

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

REVIEW APPLICATION No. 291/00024/2014
IN
ORIGINAL APPLICATION No. 479/2013

DATE OF ORDER: 05.01.2015

CORAM :

HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

H.P. Meena son of Shri Ram Swroop Meena, aged about 40 years, resident of 246, Brijpuri, Jagatpura, Jaipur and presently working as Director, Office of Senior Deputy Director General, Telecom Engineering Centre, New Delhi and further at Jaipur as Director-NT, DOT, Jhalana Doongri, Jaipur.

... Applicant

VERSUS

1. Union of India through its Secretary to the Government of India, Department of Telecommunication, Ministry of Communication and Information Technology, Sanchar Bhawan, New Delhi.
2. Senior Deputy Director General, Telecom Engineering Centre, Khursid Lal Bhawan, Jan Path, New Delhi.
3. Chief General Manager (BSNL), Rajasthan Telecom Circle, Jaipur.
4. General Manager, Telecom District, Ajmer.
5. Telecom District Manager, Jhalawar.

..... Respondents

ORDER (CIRCULATION)

The applicant has filed the present Review Application for reviewing of the order dated 12.11.2014 passed in OA No. 479/2013. The applicant in the Review Application has stated that the respondents submitted wrong facts and mislead the Tribunal by submitting false statements that the applicant not opted BSNL MRS Scheme which is against the record available with the respondents. The record and documents regarding the option was not available with the applicant, so the applicant did not disclose the same before the Tribunal. That medical claim filed by the applicant has been rejected on the ground that the

Anil Kumar

applicant did not opt for BSNL MRS Scheme nor fill Registration Form which is against the record. All the information required by the respondents with the regard to the medical reimbursement claim filed by the applicant for the treatment of his mother was provided by the applicant. The treatment taken by mother is nowhere disputed. As regards dependency, the applicant's father is neither in Government job nor in business. Even today, the applicant's father is dependent on applicant. The applicant's mother has since expired. They were allowed medical claims prior to the present claim. The Tribunal also did not consider that the competent authority after verifying the facts sanctioned medical advance to the applicant. The medical advance cannot be sanctioned without recommendation/advice of the concerned hospital. The applicant has also stated that in view of this position and that the respondents did not present correct facts before the Tribunal, therefore, the order passed by the Tribunal dated 12.11.2014 requires to be reviewed.

2. Perused the relevant record on file. The applicant along with the Review Application has filed Annexure R/2 which is Reimbursement Scheme Registration Form. He has also filed Annexure R/3 vide which the applicant was granted quarter-wise medical installments for the period from 01.04.2003 to 31.03.2004 and 01.04.2004 to 31.03.2005. From the perusal of Annexure R/2, it appears that the applicant has marked Option for Outdoor/Domiciliary treatment: Entitlement without voucher (as per Para 2.1.1) of the Scheme.



3. The respondents in their reply to the OA have stated that after formation of BSNL, guidelines & instructions for implementation of BSNL Employee Medical Reimbursement Scheme (BSNL MRS) was approved by BSNL Board on 28.02.2003 (Annexure R/1 of the OA) and instructions for operation of the Scheme was issued by BSNL HQ, New Delhi vide letter dated 22.04.2003 (Annexure R/2 of the OA). From the perusal of office order dated 22.04.2003 (Annexure R/2 of the OA), it is clear that an option form has been enclosed along with this order as Annexure-A. As per the eligibility criteria as provided in the Scheme 28.02.2003 (Annexure R/1 of the OA) serving and retired employees of BSNL including the deputationist would be eligible for this Scheme. However, the employee in order to avail of this Scheme have to opt for this Scheme whereby they will not be allowed the facility of CGHS Scheme. The applicant even along with the Review Application has not enclosed a copy of his Option Form given by him as provided in Annexure-A of the office order dated 22.04.2003 (Annexure R/2 of the OA). The question of filing up of the Registration Form as provided in Annexure-B of the said order dated 22.04.2003 would arise only when the employee opt BSNL MRS Scheme. It has also not been disputed by the applicant even in the Review Application that the medical card was not issued to the applicant as provided under the BSNL MRS Scheme.

4. I have carefully perused the Annexure R/2 of the Review Application, which is the Registration Form as filled up by the applicant. It is clear that applicant has not shown his father and

Anil Kumar

his mother as dependant on him. In the Review Application, the applicant has stated that as regards dependency his father is neither in Government job nor in business. If the applicant's contention is accepted then it was the duty of the applicant to show his parents as dependants while filing the Registration Form. Thus it cannot be categorically stated now that the parents of the applicant were dependent on him at the time of filing of the Registration Form (Annexure R/2 of the Review Application). Moreover, this Registration Form has not been dated by the applicant nor by the Accounts Officer, who has signed this Form.

5. From the perusal of the Registration Form at Annexure R/2 of the Review Application, it is clear that the applicant has opted for 9 (ii) for outdoor treatment under BSNL MRS. This option entitles the applicant for reimbursement as per Para 2.1.1 of the Scheme dated 28.02.2003 (Annexure R/1 of the OA). Para 2.1.1 of the Scheme is quoted below:-

“2.1.1 Outdoor/Domiciliary treatment: Entitlement without Voucher:

Alternatively, 50% of the admissible amount (as mentioned in para 2.1.0 above, i.e. one month's basic + DA) will be paid to the working employees without production of any vouchers. Such payment limited to 50% of one month's salary will be paid in four equal installments at the end of each quarter. This amount would be taxable. Similar facility for payment without voucher will be available to the retired employees also.”

This provision provides for payment of 50% of one month's salary in four equal installments at the end of each quarter without production of any vouchers. The applicant in the Review Application has enclosed payment received by him for the year 01.04.2003 to 31.03.2004 and 01.04.2004 to 31.03.2005. Even for the year 01.04.2004 to 31.03.2005, the applicant has received reimbursement only for the first three

Anil Kumar

quarters. There is no explanation given in the Review Application as to why the applicant did not receive the reimbursement for the fourth quarter and subsequently for next financial years. The applicant has not given proof whether he received continuously this quarterly payment till the filing of the OA or the Review Application or if this payment was stopped by the official respondents then on what grounds this payment was stopped by them.

6. The applicant has primarily laid emphasis on the ground that the respondents have not brought out the correct facts before the Tribunal in their reply. The applicant's counsel was given enough opportunities to file the rejoinder to the reply filed on behalf of the respondents but the learned counsel for the applicant on 15.04.2014 submitted that he did not wish to file rejoinder to the reply filed on behalf of respondents nos. 3 to 5. On 13.10.2014, the learned Sr. Central Government Standing Counsel, submitted that he did not wish to file reply on behalf of respondents nos. 1 & 2. Therefore, the right to file reply of respondents nos. 1 & 2 was closed by the Tribunal. Again on the same date, the learned counsel for the applicant submitted that he did not wish to file the rejoinder. Therefore, if the respondents did not bring the correct facts before the Tribunal, the applicant had an opportunity to bring the correct facts before the Tribunal by filing a rejoinder. At this stage when the final order has been passed by the Tribunal, it would not be appropriate to allege that the respondents have not brought out the correct facts in their reply. By way of the Review Application, the applicant is trying to re-open the entire issue which is not

Anil Kumar

permissible under a Review Application. As stated earlier, the applicant while filing the Review Application has not produced the Option Form, Annexure-A of the order dated 22.04.2003 (Annexure R/2 of the OA) nor the applicant has produced the Medical Card issued to him, if any. Moreover, even in the Registration Form (Annexure R/3 of the Review Application), the applicant has not shown his parents as dependant on him. Thus there is neither an error of law nor an error of facts in the order dated 12.11.2014 passed in OA No. 479/2013. Nor the order dated 12.11.2014 is based on wrong facts given by the respondents.

7. The Hon'ble Apex Court in the case of **Smt. Meera Bhanja vs. Nirmal Kumari**, AIR 1995 SC 455, observed that reappreciating facts/law amounts to overstepping the jurisdiction conferred upon the Courts/Tribunals while reviewing its own decision. In the present application also, the applicant is trying to claim reappreciation of the facts/law which is beyond the power of review conferred upon the Tribunal as held by Hon'ble Supreme Court.

8. The Hon'ble Apex Court has categorically held that the matter cannot be heard on merit in the guise of power of review and further if the order or decision is wrong, the same cannot be corrected in the guise of power of review. What is the scope of Review Petition and under what circumstance such power can be exercised was considered by the Hon'ble Apex Court in the case of Ajit Kumar Rath Vs. State of Orissa, (1999) 9 SCC 596 wherein the Apex Court has held as under:



"The power of the Tribunal to review its judgment is the same as has been given to court under Section 114 or under Order 47 Rule 1 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47 Rule 1 CPC. 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 of fact or error apparent on the face of record or for any other sufficient reason. 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 error of law or fact which stares in the fact without any elaborate argument being needed for establishing it. It may be pointed out that the expression 'any other sufficient reason' used in Order XL VII Rule 1 CPC means a reason sufficiently analogous to those specified in the rule".

9. In the present case, the applicant did not exercise due diligence even after the filing of reply by respondents. If applicant had opted for BSNL MRS Scheme then he should have filed the copy of that option form in Annexure-A of the office order dated 22.04.2003. He even did not file Registration Form Annexure-B. Even he has not filed the medical card if issued to the applicant under BSNL MRS Scheme. Thus it cannot be said that there is any discovery of new and important matter or evidence which, after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the order was made. Moreover, I do not find any patent error of law or facts in the order dated order dated 12.11.2014 passed in the OA No. 479/2013 (H.P. Meena vs. Union of India & Others). Therefore, in view of the law down by the Hon'ble Apex Court, I find no merit in this Review Application and consequently the same is dismissed.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

Abdul