

**Central Administrative Tribunal
Principal Bench, New Delhi.**

**RA-325/2015 in
OA-1644/2012**

Reserved on : 17.02.2016.

Pronounced on : 19.02.2016.

Hon'ble Sh. A.K. Bhardwaj, Member (J)
Hon'ble Sh. Shekhar Agarwal, Member (A)

Nehru Yuva Kendra Sangathan
(Through its Director General)
Scope Minar, Core-IV, 2nd Floor,
Lakshmi Nagar District Centre,
Vikas Marg, Delhi-110092.

..... Review Applicant

(through Sh. R. Ramachandran with Sh. Lakshmi Gurung, Sh. Sujit Kumar Mishra
and Sh. Rajesh Kumar, Advocates)

Versus

Mr. S.S.R. Sharma,
S/o late Sh. Krishan Gopalji Sharma,
R/o 170-B, Indira Colony,
Bani Park, Jaipur-322016.

..... Respondent

(through Sh. L.R. Khatana, Advocate)

O R D E R

Mr. Shekhar Agarwal, Member (A)

This Review Application has been filed by OA respondent for review of our order dated 28.11.2014 passed in OA-1644/2012 with other connected OAs. The operative part of the order reads as follows:-

"10. We have heard the learned counsel for the Applicant Shri Kedar Nath in **OA No.1642/2012**, Shri L.R. Khatana in **OA Nos. 1643/2012 and 1644/2012** and learned counsel for the Respondents Shri Rana Ranjit Singh in all the OAs. Undisputedly, the Applicants have been serving as Directors on ad hoc basis in the pay scale of Rs.14300-400-18300 till their retirement. As far as Applicant Shri R.N. Sason is concerned, he was promoted as Director on ad hoc basis with effect from 04.09.1996 in the aforesaid scale and the average pay drawn by him during the last 10 months prior to retirement was Rs.15100/-. Similarly the Applicant in **OA No. 1643/2012** (Shri

O.P. Kumar) was promoted as Director and he was sent on deputation to Society for Creation of Heaven on Earth and joined the said society on 13.09.1996 and retired on superannuation on 30.04.2001 and the average pay drawn by him during the last 10 months before his retirement was Rs.14300/- and Applicant Shri S.S.R. Sharma in **OA No.1644/2012** (supra) was sent on deputation to Jan Shikshan Sansthan, Jaipur and joined the said society on 31.07.1999 and retired on superannuation on 30.04.2001 and the average pay drawn by him during the last 10 months before his retirement was Rs.15900/-. Both the above Applicants were also in the pay scale of Rs.14300-400-18300. The contention of the Respondents that the appointment of the Applicants as Director was on ad hoc basis and the recommendation of the DPC for granting them the scale of pay of the aforesaid pay scale of Rs.14300-400-18300 was not accepted by the competent authority is no more relevant. It is also an admitted fact that in terms of the Respondents Office Order dated 18.06.1999, the Applicants have neither been posted as Zonal Directors in the scale of pay of Rs.12000-400-1600 nor any at any time they have worked in the post. On the other hand, w.e.f. 01.01.996, all of them have been working as Director in the pay scale of Rs.13400-400-18300. Therefore, refixation of their pay under FR 35 cannot be accepted as such refixation of pay cannot be done after the retirement of the employee from service.

11. We, in the above facts and circumstances of the case, allow these OAs and direct the Respondents to revise their pension taking into consideration the average emoluments drawn by them on the dates of their retirement and pay the arrears with GPF interest rate. The aforesaid direction shall be complied with, within a period of 2 months from the date of receipt of a copy of this order.

12. There shall be no order as to costs.

Let a copy of this order be placed in all the files."

2. The OA applicant (respondent in RA) has chosen not to file any reply but has contested the above review.

3. We have heard learned counsel for the parties. Learned counsel for the review applicant argued that an error had been committed while fixing the pay of the applicant on the post of Director w.e.f. 14.10.1996. The Tribunal has ordered fixation of pension on this erroneous pay fixation, without appreciating that as per orders of the Tribunal, the fixation of pension would also be erroneous since it would be based on wrong pay fixation. The review applicant is being compelled to pay higher pension to the applicant to which he was not entitled. Learned counsel stated that it was a settled principle of law that

Courts/Tribunals cannot direct payment of any amount, which was not supported by Rules and Regulations. Moreover, the respondents do not intend to make any recovery of any excess payment made to the applicant. They were only seeking to re-fix the pension after correcting the error committed in fixation of applicant's pay. The review applicant has relied on the judgment of Hon'ble Supreme Court in the case of **Union of India Vs. S.R. Dhingra and Others**, (2008) 2 SCC 229 to say that re-fixation of pension on account of mistaken calculation can be corrected. He has also relied on the judgment of Hon'ble Supreme Court in the case of **Ram Chandra Singh Vs. State of Jharkhan & Ors.**, 2005(2) JLJR 705 on the same issue. The review applicant has also relied on the judgment of **Hon'ble Jharkhand High Court** in the case of **Rameshwar Prasad Vs. Jharkhand State Electricity Board & Ors.**, 2009(3) JCR 207 in which re-fixation of pension was upheld. Lastly, the review applicant submitted that in case this mistake was not allowed to be corrected, it would result in excess payment of public money to the OA applicant without any authority of law.

3.1 Learned counsel for the review respondent Sh. L.R. Khatana stated that the review applicant has not pointed out any error apparent on the face of the record but was only trying to re-argue the matter.

4. We have heard both sides and have perused the material on record. We have also gone through our judgment in question. We find that the review applicant had pointed out that the pay fixation of the applicant was erroneous inasmuch as it was violative of FR-35. This Tribunal had, however, held the view that FR-35 cannot be applied for re-fixation of pay after retirement of the employee from service. This is obvious from last few lines of Para-10 of the judgment extracted above. The review applicant has questioned this view of the Tribunal. In our opinion, the review applicant is not pointing out any error apparent on the face of the record but was questioning the view held by the

Tribunal. If the review applicant was aggrieved by the same, then he should have approached higher judicial forum through appropriate judicial proceedings. This is not an error, which can be corrected in a review. If we were to do so, we would be re-hearing the case and sitting in judgment over our own judgment.

4.1 While considering the scope of review, Hon'ble Supreme Court in the case of **Aribam Tuleswar Sharma Vs. Aribam Pishak Sharma**, (1979) 4 SCC 389 referred to an earlier decision in the case of **Shivdeo singh Vs. State of Punjab**, AIR 1963 SC 1909 and observed as under:-

"It is true as observed by this Court in **Shivdeo Singh v. State of Punjab**, AIR 1963 SC 1909, there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which is inherent in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all matters or errors committed by the Subordinate Court."

4.2 Similarly in the case of **Ajit Kumar Rath Vs. State of Orissa and Others**, AIR 2000 SC 85 the Apex Court reiterated that power of review vested in the Tribunal is similar to the one conferred upon a Civil Court and held:-

"The provisions extracted above indicate that 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 on account of some mistake or error apparent on the face of the 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 face without any elaborate argument being needed for establishing it. **It may be pointed out that the expression “any other sufficient reason” used in Order 47 Rule 1 means a reason sufficiently 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.”

[Emphasis added]

4.3 In the case of **Gopal Singh Vs. State Cadre Forest Officers’ Assn. and Others** [2007 (9) SCC 369], the Apex Court held that after rejecting the original application filed by the appellant, there was no justification for the Tribunal to review its order and allow the revision of the appellant. Some of the observations made in that judgment are extracted below:-

“The learned counsel for the State also pointed out that there was no necessity whatsoever on the part of the Tribunal to review its own judgment. Even after the microscopic examination of the judgment of the Tribunal we could not find a single reason in the whole judgment as to how the review was justified and for what reasons. No apparent error on the face of the record was pointed, nor was it discussed. Thereby the Tribunal sat as an appellate authority over its own judgment. This was completely impermissible and we agree with the High Court (Justice Sinha) that the Tribunal has traveled out of its jurisdiction to write a second order in the name of reviewing its own judgment. In fact the learned counsel for the appellant did not address us on this very vital aspect.”

5. Under these circumstances, we are of the opinion that this Review Application is not maintainable and hence it is dismissed. No costs.

(Shekhar Agarwal)
Member (A)

(A.K. Bhardwaj)
Member (J)

/Vinita/