

(Reserved on 11.10.2018)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

(THIS THE 14th DAY of December, 2018)

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A)
HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)

Civil Misc. Review Application No. 330/00019/2013
(On behalf of Union of India & others)

In

Original Application No. 330/00279/2007.

Gore Lal, S/o Late Shiv Shankar, R/o Village – Bans Ka Pura, Post
Office – Kodraon, Police Station – Kakhranj, District - Kaushambi.

.....applicant

V E R S U S

1. Union of India through General Manager, Northern Railway,
Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Lucknow
Division, Lucknow.
3. Senior Divisional Personnel Officer, Northern Railway,
Lucknow Division, Lucknow.

.....Respondents

Advocate for the Applicants Respondents :-Shri P. Mathur

Advocate for the Respondent Applicant:- Shri A.K. Srivastava

ORDER

(Delivered by Hon'ble Mr. Gokul Chandra Pati, AM)

The instant Review Application has been filed by the Union of India (hereinafter referred to as applicants) against the order dated 30.11.2012 passed by this Tribunal in OA No. 279/2007 – Gore Lal Vs. UOI & Ors. The OA was disposed by this Tribunal vide order dated 30.11.2012 with following direction: -

“9. Keeping in view the provisions of paragraph 2318 of IREM Vol. II and the decision of the apex court in the case of Prabhavati Devi (Supra), this Tribunal is of the concrete opinion that the applicant may be deemed to be in continuous service subject to the prescription that for the said purpose, half the period of his past service shall be reckoned and there shall be

no wages for the period he was out of service. This past period is counted only for the purpose of qualifying service for pension and nothing else. For this purpose, there shall be a formal sanction of the Railway Board and this case shall not be quoted as a precedent as this order is passed under peculiar facts and circumstances.

10. Let Respondent No. 2 take up the case with the Railway Board through first respondent so that the case could be considered at Railway Board level and sanction accorded.”.

2. Since there is a delay of more than five months in filing Review Application, the applicants have filed M.A. No. 2197/2013 alongwith affidavit for condonation of delay. The grounds for condonation of delay mentioned in the affidavit are as under: -

- i. Immediately on receipt of certified copy of the order dated 30.11.2012 on 23.01.2013, the matter was sent to the legal branch, who put up the same before the competent authority for taking appropriate decision.
- ii. Since the matter was referred to the Railway Board, as such the concerned file was sent to the Northern Railway, Baroda House, New Delhi on 01.03.2013. Thereafter , on receipt of legal opinion on 22.03.2013 for filing review application, the matter was remitted to the Northern Railway Headquarter for filing present review application vide order dated 03.04.2013 (Annexure-1 to the Affidavit).
- iii. The delay in filing review application is neither intentional nor deliberate.

3. We have heard learned counsel for the applicant and perused the material on record. Admittedly, the present Review Application is filed beyond 30 days with a delay condonation application under rule 17 of the CAT (Procedure) Rules, 1987, which states as under:-

“17. Application for review – (1) No application for review shall be entertained unless it is filed within thirty days from the date of receipt of a copy of the order sought to be reviewed.”

Hence, the Review Application filed beyond 30 days will not be maintainable in terms of the aforesaid rule 17.

4. In the case of **K. Ajit Babu Vs. Union of India – 1997 (6) SCC 473 (Para 4)**, while examining the provisions of Section 22(3)(f) of the AT Act and the Rule 17(1) of CAT (Procedure) Rules and also order 47 Rule 1 of CPC, the Hon’ble Apex Court held that the right of review is available to the aggrieved person on restricted ground as mentioned in the Oder 47 of the Code of Civil Procedure if filed within the period of limitation. The matter of condonation of delay in such cases also came before the Full Bench of Hon’ble Andhra Pradesh High Court in the case of **G. Narasimha Rao Vs. Regional Joint Director of School Education, Warangal and others – 2005(4) SLR 720** and it was held that the Tribunal will not have jurisdiction to condone the delay under the Limitation Act. In this case, this Review Application was filed on 16.05.2013 impugning the order dated 30.11.2012 of this Tribunal.

5. It is seen that there is delay of more than five months and the reasons in the Misc. delay condonation application No. 2197/2013 pertains to official procedure, which are considered to be inadequate.

6. For the reasons stated above, we do not find the reasons furnished in the application for delay condonation to be adequate enough to consider condonation of delay, which is also not permissible as per law in view of the above discussions at para 3 and 4 above. Accordingly, the Misc. Application No. 2197/2013 for condonation of delay in filing the review application is liable to be dismissed.

7. The review application has been filed on 16.05.2013 mainly on following grounds: -

i. The Tribunal had recorded its finding that the original application is time barred but taking a sympathetic view of the accident of the applicant during duty hours, the matter was remitted for passing necessary order by the Divisional Railway manager.

ii. The direction given by the Tribunal is against rules because on one hand the claim of the applicant is excessively time barred and on the other hand had directed the respondents for consideration of the claim of the applicant for absorption in alternative category.

iii. The case of the applicant was reconsidered by the respondents in pursuance of the direction of this Tribunal and he was given appointment vide order dated 07.01.2006 in pay scale of Rs. 2550-3200. But the applicant has filed OA No. 279/2007 for treating him to be in continuous service w.e.f.11.12.1987 to the date of appointment on 07.01.2006 passed in compliance of the order of this Tribunal dated 27.10.2004.

iv. After recording the opinion for consideration by the competent authority and simultaneously giving a binding direction to the Railway Board for according sanction is contradictory in nature.

8. Review application to review the order of the Tribunal are considered by the Tribunal under Rule 1 of the Order 47 of the Civil Procedure Code (in short CPC), which states as under:-

“1. Application for review of judgement

(1) Any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but from no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgement to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgement notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

[Explanation.-The fact that the decision on a question of law on which the judgement of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgement.]”

From above provisions of the Rule 1 of the Order 47, the scope of review by this Tribunal is limited to the grounds of (i) discovery of any new and important facts or evidence which was not within the applicant’s knowledge and which, after exercise of due diligence, was not within his knowledge or could not be produced at the time of consideration of the O.A.; or (ii) some mistake or error apparent on the face of the record; or (iii) for any other sufficient reasons. In the case of **Ajit Kumar Rath vs. State of Orissa and Ors – AIR 2000 Supreme Court 85**, it was held by Hon’ble Apex Court as under:-

“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 of a person on the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made. The power can also be exercised 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 analogous to those specified 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."

9. It is noted that this Tribunal, while exercising the power under the section 22 of the Administrative Tribunals Act to review its order cannot function like an appellate forum as per the judgment of Hon'ble Apex Court in catena of cases. . In the case of **State Of West Bengal And Others v. Kamal Sengupta and another - (2008) 8 SCC 612**, Hon'ble Supreme Court after taking into account almost entire case law on review, has held as under:

"22. The term "mistake or error apparent" by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of order 47 rule 1 cpc or section 22(3)(f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision."

10. Hon'ble Supreme Court in **Andhra Pradesh State Road Transport Corporation Vs. Abdul Karim - 2007 (2) Scale page 129** has held that the review application cannot be lightly entertained. It should be entertained only when there are manifest error which crept up in the judgment resulting serious miscarriage of justice.

11. Further, the Review Application cannot be entertained on the grounds which were already considered in the OA. In the case of **Kamlesh Verma v. Mayawati And Others reported in 2013 AIR SC 3301**, Hon'ble Supreme Court has held as under:

“18. Review is not rehearing of an original matter. The power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. A repetition of old and overruled argument is not enough to reopen concluded adjudications.
.....

19. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of order 47 rule 1 CPC. In review jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible under the review jurisdiction.”

12. In view of the above discussions, the grounds mentioned in the Review Application cannot be considered to be mistakes or error apparent on record. There are not the grounds for consideration of the Review Application under rule 1 Order 47 of the CPC. In the impugned order dated 30.11.2012, the directions given by this Tribunal cannot be stated to arise out of any factual error or mistakes apparent on the face of the record. In case the review applicant is aggrieved by the order, it is open for him to take appropriate legal recourse as per law.

13. Shri P. Mathur, learned counsel for the review applicants had referred to a Full Bench judgment of this Tribunal while arguing the case and copy of the operative part of the order was submitted. It is seen that the issue which was considered by the said Full Bench judgment related to the family pension for casual labourers under the Railways. There is nothing on record to show that the said judgment was placed before the Tribunal at the time of consideration of the OA. Hence, it is not helpful for the purpose of deciding the present Review Application.

14. In view of the above discussions, the Review Application is not maintainable both on the ground of delay as well as on merits. Hence, the Review Application is dismissed. There will be no order as to costs.

MEMBER (J)

MEMBER (A)

Anand...