CENTRAL ADMINISTRATIVE TRIBUNAL

CHANDIGARH BENCH

R.A.No.060/00135 in
In O.A.NO.060/00059/2014

Decided on: 18.12.2014

CORAM: **HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)**
HON'BLE MS.RAJWANT SANDHU, MEMBER(A)

Ashok Kumar .... Applicant

Union of India etc. ... Respondents

O R D E R (by circulation)
SANJEEV KAUSHIK, MEMBER (J)

1. This R.A. has been filed by the applicant seeking review of order dated 3.11.2014 vide which O.A. No. 060/00059/2014 has been dismissed.
2. The premise of review is that this Tribunal has placed reliance on Rule 9 (21)(a)(i) of FRSR Part I and ignored further sub clause (ii) which covers the case of the applicant for counting of special pay towards determination of retiral dues.
3. A perusal of rule 9 (21)(a)(ii) reproduced in R.A. indicates that pay means amount drawn monthly by a Government employee as overseas pay, special pay and "personal pay" and as such pay drawn by the applicant would also include in determination of retiral dues. The plea, on the face of it, is

misconceived as definition of "personal pay" has also been given in para 9 (23) which reads as under :-

> "Personal pay" means an additional pay granted to a Government servant-
>
> (a) to save him from a loss of substantive pay in respect of a permanent post other than a tenure post due to a revision of pay or to any reduction of such substantive pay otherwise than as a disciplinary measure; or
>
> (b) in exceptional circumstances, on other personal Considerations".

4. The special pay has also been defined in clause 9 (25) as under :-

> "Special Pay" means an addition, of the nature pay, to the emoluments of a post or of a Government servant, granted in consideration of-
>
> (a) the specially arduous nature of the duties; or
>
> (b) a specific addition to the work or responsibility"

5. Apparently the special pay drawn by the applicant does not find a mention in the definition of "pay" given above which may constitute as part of pay for determination of retiral dues. Thus, no review is called for on this premise raised by the applicant.

6. The other ground raised by the applicant is qua applicability of decision of Hon'ble High Court on the ground that be it Punjab Rules or Central Rules, the position remains the same and as such the applicant would be entitled to the benefit prayed for by him.

7. As observed above, the claim raised by the applicant is not made out on the basis of the rules and as such he cannot seek any benefit out of decisions quoted by him more so when in the case of Radhe Krishan Sharma Vs. State of Haryana etc. 1993(1) SCT 58 (P&H) RCC 530, the Court took into account the special pay drawn by employee while on being deputation for calculation of retiral dues. The pay drawn by the applicant herein does not fall within the four parameters of definition given in the rules applicable to him.

8. In the case of **M/s Northern India Caterers (India) Ltd. vs. Lt. Governor of Delhi**, (1980) 2 SCC 167, the Apex Court, held as under:

> "8. It is well-settled that a party is not entitled to seek a review of a judgment delivered by this Court merely for the purpose of a rehearing and a fresh decision of the case. The normal principle is that a judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and

compelling character make it necessary to do so: Sajjan Singh v. State of Rajasthan. For instance, if the attention of the Court is not drawn to a material statutory provision during the original hearing, the Court will review its judgment: G.L. Gupta v. D.N. Mehta. The Court may also reopen its judgment if a manifest wrong has been done and it is necessary to pass an order to do full and effective justice: O.N. Mohindroo v. Distt. Judge, Delhi. Power to review its judgments has been conferred on the Supreme Court by Article 137 of the Constitution, and that power is subject to the provisions of any law made by Parliament or the rules made under Article 145. In a civil proceeding, an application for review is entertained only on a ground mentioned in Order 47 Rule 1 of the Code of Civil Procedure, and in a criminal proceeding on the ground of an error apparent on the face of the record (Order 40 Rule 1, Supreme Court Rules, 1966). But whatever the nature of the proceeding, it is beyond dispute that a review proceeding cannot be equated with the original hearing of the case, and the finality of the judgment delivered by the Court will not be reconsidered except "where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility": Sow Chandra Kante v. Sheikh Habib.

9. Now, besides the fact that most of the legal material so assiduously collected and placed before us by the learned Additional Solicitor General, who has now been entrusted to appear for the respondent, was never brought to our attention when the appeals were heard, we may also examine whether the judgment suffers from an error apparent on the face of the record. Such an error exists if of two or more views canvassed on the point it is possible to hold that the controversy can be said to admit of only one of them. **If the view adopted by the Court in the original judgment is a possible view having regard to what the record states, it is difficult to hold that there is an error apparent on the face of the record."**
(emphasis supplied)

10. A review petition, it must be remembered has a limited purpose and cannot be allowed to be 'an appeal in disguise'. In the case of **Inderchand Jain (dead) through LRs vs. Motilal (dead) through LRs** [(2009) 14 SCC 663], the Hon'ble Supreme Court has clearly held that an application for review only when the order suffers from an error apparent on the face of the record and permitting the same to continue would lead to failure of justice. It is, thus, no more res integra that a review cannot be sought merely

for fresh hearing or arguments or correction of an erroneous view taken earlier. The power of review can be exercised only for correction of a patent error of law or fact which stays in the face without any elaborate argument being needed for establishing it. This power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason.

11. Needless to mention that the applicant has not been able to point out any factual error in the order under review. He appears to be not satisfied by the view taken by this Tribunal and in such a situation the only course open for him is to file a judicial review, if he so chooses to do so.

12. The R.A. is accordingly dismissed by circulation.

(SANJEEV KAUSHIK)
MEMBER (J)

(RAJWANT SANDHU)
MEMBER(A)

Place: Chandigarh
Dated: 18.12.2014

HC*