

Date of Order: 03.10.2018

HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER

- Versus -

ORDER
[In Circulation]

“16. In view of the above, it emerges that the action of respondents are in violation of Railway Service (Pension) Rules, 1993 and is also contrary to their own guidelines/directions. In this view of the matter, the applicant cannot be deprived of his constitutional rights to receive DCRG and Leave Encashment from the date of his retirement. Hence, the OA is allowed, and the respondents are accordingly directed to release all gratuity amount and also the amount of Earned Leave Encashment in favour of the applicant within six weeks from the date of receipt of this order. So far as interest part on delayed payment of gratuity and leave encashment is concerned, this Tribunal finds that the delay is attributable to the administrative lapses,

therefore, the respondents are directed to pay simple interest at the rate of 8% per annum from the date beyond three months of superannuation. No order as to costs.”

2. It is noticed that though the order in OA was passed on 13.10.2017, but the instant RA has been filed on 01.06.2018 with a petition for condonation of delay in filing the RA vide MA/050/00347/2018 although there is no such provision under the CAT(Procedure) Rules, 1987. Nevertheless, the grounds taken for delay in filing the RA are not satisfactory. Otherwise also, I am not convinced with the grounds taken by the applicants (Respondents in OA) in the instant RA petition for review of the order dated 13.10.2017 passed in OA/050/00778/2015 as the scope of review is very limited only to correcting self evident errors. There is no apparent error on the face of record In the Tribunal's order dated 13.10.2017.

3. As per several pronouncements of Hon'ble Supreme Court, viz. ***Parsion Devi & Others Vs. Sumitri Devi & Others [1997(8) SCC 715]*** and ***State of West Bengal Vs. Kamal Kumar Sengupta [2008(8) SCC 612]***, the scope of review is very limited, mainly to correcting self-evident errors.

4. In the case of **Parsion Devi** (supra), Hon'ble Supreme Court has held as under:-

"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". There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter only can be corrected by exercise of the review jurisdiction. A review petition has a limited purpose and cannot be allowed to be "*an appeal in disguise*". [Emphasis added]

5. Further, in the case of **Kamal Kumar Sengupta** (supra), Hon'ble Supreme Court has held as under:-

“ The principles which can be culled out from the above noted judgments are :

(i) The power of the 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 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 record justifying exercise of power under Section 22(3)(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 larger bench of the Tribunal or of a superior Court.

(vii) 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.

(viii) 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.”

6. This review application amounts to request for re-hearing and re-adjudication which is beyond the scope of review.

Therefore, the RA as well as MA is dismissed in circulation.

[J.V. Bhairava]
Judicial Member

Srk.