

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

**Review Application No.7 of 2019
In
Original Application No.21/68/2018**

Date of Order: 19.02.2019

Between:

M. Sivarama Krishna, S/o. late Sri Rama Murthy,
Aged about 66 years, Retired LDC,
National Savings Institute, R/o. Plot No. 46,
Opp. Sri Ramulu Residency, Narayana Reddy Colony,
Ramachandrapuram PO – 502 032,
Medak District, Telangana State.

...Applicant

And

The Union of India, rep. by

1. Regional Director, National Savings Institute,
Kendriya Sadan, 1st Floor, F Wing,
Koramangala, Bengaluru – 560 034.
2. The Joint Director, National Savings Institutes,
Ministry of Finance, Department of Economic Affairs,
ICCW Building, 4-Deen Dayal Upadhyaya Marg,
New Delhi – 111 002.
3. The Secretary to Govt. of India,
Ministry of Finance,
Department of Pensions and Pensioners Welfare,
Lok Nayak Bhavan, Khan Market, New Delhi – 110 003.

...Respondents

Counsel for the Applicant ...
Counsel for the Respondents ...

Mr. E. Krishna Swamy
Mr. M. Brahma Reddy, Sr. PC for CG

CORAM:

Hon'ble Mr. B.V. Sudhakar ... Member (Admn.)

ORDER (By Circulation)
{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.)}

2. This Review Application has been filed in regard to the decision of this Tribunal dated 27.12.18 in OA No. 68 of 2018. The operative portion of the said order, reads as under:

"F. The learned counsel for the applicant referred to the orders of Hon'ble Bangalore, Ernakulam benches of this Tribunal and also to the observations of Hon'ble High Court of Delhi and Hon'ble High Court of Kerala in support of his contention for payment of arrears of pension from 1.1.2006. The claim for arrears of pension is nearly 12 years old. It comes under the ambit of the observation made by the Hon'ble Supreme Court referred to in para 7(E). Hence this Tribunal respectfully abides by the order of the Hon'ble Supreme Court in the cited judgment. This Tribunal has taken the stand of confining arrears of pension to 3 years in Original Application Nos.518/2015, 401/2015, 402/2015, 404/2015, 482/2015, 568/2015, 716/2015, 717/2015, 718/2015, 807/2015, 1039/2015 & 165/2018. The same holds good even in the present case as well and the claim of the applicant for payment of revised rates of pension right from 01-01-2006 fails. All that could be granted to the applicant is the higher rate of pension for a period reckoned from three years anterior to the date of filing of the OA.

G. Thus based the aforesaid discussion, the OA is allowed to the extent as hereunder and the respondents are directed to consider as under:

- i) *Revising pension of the applicants based on the recommendation of the 6th CPC and accepted by the Govt, by working out the pension as 50 percent of last pay drawn using the Concordance table appended to O.M dt 1.9.2008 issued by Dept of Pension and Pensioners' Welfare, G.O.I*
- ii) *Working out and release the arrears of pension for a period of 3 years prior to the date of filing the OA as per para 5 of the verdict of the Hon'ble Supreme Court in CA No. 5151 of 2008 – 5152 of 2008 in Union of India & Others Vs. Tarseem Singh.*
- iii) *Time calendared to comply with the order is 7 months from the date of receipt of this order.*
- iv) *No order to costs."*

3. As no hearing is considered necessary, the Review Application is being disposed under circulation as per Rule 17(3) of the C.A.T. (Procedure) Rules, 1987.

4. In a review, new facts cannot be considered. Therefore, the GOI order dt 4.1.19 does not come to the rescue of the applicant as the judgment in respect of the OA is dt. 27.12.18. Restriction of pension is for 3 years based on Honourable Supreme Court Judgment in Union of India & Others Vs. Tarseem Singh reported in CA No. 5151 of 2008 – 5152 of 2008. Hon'ble Supreme Court has given elaborate reasons as to why it should be so and

hence need not be reiterated. Time allowed to implement the judgment is 7 months as it has to be examined by different wings of the Ministry and if necessary consult other Ministries. The verdict has financial repercussions which would have all India ramifications and hence reasonable time has to be given and accordingly ordered. The applicant claims that the order of the Tribunal should not be a directive to consider but it should be a straight forward directive to the respondents to enforce the order. The applicant claims in RA that this Tribunal should not issue an order wherein the word “Consider” is used to direct the respondents. This is a mistaken perception of the applicant that every order of the Tribunal has to be an open directive so that the order is enforceable and actionable. The term “consider” came up for interpretation of the Apex Court. Any order issued by the Tribunal is enforceable and actionable based on law. Use of the word “Consider” is based on the Hon’ble Supreme Court directive in the case of Divisional Personnel Officer, Southern Railway vs T.R.Chellappan (1976) 3 SCC 190 wherein the said term has been interpreted as under:-

The word “consider” has been used in contradistinction to the word “determine”. The rule-making authority deliberately used the word “consider” and not “determine” because the word “determine” has a much wider scope. The word “consider” merely connotes that there should be active application of the mind by after considering the entire circumstances of the case.

5. The Tribunal after proper rumination spelt out the law on the subject and determined the extent of applicant’s entitlement to pension. That far and no further. It is for the authority to keep in view the above decision and with various kindred subjects has to work out the extent of amount due and payable to the applicant. For this purpose, the respondents are to apply their mind and

pass orders, though they cannot sit in appeal over the decision already made and indicated in the order under review. Their consideration of the case is from the facts available on record and should there be any relevant facts which have not been taken into consideration by the Tribunal the same could be brought to the notice of the Tribunal. Needless to mention that if there is no impediment in the entitlement of pension to the applicant on the basis of the legal issue decided by the Tribunal, the applicant cannot have any grievance. If, after consideration, the respondents come to a conclusion which is not, according to the applicant, in order, he always has a right to approach the Tribunal again. Secondly, the use of the term “consider” has been consciously and judiciously used by the Tribunal and certainly, it is not an inadvertent error to have it rectified under the Review jurisdiction. It is a term judiciously used by the Tribunal under the discretion available to it and no one can dictate as to how to use that discretion wherein it was held that the orders of the Tribunal has to be. Consequently, the plea of the applicant in this regard has no legal leg to stand.

6. Besides, a plea for review, unless the first judicial view is manifestly distorted, is like asking for the moon. A forensic defeat cannot be avenged by an invitation to have a second look, hopeful of discovery of flaws and reversal of result. [Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi, (1980) 2 SCC 167]. The review should be as per guidelines of Apex Court in the case of State of W.B. vs Kamal Sengupta (2008) 8 SCC 612 which are as under:-

“35. 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 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.”*

7. Applying the above norms, the only area where a relook is required is in regard to the period for which arrears of pension was allowed. It was directed that it shall be for a period of 3 years prior to the date of filing of the OA. The OA was filed in Jan 2018. The 6th CPC has covered the period from 1.1.2006 to 31.12.2015. Hence the arrears ought to be confined to this time span. The judgment per se is not erroneous but there is a self evident error of clerical nature, in regard to period of arrears. Accordingly, para G (ii) of the order in OA cited above is modified as under. Respondents are directed to consider the same:

i) Work out and release the arrears of pension for a period of 3 years covering the calendar years 2013, 2014 & 2015 as per para 5 of the verdict of the Hon'ble Supreme Court in CA No. 5151 of 2008 – 5152 of 2008 in Union of India & Others Vs. Tarseem Singh.

8. Besides, Division Bench of this Tribunal has issued similar orders in identical cases in Original Application Nos.518/2015, 401/2015, 402/2015, 404/2015, 482/2015, 568/2015, 716/2015, 717/2015, 718/2015, 807/2015, 1039/2015 & 165/2018. Therefore as per Honourable Supreme Court directive in ***Sub-Inspector Roopal vs Lt. Governor, (2000) 1 SCC 644*** the judgment of the division bench of this Tribunal has to be adhered to.

9. Accordingly, with the modification as at para 6 (i), the RA is partly allowed. Respondents to take note and accordingly act.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 19th day of February, 2019

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