

**CENTRAL ADMINISTRATIVE TRIBUNAL
AMHEDABAD BENCH**

**Review Application No.04/2019 in O A No. 536/2018
Ahmedabad, this the 10th April, 2019**

CORAM :

Hon'ble Shri M.C. Verma, Member (J)

- 1 Radheyshyam S/o Ramcharitra Mishra,
Age 62 yrs, Retired Hindu by Religion,
Residing at : A/3, Sumukh Appt. Jawahar chowk,
Maninagar, Ahmedabad – 380008.
- 2 Mahendrasingh S/o Udhavsinh Ailsinghani,
Age 68 yrs., Retired Sikh by Religion,
Residing at : B/204, Popular Paradise, Satyam Vista
Lane, Gota, Ahmedabad – 382481.
- 3 Sanjay S/o Mangaldas Shah
Age 61 yrs, Retired, Hindu by Religion,
Residing at: B-9, Aadesh Apartment,
Nr. Hasubhai Park, Jodhpur, Ahmedabad – 380015.
- 4 Anil S/o. Rammanoharlal Khare,
Age 62 yrs, Retired, Hindu by Religion,
Residing at: B-23, Parth Apartment, Ramdevnagar,
Satellite, Ahmedabad – 380015.
- 5 Smt Madhvai W/o Jaykumar Joshi,
Age 67 yrs, Retired, Hindu by Religion,
Residing at : 20/141, Pragatinagar, Narapura,
Ahmedabad – 380015.
- 6 Smt Ruksana W/o hiyas Jariwala,
Age 62 yrs, Retired Muslim by Religion,
Residing at:A-2 Diamond Apartments, Kocharab,
Paldi, Ahmedabad – 380007.
- 7 Rameshkumar S/o Maniram Gorkha,
Age 62 yrs, Retired, Hindu by Religion,
Residing at: E/203, Darshanam Antica,
Danteshwar-Tarsali Raod, Vadodara – 390009. .. Review Applicants.

By Advocate Shri Mahesh H Chandrana

V/s

- 1 Director General,
E.S.I. Corporation,
Panchadeep Bhavan, C.I.G. Marg,
New Delhi – 110002.

ORDER

Per Shri M C Verma, Member (Judicial)

- 1 Instant Review Application has been filed by applicants in OA No.536/2018 disposed of on 12th December, 2018 seeking the following prayers:- *(1)Admit this review application in the interest of justice. (2)Restore the original application No.536/2018 with MA No.450/2018 which was dismissed/disposed off vide order dated 12.12.2018. (3) Grant such other and further reliefs as may be deemed fit and proper in the particular facts of the case.”*
- 2 Said OA No.536/2018 had been preferred by seven retired employees of E.S.I. Corporation under the Ministry of Labour & Employment and their case in the OA was that they have opted Pensioners Medical Scheme, 2006 , the Scheme was optional and a members could pay either lifetime or annual subscription to avail medical facilities after retirement and they opted for lifetime/annual subscription. The grievance of the applicant was revision of subscription rate with retrospective date and the order under challenge was revision of rate of contribution as has been made vide Annexure A-1, letter dated 06.03.2018 on the subject: **“ESIC Pensioners Medical Scheme, 2006 - rates of contribution”**. Interestingly this letter in unequivocal term stipulates that pensioners beneficiaries who have already obtained ESIC card with life time validity will not be required to pay any additional amount. Sub Clause (i) of Clause (3) of said letter reveals **“Pensioners beneficiaries, who have already obtained ESIC card with life time validity by paying a lump sum amount equivalent to 10 years’ contribution will not be required to pay any**

additional OA/536/2018 CAT, Ahmedabad Bench -6- amount as a result of the revision in the rates of contribution for availing ESIC facility". As per submission made at Bar all the applicants are those who have already obtained ESIC card with life time validity. When applicants are persons who have already opted and have obtained ESIC card with life time validity, to avail ESIC facility, they do not appear to be affected. Hence the OA was dismissed.

- 3 In review application applicants are referring ESIC New Delhi Letter No. D.12 /16/2017- Vol.1 dated 17/8/17 and have pleaded that as per Para 4 of this letter the instructions dated 6/3/18 were made effective from 1/2/17. Unfortunately this Letter, No. D.12 /16/2017- Vol.1 dated 17/8/17, was not impugned in the OA and the prayer made for relief in OA only were:- (A) *Quash the order No.D12/16-12017 E-VI dt. 06.03.2018 of the respondent regarding revision of rate of subscription with retrospective effect.* (B) *Not to recover any amount from the applicants, due to such revision.* (C) *Revision of rate should be applicable only after expiry of validity period of the card already issued.* (D) *Refund/adjust against future payment amount paid by the applicants by the applicants due to such revision, on the constant demand of respondents and to continue to avail medical facility/treatment.* (E) *Allow cost of this application to the applicants.* (F) *Pass such other orders or relief, as deemed fit and proper in the interest of justice in favour of applicants in view of facts and circumstances of the case.*
- 4 The scope for a review application is clearly defined in various orders of the Hon'ble Supreme Court. The Hon'ble Supreme Court in the case of *State of West Bengal & others v. Kamal Sengupta and another* (2008) 3 AISLJ 209 has held that the Tribunal can exercise the powers of a Civil Court in relation to matters enumerated in clauses (a) to (i) of sub-section (3) of Section 22 of the Administrative Tribunals Act including the power of reviewing its decision. By

referring to the power of a Civil Court to review its judgment/decision under Section 114 CPC read with Order 47 Rule 1 CPC, the Hon'ble Supreme Court laid down the principles subject to which the Tribunal can exercise the power of review. At para 28 of the said judgment the Hon'ble Supreme Court culled out the principles which 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 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."*

4 Bearing in mind the above law set out by the Hon'ble Supreme Court, I have examined the ground urged by the Review Applicant in support of his prayer for reviewing the order. In instant review application, applicants have not brought any new facts on record to illustrate that there is error apparent on the face of the record in the Order, review of which has been sought for nor could illustrate any other

ground justifying reviewing. These being the facts, I do not find any error of fact or law in the order dated 12.12.2018 in OA 536/2018. The applicant has failed to point out any error much less an error apparent on the face of record justifying the exercise of power under sub-clause (f) of sub-section (3) of Section 22 of the Administrative Tribunals Act, 1985. The review application deserves to be dismissed and accordingly, the same is dismissed.

(M C Verma)
Member(J)

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