

**Central Administrative Tribunal
Principal Bench**

M.A. No.3328/2018

R.A. No.0115/2018

In

O.A.No.2843/2016

New Delhi this the 13th day of August, 2018.

Hon'ble Mr. K.N. Shrivastava, Member (A)

The Divisional Railway Manager,
North Central Railway,
Nawal Yusuf Road, Allahabad

-Review Applicant

Versus

Smt. Mamta Devi,
D/o late Shri Bhim Sen,
R/o Village Nagla Kumaharan,
PO Mohamamdbad,
TDL/Firozabad, UP-283204,
C/o Shri O.P. Gautam,
E-401/7, West Vinod Nagar,
Delhi-72.

-Respondent

O R D E R (By Circulation)

Through the medium of this Review Application (RA), filed under Section 22 (3) (f) of the Administrative Tribunals Act, 1985, the review applicant, who was respondent no.3 in OA No.2843/2016, has sought review of order dated 08.05.2018 passed in the said OA.

2. The main grounds pleaded in the RA for review of the order are as under:

2.1 The Railway Board letter dated 26.09.2013, enclosing therewith the DoPT instructions dated 11.09.2013 and other relevant instructions on the subject clearly stipulates that the respondent herein cannot be taken to be a dependent and hence not entitled to family pension. The Railway Board letter is in the nature of policy decision of the Government and has to be made applicable to all otherwise it would lead to discrimination and violation of equality clause enshrined in Articles 14 and 16 of the Constitution of India.

2.2 It is settled law that courts would not interfere with the policy decisions of the Government unless it is in violation of some statutory or constitutional provisions, as held by the Hon'ble Apex Court in **Basic Education Board, UP v. Upendra Rai**, [(2008) 3 SCC 432]. In view of the above categorical position of law, the learned Tribunal erred in passing the impugned order, which needs to be reviewed in the interest of justice and equity.

2.3 The learned Tribunal erred in not appreciating that rules and guidelines on the subject of grant of family pension did not

permit the respondent to be eligible for such grant and thus erred in allowing the application. The mere fact that earlier family pension was granted mistakenly does not confer any vested right on respondent to continue to draw what she is not entitled to. The learned Tribunal erred in not appreciating this fact.

2.4 Violation of principles of natural justice cannot be a ground in such situations where policy decisions are involved. It is submitted that the applicant is not entitled for grant of family pension in view of the policy decision of the Government and therefore no useful purpose would be achieved to put the review applicant on notice. The ground on which the OA has been allowed is, therefore, erroneous and needs to be reviewed.

2.5 The direction of the learned Tribunal to restore the pension and pay arrears and to continue payment of such pension *de hors* the rules and guidelines on the subject is erroneous.

3. I have perused the RA. The scope of review lies in a narrow compass as prescribed under Order XLVII, Rule (1) of CPC. None of the grounds raised in the RA brings it within the scope and purview of review. It appears that the review applicant is trying to re-argue the matter afresh, as if in appeal, which is not

permissible. If in the opinion of the review applicant the order passed by the Tribunal is erroneous, the remedy lies elsewhere. Under the garb of review, the review applicant cannot be allowed to raise the same grounds, which were considered and rejected by the Tribunal while passing the order under review. Existence of an error apparent on the face of the record is *sine qua non* for review of the order. The review applicant has failed to bring out any error apparent on the face of the order under review.

4. On the power of the Tribunal to review its own orders, the Hon'ble Supreme Court has laid down clear guidelines in its judgment in the case of **State of West Bengal & others Vs. Kamal Sengupta and another**, [2008 (3) AISLJ 209] stating therein that “*the Tribunal can exercise powers of a Civil Court in relation to matter enumerated in clauses (a) to (i) of sub-section (3) of Section (22) of Administrative Tribunal Act including the power of reviewing its decision.*” At Para (28) of the judgment, the principles culled out by the Supreme Court are as under:-

“(i) *The power of Tribunal to review its order/decision under Section 22(3) (f) of the Act is akin/analogous to the power of a Civil Court under Section 114 read with order 47 Rule (1) of CPC.*

“(ii) *The Tribunal can review its decision on either of the grounds enumerated in order 47 Rule 1 and not otherwise.*

(iii) *The expression “any other sufficient reason” appearing in Order 47 Rule 1 has to be interpreted in the light of other specific grounds*

(iv) *An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as a error apparent in the fact of record justifying exercise of power under Section 22(2) (f).*

(v) *An erroneous order/decision cannot be corrected in the guise of exercise of power of review.*

(vi) *A decision/order cannot be reviewed under Section 22(3) (f) on the basis of subsequent decision/judgment of a coordinate or a larger bench of the Tribunal or of a superior court*

(vii) *A decision/order cannot be reviewed under Section 22(3)(f).*

(viii) *While considering an application for review, the Tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.*

(ix) *Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also 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 before the Court/Tribunal earlier.”*

5. For the reasons discussed in the foregoing paras, I do not find any merit in the RA. Accordingly, the RA is dismissed in circulation.

6. In view of the above, no separate order is required to be passed in MA No.3328/2018, which accordingly stands disposed of.

(K.N. Shrivastava)
Member (A)

‘San.’