

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

**Review Application No. 021/02/2019
in
Original Application No.813 of 2017**

Order of Order: 11.01.2019

Between:

M.S.S. Ramchandra Murthy
S/o. late Suryanarayana Murthy,
Aged about 67 years, Hindu, Gr. B.,
Retired Personnel Assistant to DGM (Marketing),
HMR Pride, 2nd Floor, F. No. 202, Manjeera Pipeline Road,
Madinaguda, Hyderabad – 500 049.

...Applicant

And

1. Union of India, Rep. by its Secretary (DOT),
Govt. of India, New Delhi – 110 001.
2. The Chairman and Managing Director,
Bharat Sanchar Nigam Limited,
Corporate Office, Personnel Branch – II,
4th Floor, Janapath, New Delhi – 110 001.
3. The Chief General Manager Telecom,
Bharat Sanchar Nigam Limited, Hyderabad – 500 001.

...Respondents

Counsel for the Applicant	...	Mr. M.S.S. Ramachandra Murthy (PIP)
Counsel for the Respondents	...	Mrs.K. Rajitha, Sr. CGSC
		Mr. M.C. Jacob for RR 2 & 3

CORAM:

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

ORDER (In 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 10.12.2018 in OA No. 813 of 2017. The operative portion of the said order, reads as under:-

“6. Facts on record do make it lucid that the applicant has been absorbed as a BSNL employee from 1.10.2000. On being absorbed in

BSNL, based on IDA, applicant has been granted pay scales and pay was regulated from time to time, as per rules and regulations of BSNL. As per Rule 37-A of CCS (Pension) Rules, an employee on permanent absorption into a public sector undertaking ceases to be a Government servant from the date of absorption. Rules of the PSU will thereafter apply. As per sub rule 8 of Rule 35-A, such absorbed employees and family are eligible for pensionary benefits including commutation, gratuity, family pension on the basis of combined service in accordance with the formula in force at the time of his retirement from the Public Sector Undertaking or at his option, to receive benefits for the service rendered under the Central Government in accordance with the orders issued by the Central Government. Further sub rule 10 of Rule 35-A specifies that an absorbed employee who has opted for pension on the basis of combined service is eligible for dearness relief as per the Industrial Dearness Allowance pattern. The applicant having become a BSNL employee his pension was naturally drawn based on his last pay drawn in BSNL. The applicant is under the impression that Rule 37-A continues to treat him as a Government Servant, which is not the case as per the reading of the said rule. The rule clearly distinguishes two aspects viz service benefits as per the orders pertaining to Public Sector undertakings and pension benefits as per CCS (Pension) Rules. Had the applicant opted for retirement benefits from DOT the scenario would have been different! However, since the applicant has opted for combined service the rules of the game are different. Moreover, the respondents categorically state that after 1.10.2000, BSNL employees are not provided with pension excepting to those who have been absorbed from D.O.T. The applicant contended that D.O.T employees are getting the benefit of 7th CPC. They do because they are Govt. employees. Besides, as claimed by the applicant Pension is a property but it was not denied to him. It was and is being paid as per rules adopted by BSNL. The applicant cannot seek application of rules selectively, of both Government and BSNL, in order to take advantage of the best among the better of the rules in the two institutions. Being a BSNL employee the applicant cannot compare himself with DOT employee and allege discrimination. One is a Govt. department and the other is a PSU. Therefore no parallels can be drawn in regard to the issue in question. Applicant also represented for gratuity under Gratuity Act which was allowed by this tribunal. On challenging the same by the respondents by way of a writ petition in the Honourable High Court and it was allowed. The applicant filed a writ appeal but it was dismissed on the ground that the applicant is covered under Rule 37-A of CCS (Pension) Rules. The pay and allowances of BSNL employees are revised as per the recommendations of Pay Revision Committee (PRC) of Public Sector Undertakings. Accordingly the applicant has been granted pensionary benefits as per 2nd PRC recommendations. PRC has no relation to the 7th CPC. Thus there is a separate system altogether to deal with the pay & allowance and pension of public sector employees like BSNL. The OMs and judgments cited by the applicant have been gone through and found them to be irrelevant to the issue in question. Hence they are not broached upon. The OMs of the Central Government when they are adopted by BSNL such benefits get extended to the BSNL employees. Otherwise not, as we have seen in the present case. To sum up, the applicant is not a Government employee and hence he does not come under the ambit of 7th CPC. The norms for revision of pension are decided by the pay revision committee of

public undertakings and not by pay commissions. Therefore there is no reason for this Tribunal to intervene on behalf of the applicant, as his prayer cannot be acceded to as per rules on the subject.

7. Therefore the OA is dismissed. MA stands disposed. 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. As can be seen from the record, the relevant facts of the case have been taken into consideration and judgement delivered.

5. 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 also does not fall under any of the categories prescribed by the 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.

6. Based on the above observations of the Hon'ble Supreme Court, there are no grounds which have been brought in the review application to review the case. The details presented in the review application have already been comprehensively gone into while delivering the judgment in the OA. Facts of the case in all respects and the rules prevailing have been reckoned and on merits the OA was dismissed.

7. Hence, there is no merit in the review application and is dismissed in circulation. No order as to costs.

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

Dated, the 11th day of January, 2018

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