

CENTRAL ADMINISTRATIVE TRIBUNAL,
CALCUTTA BENCH
KOLKATA

RA No.350/00029/2016
O.A.No. 350/01859/2015
(Disposed of on 20.09.2016)

Date of Order: 09/11/2016

CORAM :

Hon'ble Mr Justice Vishnu Chandra Gupta, Judicial Member
Hon'ble Ms Jaya Das Gupta, Administrative Member

ABDUL BASIR & ANR
-Vs-
UNION OF INDIA & ORS

For the Applicant :Ms.P.Mondal, Counsel

O R D E R

MS.JAYA DAS GUPTA, AM

The Applicants have filed this RA on 06.10.2016 seeking to review the order dated 20.09.2016 in OA No. 350/01859/2015 and the same has been placed before us, as per the Rules, under circulation, for consideration as to whether this is a fit case to be placed before the Bench for considering on the question of admission. The order which has been sought to be reviewed has been passed by us. The relief sought by the applicants in this RA is as under:

"In view of above, the applicant humbly pray that Your Lordships will graciously be pleased to review/recall the order dated 20.09.2016 passed by the Hon'ble Justice Shri Vishnu Charan Gupta and Hon'ble Ms. Jaya Das Gupta and to hear the matter on merit and to pass such further order or orders and/or Direction or Directions as Your Lordships may deem fit and proper."

(emphasis added)

2. The gist of the matter is that the applicants filed No. 350/01859/2015 seeking the following reliefs:

"8(a) Office order being No. E/LARGESS-2012/Notification/MLDT/Pt-1 dated 05.11.2015 issued by the Sr. Divisional Personnel Officer, Eastern Railway, Malda is not tenable in the eye of law and as such the same should be quashed.

(b) An order do issue directing the respondents to grant an appointment in favour of the applicant no.2 under the "Liberalized Active Retirement Scheme for Guaranteed Employment for Safety Staff".

(c) An order do issue directing the respondents authorities to allow the applicant No.1 to retire from his post with all benefits admissible under "Liberalized Active Retirement Scheme for Guaranteed Employment for Safety Staff".

(d) Pass such further order/orders and/or direction/directions as Your Lordships may deem and proper."

3. This Bench of the Tribunal, after giving in-depth consideration to the totality of the matter disposed of the OA on 20.09.2016. The operative part of the order is quoted herein below:

"5. On going through the impugned order it appears that the applicant as stated by him earlier in Annexure-A/1 at page 18 of the OA, had already retired on 31.07.2015. He approached this CAT on 03.12.2015 i.e. after he has already retired. At least if he had approached CAT before his normal date of retirement, the OA could have been considered but we cannot apply the LARSGESS Scheme to a person who is seeking benefit under the scheme of voluntary retirement, after he has normally retired and when the scope of voluntary retirement as per LARSGESS scheme is gone forever."

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4. By filing this instant RA, the applicants, in fact, seek for re hearing of the OA, on merit, afresh, on the ground that the observation of the Tribunal that the applicant filed the present OA after the date of retirement, and, therefore, he is not entitled to the relief claimed whereas, the applicant earlier filed OA No. 350/01178/2015 which was disposed of on 24.08.2015. As per the order of this Tribunal, the Respondents considered the request of the applicants but rejected vide order dated 05.11.2015 which was challenged by the applicants in the present OA. As such, the applicants were very much before this Tribunal before the date of retirement of the railway employee. Hence, the order is liable to be reviewed/recalled.

5. We have gone through the records of the OA No. 1859/2015 and the order dated 20.09.2016 vis-a-vis the record of the RA. It is not in dispute that applicant No.1 applied for voluntary retirement on and around 27.06.2012 and for the reason of non acceptance of his retirement he continued in service with no evidence filed that he continuously pursued his case with the respondent authorities for accepting his prayer for voluntary retirement and ultimately retired from service on reaching the normal age of superannuation on 31.07.2015. It is true that he filed the earlier OA No. 350/01178/2015 on 23.07.2015 which was disposed of by the Tribunal on 24.08.2015 with direction to the Respondents as under:

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"4. Be that as it may, we are not concerned with the allegations made by the applicants against the Railways. One fact is clear that the Full Bench of CAT declared the constitutional validity of the Largess Scheme and accordingly the CT would direct the Railway authority to consider the individual merit of the applicants and scrutinize the same and proceed further with the matter subject to the decision, if any that might emerge from the Hon'ble Court or the Hon'ble Supreme Court in this regard. The case of the applicants be considered within a time frame of two months from the date of receipt of a copy of this order."

6. In pursuance of the aforesaid direction of this Tribunal the Respondents considered the case of the applicants but rejected vide order dated 5.11.2016 which was challenged in OA No. 1859/2015 filed on 03.12.2015 which was dismissed on 20.09.2016. So the stand of the Applicants that as the applicants have filed the earlier OA nine days before the normal date of retirement of applicant No.1 is of no ground to review the order as he continued in service till attaining the age of superannuation on 31.07.2015 and final order of the Respondents was challenged by the applicants in OA No. 1859 of 2015 only after the normal date of retirement of applicant No. 1.

7. Also the prayer of the applicant for rehearing on merit made in this RA is not tenable because it does not come within the ingredients of Order 47, Rule 1 of CPC as held by the Hon'ble Apex Court in the case of **Parsion Devi & Ors. vs. Sumitri Devi & Ors.**, (1997) 8 SCC 715. The relevant portion of the aforesaid decision is quoted herein below:

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"9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. **In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected.** A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise".

(Emphasis added)

8. In view of the above, there is no ground to review/recall the order dated 20.09.2016 in OA No. 350/01859/2015 so as to rehear the matter afresh. The RA is accordingly dismissed. Inform the parties.

(Ms. Jaya Das Gupta)
Admn. Member

(Justice V.C. Gupta)
Judicial Member