itself does not constitution a sufficient ground to review the order in terms of the powers of review available under Section 114 read with Order 47 CPC. The applicant has not disclosed when she became aware about the Railway Board circular dated 20.12.91 and under what circumstances the said circular was not pleaded in the earlier OA and also that despite after exercise of due diligence the plea based on the said circular could not be raised in earlier OA. Rather, I am of the firm view that this plea in the review application is after-thought and has been raised by the applicant only after the dismissal of the OA, when categorical finding was given that applicant is not adopted daughter of late Shri Brij Mohan Sharma and as such not entitled to any relief.

6. That apart, as already stated above, the case of the applicant in the OA was founded on the ground that she is adopted daughter of late Shri Brij Mohan Sharma and, as such, she is entitled for the amount of DCRG and also retention of Govt. accommodation. As already noticed above, the Railway Board circular dated 20.12.1991 is applicable in those cases where the deceased have left no family member and has also not made any nomination in favour of any person. The applicant has not pleaded the alternative case in the OA and he is precluded from raising the same in the subsequent OA on the principle of constructive res-judicata. In case the present Review Application is allowed, it will amount to entertaining the case of the applicant which he has never pleaded in the OA and for which purpose no foundation whatsoever has been laid in the earlier OA. This is not legally permissible. In the garb of this Review Application, the applicant wants to set up an alternative plea that even if she is not adopted daughter of the deceased, she is entitled to receive the DCRG amount on the basis of succession certificate. Since the applicant has not pleaded this case earlier in the OA and the Review Application has been filed basically for claiming relief on the basis of Railway Board circular which was not part of the OA, no relief can be granted to the applicant on the basis of said circular. In fact the applicant wants re-hearing of the matter on

the basis of Railway Board circular dated 20.10.91 contrary to the case set up by him earlier in the OA where he has claimed relief on the basis of being adopted daughter of late Shri Brij Mohan Sharma (whereas now the applicant claims that even if she is not legally adopted daughter of late Shri Brij Mohan Sharma, she is entitled to the DCRG amount on the basis of succession certificate) which is barred by the principle of constructive res-judicata. Further, once the judgment has been rendered, it will amount to re-opening the entire issue and in that way there will be no finality attached to the judgment, which course is not legally permissible.

7. For the foregoing reasons, the Review Application is dismissed in limine.



(M.L. CHAUHAN)

Member (J)