

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

R.A.No.15/2000

Date of order: 23.9.2002

Wazeer Hussain, S/o late Sh.Ragib Hussain, R/o Gali
Shandeen ki Kali Paltan, Tonk.

...Applicant.

Vs.

1. Union of India through the Secretary, Mines Deptt, New Delhi.
2. The Director General, Geological Survey of India, 27 Jawahar Lal Nehru Marg, Calcutta.
3. Deputy Director General, Geological Survey of India, Western Region, Jhalana Doongri, Jaipur.

...Respondents.

Mr.S.S.Hasan - Counsel for applicant.

Mr.T.P.Sharma - Counsel for respondents

CORAM:

Hon'ble Mr.M.L.Chaunan, Judicial Member.

PER HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER.

The applicant has filed this Review Application for reviewing the order dated 10.4.2000 passed in O.A No.45/98, Wazeer Hussain Vs. Union of India & Ors.


2. O.A No.45/98 was decided by the Single Bench presided by Hon'ble Mr.S.K.Agarwal, Judicial Member, who ceased to be a Member of this Tribunal. In view of the provisions contained under Rule 49-II(c) and Appendix IV of the CAT Rules of Practice, 1993, the matter was placed before Hon'ble the Vice Chairman so that the same can be posted for preliminary hearing before any Member of the Bench. Hon'ble the Vice Chairman, vide order dated 26.8.02 has directed that the Review Application be placed before Hon'ble Mr.M.L.Chauhan, Member (J). Therefore, the matter was listed before me on 12.9.02. On that date,

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notices to the respondents were issued and directed to file reply to M.A No.125/02 and R.A No.15/2000 within a week. The notices on behalf of the respondents were accepted by Mr.T.P. Sharma, Advocate, and the matter was listed for further hearing on 23.9.02. Today, the matter was listed for further hearing. The respondents have not filed any reply either to the M.A or the R.A. However, heard the arguments advanced by the counsel for the parties and perused the material on record.

3. By way of M.A No.125/02, the applicant has placed certain documents on record showing that father of the applicant was a permanent employee of Group-C in Geological Survey of India and at the time of death of the father of the applicant on 28.3.96, he was working on the post of Technical Operator, Group-C, Geological Survey of India Western Region, Jaipur. This application has been allowed by a separate order and the documents annexed therein shall form as a part of the R.A.

4. Now, the question which requires consideration of this Bench is whether the ground mentioned in the R.A constitute a sufficient cause so as to review the judgment dated 10.4.2000 passed in O.A No.45/98. Before examining this question, it will be relevant to incorporate the relevant facts which led the passing of the impugned order dated 10.4.2000. In O.A No.45/98, the case of the applicant was that Sh.Ragib Hussain, father of the applicant was working as Turning Operator under the respondents and died on 28.3.96. It was further stated that the applicant is 8th Standard passed and according to the Central Govt Rules, he is entitled to appointment on compassionate grounds. It was on these ground the applicant has sought the relief of compassionate appointment. Reply was filed by the respondents. In the reply, it was stated that the applicant was engaged only on daily wage basis as Waterman for summer season



and his engagement ended with the end of the specific period. It was further stated that the applicant filed O.A No.31/96 which was decided vide order dated 31.7.98, therefore, this O.A is not maintainable on the basis of principles of resjudicata. While disposing of this O.A, in para 5, this Tribunal held as under:

"5. The applicant has failed to establish the fact that the deceased Sh.Ragib Hussain was died as Turning Operator while on duty, whereas, the respondents have categorically established the fact that the deceased employee was only engaged as seasonal Waterman only daily wage basis, therefore, the son of the deceased being son of a deceased casual labour is not entitled to any appointment on compassionate ground. Moreover, the respondents have also established the fact that the applicant has already filed O.A No.31/96 which was disposed of on 31.7.96, therefore, this O.A is not maintainable on the basis of principles of resjudicata."

Thus, the O.A was dismissed by the Tribunal as barred by the principle of resjudicata.

5. The applicant has placed on record copy of the order dated 31.7.96 passed in O.A No.31.96 titled as Nandu Singh Shekhawat Vs. Union of India & Ors as Annx.RA-1 with the Review Application. From a perusal of this annexure, it is quite evident that O.A No.31/96 was filed by one Sh.Nandu Singh Shekhawat and not by the applicant, Sh.Wazeer Hussain and as such the matter could not have been disposed of on the basis of the order passed in another O.A No.31.96 filed by Nandu Singh Shekhawat, treating O.A No.45/98 as barred by the principle of res-judicata. Similarly, the applicant has specifically pleaded that father of the applicant was working as Turner Operator

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which is a Class-C post when he died on 28.3.96. The respondents in their reply had denied this part of the averment by stating that the applicant was engaged as Waterman for a specific period, on daily wage basis and his engagement ended with the specific period (summer Season). No contemporaneous record was placed on record to show that the engagement of father of the applicant was on daily wage basis for a specific period (summer season). In the absence of any such contemporaneous record, the Tribunal was wrong in holding that the respondents was established that the father of the applicant was working on daily wage basis for a specific period.

6. Scope of review has been provided u/s 22(3)(f) of the Administrative Tribunals Act which provides as under:

"Section 22.

(1)...

(2)....

(3) A Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matter, namely-

(a) ...

(b) ...

(c) ...

(d) ...

(e) ...

(f) reviewing its decisions"

7. The provision extracted above indicates that the power of review available to the Tribunal is the same as has been given to a court under Sec.114 read with Order 47 CPC. The power can

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be exercised on the application of 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 fact of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for 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 correcting of patent error of law or fact which stares in the face without any elaborate argument being needed or establishing it.

8. From the principle as enunciated above, it is quite evident that the present Review Application constitute a sufficient ground for reviewing the judgment dated 10.4.2000. Admittedly, the father of the applicant was a permanent and confirmed employee of Group-C in the respondents department. At the time death of the father of the applicant was working as Turning Operator, Group-C, Geological Survey of India, Western Region, Jaipur. O.A No.45/98 was dismissed by the Tribunal on the basis of the reply filed by the respondents which was based on the facts of another case relating to Nandu Singh Shekhawat who was a casual daily wager in the office of Additional Director, CGHS, Jaipur and who had earlier filed O.A No.31/96 decided on 31.7.96. Thus, OA No.45/98 could not have been dismissed on the principle of res-judicata and also on the basis of facts relating to another case i.e. O.A No.31/96. There is thus patent error of fact which stare in the face without any elaborate argument being needed or established. As such, the aforesaid facts constitute a sufficient ground for reviewing the order within the purview and scope of review

under Sec.22(3)(f) of the Administrative Tribunals Act, as quoted above.

9. Resultantly, the Review Application is allowed and order dated 10.4.2000 passed in O.A No.45/98 is hereby recalled and O.A No.45/98 is restored to its original number. The respondents are directed to file a fresh reply based on the facts of the O.A, within six weeks.



(M.L.Chauhan)

Member (J).