

(Under Circulation)

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD**

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(THIS THE 30<sup>th</sup> DAY of November, 2018)

**HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A)**

Civil Misc. Delay Condonation Application No. 330/02343/2018

With

Civil Misc. Review Application No. 330/00060/2018

1. Union of India through the Secretary, Ministry of Defence, Government of India, New Delhi.
2. Ordnance Parachute Factory, Kanpur – 208004 through the Senior General Manager, O.P.F., Kanpur.
3. Works Manager, Ordnance Parachute Factory, Kanpur.
4. Smt. Shanti Devi, wife of Late Shri Digvijai Singh, resident of 2/16, Dadanagar, Labour Colony, Govind Nagar, Kanpur  
.....applicants

**V E R S U S**

Smt. Usha Verma Alias Lakshmi Devi, wife of Late Jai Singh Verma, R/o 139 A (S.S), Barra-4, Kanpur Nagar.

.....Respondents

**In**

**Original Application No. 330/00264 /2016.**

Smt.Usha Verma Alias Lakshmi Devi.

.....Applicant

VERSUS

Union of India and others.

.....Respondents

**Advocate for the Applicants :- Shri A.K. Rai**

**Advocate for the Respondent:-**

**ORDER**

The instant Review Application filed by the respondents in the OA (herein after referred to as ' respondents'), is directed against the order dated 23.02.2018 (Annexure-RA -1) passed by this Tribunal in OA No. 264/2016 (Smt. Usha Verma alias Lakshmi Devi Vs. U.O.I. & Ors). The respondent in the Review Application, was the applicant in the O.A, is referred hereinafter as

to applicant. The operative paragraphs of the impugned order dated 23.02.2018 is as follows:-

“13. In view of the above, all the retiral dues of Late Jai Singh including family pension are required to be disbursed to the applicant as per rules, ignoring the nomination in favour of the deceased employee’s mother.

14. Accordingly, the OA is allowed and the impugned order dated 05.02.2016 (Annexure A-9) is set aside and quashed. The respondents are directed to sanction the family pension, gratuity and other retiral dues of Late Jai Singh in favour of his wife (applicant in this OA) as per the succession certificate dated 15.07.2015 issued by the Civil Court (Annexure A-6) within two months from the date of receipt of a copy of this order alongwith the interest at the rate of 9% per annum on the arrears of family pension dues from 01.08.2014 till the date of actual payment to the applicant and interest at the same rate in respect of the gratuity and other retiral dues of Late Jai Singh from 20.07.2015 (when the applicant furnished the undertaking to the respondents after furnishing the succession certificate) till the date of actual payment to the applicant as per the rules. No order as to costs .”

2. Main grounds mentioned in the Review Application to review the order dated 26.02.2018 of this Tribunal in OA No. 264/2016 are as under: -

- a. The original application was allowed without giving proper opportunity of hearing to the respondents and without going into the merits of the case.
- b. Late Jai Singh had earlier nominated his mother Smt. Shanti Devi for full sum, who is still alive hence she is the only family member to receive the death gratuity as per provisions of Payment of Gratuity Act, 1972.
- c. The family pension papers in favour of Smt. Usha Verma has already been forwarded to the PCDA (Pension), Allahabad. However, the claim of death gratuity will be processed in favour of Smt. Shanti Devi, who is still alive and has been nominated by deceased son.

- d. A perusal of the order dated 21.05.2015 passed by Civil Judge (Senior Division), Kanpur Nagar (copy enclosed with the OA), would reveal that she had not made her mother in law Smt. Shanti Devi as party.
- e. In view of the above fact the order dated 26.02.2018 needs to be reviewed.

3. The Review Application against the order dated 26.02.2018 has been filed on 17.09.2018 after more than six month, for which a delay condonation application alongwith the affidavit has been filed with prayer to condone the delay mainly on following grounds: -

- i. After receipt of certified copy of the order dated 26.02.2018, the matter was referred to the higher authorities for taking necessary decision.
- ii. The competent authority decided to file the review application and thereafter, the present review application has been filed.
- vi. The delay in filing the review application is neither intentional nor deliberate but due to some unavoidable reasons, which were beyond the control of the applicants.

4. Admittedly, the present Review Application is filed beyond 30 days with a delay condonation application under rule 17 of the CAT (Procedure) Rules, 1987, which states as under:-

“17. Application for review – (1) No application for review shall be entertained unless it is filed within thirty days from the date of receipt of a copy of the order sought to be reviewed.”

Hence, the Review Application filed beyond 30 days will not be maintainable in terms of the aforesaid rule 17.

5. In the case of **K. Ajit Babu Vs. Union of India – 1997 (6) SCC 473 (Para 4)**, while examining the provisions of Section 22(3)(f) of the AT Act and the Rule 17(1) of CAT (Procedure) Rules and also order 47 Rule 1 of CPC, the Hon’ble Apex Court held that

the right of review is available to the aggrieved person on restricted ground as mentioned in the Order 47 of the Code of Civil Procedure if filed within the period of limitation. The matter of condonation of delay in such cases also came before the Full Bench of Hon'ble Andhra Pradesh High Court in the case of **G. Narasimha Rao Vs. Regional Joint Director of School Education, Warangal and others – 2005(4) SLR 720** and it was held that the Tribunal will not have jurisdiction to condone the delay under the Limitation Act. In this case, this Review Application was filed on 17.09.2018 impugning the order dated 23.02.2018 of this Tribunal.

6. It is seen that there is delay of more than six months and as per the Misc. delay condonation application No. 2343/2018, delay in obtaining approval of the competent authority has been mentioned as the main reason for the delay in filing the Review Application. Such reason cannot be accepted to be satisfactory.

7. For the reasons stated above, I do not find the reasons furnished in the application for delay condonation to be adequate enough to consider condonation of delay, which is also not permissible as per law in view of case laws discussed above. Accordingly, the Misc. Application No. 2343/2018 for condonation of delay in filing the review application is liable to be dismissed.

8. Regarding merits, the review of the order of this Tribunal is done under the section 22(3)(f) of the Administrative Tribunals Act, 1985 read with provisions of the rule 1 Order 47 of the CPC which states as under: -

“1. Application for review of judgment – (1) Any person considering himself aggrieved –

(a). by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b). by a decree or order from which no appeal is allowed, or

(c). by a decision on a reference from a Court of Small Causes,

and who, from 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 decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against

him, may apply for a review of judgment to the Court which passed the decree or made the order.”

9. It is noted that the scope of reviewing the order of this Tribunal is limited to the grounds as mentioned in the Order 47 Rule 1 of the CPC. A review application can be entertained on the ground of error apparent on the face of record or new facts / matter which was not known at the time of hearing of the O.A. In the case of **State of West Bengal And Others v. Kamal Sengupta and another reported in (2008) 8 SCC 612**, Hon’ble Supreme Court has laid down following factors to be kept in mind for review:-

- “(i). *The power of the Tribunal to review is akin to order 47 Rule 1 of CPC read with Section 114.*
- (ii). *The grounds enumerated in order 47 Rule 1 to be followed and not otherwise.*
- (iii). *“that any other sufficient reasons” in order 47 Rule 1 has to be interpreted in the light of other specified grounds.*
- (iv). *An error which is not self evident and which can be discovered by a long process of reasoning cannot be treated as an error apparent on the face of the record.*
- (v). *An erroneous decision cannot be corrected under review.*
- (vi). *An order cannot be reviewed on the basis of subsequent decision / judgment of coordinate Larger bench or a superior Court.*
- (vii). *The adjudication has to be with regard to material which were available at the time of initial decision subsequent event / developments are not error apparent.*
- (viii). *Mere discovery of new / important matter or evidence is not sufficient ground for review. The party also has to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence the same could not be produced earlier before the Tribunal.”*

10. The Hon’ble Apex Court in the case of **Rajendra Kumar and others Vs. Rambhai and others – (2007) 15 SCC 513** has dealt with the question of review and its maintainability and has held as under: -

*“6. The limitation on exercise of the power of review are well settled. The first and foremost requirement of entertaining a review petition is that the order review of which is sought, suffers from any error apparent on the face of the order and permitting the order to stand will lead to failure of justice. In the absence of any such error, finality attached to the judgment/order cannot be disturbed.*

11. In the case of **Inder Chand Jain (Dead) through Lrs, Vs. Motilal (dead) through Lrs. Reported in (2009) 14 SCC 663** the Hon’ble Apex Court held as under:-

*“..10. It is beyond any doubt or dispute that the review court does not sit in appeal over its own order. A re-hearing of the matter is impermissible in law. It constitutes an exception to the general rule that once a judgment is signed or pronounced, it should not be altered. It is also trite that exercise of inherent jurisdiction is not invoked for reviewing any order.*

*11. Review is not appeal in disguise. In Lily Thomas v. Union of India [AIR 2000 SC 1650], this Court held :*

*"56. It follows, therefore, that the power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated an appeal in disguise."*

12. Perusal of the grounds mentioned in the Review Application indicates that these grounds have been considered at the time of passing the order dated 23.02.2018 and no fresh ground as required under the law has been made out in the Review Application and no error or mistake apparent on the face of the record has been pointed out. It is stated that the respondents were not given opportunity of hearing. But the impugned order mention the grounds taken in the Counter Affidavit and learned counsel for the respondents was heard. How it was concluded that proper opportunity was not allowed has not been mentioned in the Review Application.

13. Another ground mentioned by the respondents in the Review Application was that the nomination for payment of death gratuity has been furnished by the deceased employee in favour of his mother Smt. Shanti Devi for full sum for which the gratuity cannot be paid to the applicant in the OA. It is seen from the impugned order that this particular issue has been discussed in detail in paragraph 11 and 12 of the impugned order. This point has

already been considered by this Tribunal due to which it cannot be considered a new ground or there is any error apparent on the face of the record. If the respondents are aggrieved by the findings of the Tribunal, they are free to pursue appropriate legal remedy as per the provisions of law but the remedy of review is not available to the respondents under law.

14. In view of the above discussions, I am of the view that the respondents have failed to show that there is any ground which is admissible under Rule 1 of Order 47 of CPC to justify the review of the order dated 23.02.2018 of this Tribunal.

15. In view of above discussions, the Misc. Delay Condonation Application No. 2343/18, being devoid of merit, is dismissed. The Review Application No. 60/2018 is also dismissed on the ground of merits for the reasons discussed above.

16. Registry is directed to send a copy of this order to the learned counsels for parties.

MEMBER (A)

*Anand...*