

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Review Application No. 180/00001/2019 in
Original Application No. 180/00983/2014

Monday, this the 7th day of January, 2019

CORAM:

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member

Kochurani Lawrence, W/o Lawrence,
Aged 54 years,
Senior Accountant,
Office of the Controller of Communication Accounts,
Kerala. (Department of Telecommunications)
Door Sanchar Bhavan, Thiruvananthapuram-695 033.
Residing at: "Alphonsa", No.TC.3/1062(3), VN-66B ,
Vyasa Nagar, Pattom P.O.,
Thiruvananthapuram-695 004. **Review Applicant**

(By Advocate : Mr.Antony Mukkath)

V e r s u s

1. The Union of India,
Represented by the Secretary,
Ministry of Communications & Information Technology,
(Department of Telecommunications)
New Delhi – 110 001.
2. The Controller of Communication Accounts,
(Department of Telecommunications),
Office of the Controller of Communication Accounts,
Kerala, Ministry of Communications &
Information Technology, Door Sanchar Bhavan,
Thiruvananthapuram-695 033.
3. The Deputy Controller of Communication Accounts (Admn),
(Department of Telecommunications),
Office of the Controller of Communication Accounts, Kerala,
Ministry of Communications & Information Technology,
Door Sanchar Bhavan, Thiruvananthapuram – 695 033.

4. Registrar,
Rajiv Gandhi University,
(Central University),
Rono Hills, Doimukh P.O.,
Itanagar -791 112, Andra Pradesh. ... Respondents

(By Advocate : Shri. N.Anil Kumar,SCGSC)

ORDER (By circulation)

Per : Mr. E.K.Bharat Bhushan, Administrative Member

Applicant in this review application is the applicant in OA No. 180/983/2014 which was dismissed by this Tribunal vide Annexure RA-1 order dated 16.11.2018. Applicant in the OA was Senior Accountant, Office of the Controller of Communication Accounts, (Department of Telecommunications), Kerala. Applicant had approached this Tribunal seeking counting of her past service and to include her under the Pension rules applicable to those who are appointed prior to 01.04.2004 in Government service. The applicant was initially appointed as LDC under the 4th respondent University on 23.06.1987. She was promoted as UDC on 18.05.1993 and further as an Assistant with effect from 23.09.1998. Meanwhile Bharat Sanchar Nigam Limited (BSNL) had been founded with effect from 01.10.2000 on account of corporatisation of the Department of Telecommunications. As there was urgent need to have Accountants posted in the new organisation the applicant came on deputation to work with BSNL. She continued on deputation basis up to 08.02.2010 and was repatriated on completion of her term. Meanwhile the applicant came by a notification issued by the Respondents-1 to 3 for appointment of Senior

Accountants on permanent absorption basis. Having been selected, the applicant at her request was relieved from the service of her erstwhile employer as per order dated 08.09.2010, copy of which is at Annexure A3. The review applicant joined the post in BSNL on 13.09.2010. She claimed that by virtue of OM bearing No.28/10/84-Pension Unit dated 29.08.1984, the review applicant is entitled to reckon her past service for the purpose of pension and other benefits.

2. Respondents disallowed her plea for inclusion in the old pension scheme reckoning her service in Rajiv Gandhi University. The applicant contends that this decision has been in contravention of the OM issued by the DOPT and she argues that as required under the provisions of the OM she had filed her option within time and the authorities were wrong in depriving of her rights.

3. In Annexure R-1 order this Tribunal dismissed the O.A for the reasons as follows:-

“9. The applicant's case is for being included in the old pension scheme on the ground that she had filed an option for being included under that scheme within one year of being absorbed in BSNL. This would enable her to count her seniority by reckoning her past service with her erstwhile employer as well. Hence she is seeking that her seniority in the final gradation list in Annexure A10 is to be revised upwards, while at the same time making her eligible to be part of the more beneficial old pension scheme.

10. The current rule relating to mobility of personnel among Central/State Autonomous Body while working under pensionable establishment is governed under Government of India , Department of Pension and Pensioners' Welfare OM No.28/30/2004-P&PW(B) dated 28.10.2009. Para-2(c) reads as follows:

“ 2(c) the pre-existing arrangement of mobility between

State/Central Autonomous Body to Central/State Government and between Autonomous Bodies that were governed by old pension schemes in force up to 31-12-2003 vide No.28/10/84-P&PW, dated 7-2-1986 (Sl.No.240 of Swamy's Annual, 1986) and O.M.No.28/10/84-Pension unit, dated 29-8-1984 (Sl.No.118 of Swamy's Annual, 1984), stand restored although those under CPF etc. will not be allowed entry into the old pension scheme on appointments from 1-1-2004.”

11. Regardless of any previous concession made the relevant rule clearly lays down that those under CPF will not be allowed entry into old pension scheme on appointment from 01.01.2004. The applicant was covered under CPF when she was with her erstwhile employer and she came to be absorbed under BNSL several years after to 01.01.2004. As such the condition put out in the OM above clearly stands in the way of the applicant obtaining the benefit sought. Added to this is the fact that the applicant on her own sought and received all terminal benefits from her erstwhile employer. After having claimed her CPF dues cum Gratuity from her previous employer, she is now demanding to claim the benefit of that service to move up in seniority and partake of the more beneficial old pension scheme. Clearly this is untenable.

13. For reasons cited above, the OA is dismissed as devoid of merits. No costs.”

4. The review applicants state that in Annexure RA-1 this Tribunal proceeded on the wrong premise that the Review Applicant is a BSNL employee instead of civil servant under the Department of Telecommunication. The conditions of service of the Review Applicant is governed by the FRSR and CCS(Pension) Rules. The service of the review applicant under the 4th respondent also governed by the very same set of Rules. Review Applicant contends that she is entitled to count her service under the 4th respondent along with her service under the Department of Telecommunication. Review Applicant alleges that this Tribunal committed a serious error in holding that the applicant was covered under CPF when she was with her erstwhile employer.

5. We have carefully gone through the record. True, in Annexure RA-1 order there is a finding that after having claimed CPF dues cum Gratuity from the review applicant's previous employer, she is now demanding to claim the benefit of that service to move up in seniority and partake of the more beneficial old pension scheme. This Tribunal took such a conscious decision in RA-1 order because the applicant was covered under CPF when she was with her erstwhile employer and she came to be absorbed under BSNL several years subsequent to the date of 1.1.2004. As such, the condition put out in the O.M No.28/30/2004-P&PW(B) dated 28.10.2009, para 2(c), clearly stands in the way of the applicant obtaining the benefit sought and hence the O.A was dismissed.

6. The apex court in *State of West Bengal & Ors. v. Kamal Sengupta & Anr.* - 2008 (2) SCC 735 has enumerated the principles to be followed by the Administrative Tribunals when it exercises the power of review of its own orders under Section 22(3)(f) of the Administrative Tribunals Act, 1985. They 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 a 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.”

7. In the light of the above decision and in view of the facts and circumstances of this case, we do not find any error apparent on the face of the record which would warrant review of this Annexure RA-1 order. Accordingly RA is dismissed.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

List of Annexures

Annexure RA-1 - Photo copy of the order dated 16.11.2018 in O.A
No.180/00983/2014 of this Tribunal

-X-X-X-X-X-X-X-X-