

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

**Review Application No.290/00004/2019
In OA No. 290/00071/2017**

Date of Order: 8th April, 2019

CORAM

Hon'ble Mrs. HINA P.SHAH, Judicial Member

B.L. Sharma S/o Shri Phusa Ramji Sharma, Aged about 86 years, B/c Brahman, R/o H.No. 5-D-1, Duplex Colony, Bikaner-334 003 (Raj.)
(Office Address :- Retired from service on 28.02.1991 as Superintendent of Post offices.)

.....Applicants

By Advocate : Mr S.P. Singh.

Versus

1. Union of India through the Secretary, Government of India, Ministry of Communication, Department of Post, Dak Tar Bhawan, New Delhi-110001.
2. The Secretary, Ministry of Personnel, Public Grievances & Pensions, Dept. of Pension & Pensioners' Welfare, Lok Nayak Bhawan, New Delhi-110003.
3. The Chief Post Master General, Rajasthan Circle, Jaipur - 302 007.
4. The Post Master General, Western Region, Rajasthan, Jodhpur-342005.
5. Director of Accounts (Postal), Jhalana Dungri, Jaipur-342004.

.....Respondents

ORDER (By Circulation)

The present Review Application has been filed for review of order dated 26.10.2018 passed in OA No. 290/00071/2017 whereby OA filed by the review-applicant was disposed of on merits with following directions :

16. In view of discussions hereinabove made, order dated 19.10.2016 (Annex. A/1) revising the pension of the applicant to Rs 9130/- taking into consideration replacement pay-scales/Grade Pay instead of pay-scales/Grade Pay attached to the post held (Upgraded) by the applicant when he retired, is held

erroneous and illegal. Accordingly, order dated 19.10.2016 (Annex. A/1) is quashed. Respondents are directed to revise the pension of the applicant from 01.01.2006 keeping in view discussions made in para 13 above, and ensure that the applicant shall not get less than 50% of minimum of pay of corresponding pay scale attached to the post (Upgraded) from which applicant had retired as revised pension (6th CPC), within 04 months from the date of receipt of this order with all consequential benefits.

2. After passing of aforesaid order dated 26.10.2018 by this Tribunal, the applicant approached the Hon'ble Rajasthan High Court at Jodhpur in D.B. Civil Writ Petition No. 2010/2019. However, the same was not pressed in order to seek review of order dated 26.10.2018 passed by this Tribunal in OA No. 290/00071/17. Hence, the applicant preferred the present Review Application.

3. I have gone through pleadings made in the Review Application and grounds raised therein for review. By way of instant review application, applicant is not entitled to reopen the merits of the issue which are summarized in simple term that in view of pleadings and grounds raised in support thereof in the OA, respondents shall ensure that applicant does not get less than 50% of minimum of pay of corresponding pay scale attached to the post (Upgraded) held by the applicant at the time of retirement, pension w.e.f. 01.01.2006.

4. In para 4 of the review application, the applicant has pleaded that this Tribunal concentrated only to para 4.2 of OM dated 01.09.2008 but denied to take into consideration gazette notification as well as fitment table in accordance with RP Rules and differentiated by not treating existing employee which has resulted in error on face of record and therefore, the same deserves to be reviewed and order passed by this Tribunal may be amended to the extent taking into

consideration last pay drawn as Rs 8250/- instead of Rs 7500/- in 5th CPC.

5. Although in para 4 of the present application, applicant pleads that there is an error apparent on face of record but the first few lines of para 4 makes it abundantly clear that he is seeking review on merits. It is admitted that applicant retired when 4th Pay Commission Pay Rules were in force and thereafter his pension was revised in subsequent Pay Commissions. The applicant is seeking his pay to be fixed notionally by assuming him in service and thereby fixing his pension based on that notional pay, which is not provided under the rules as well as not envisaged by the rule makers nor relevant rules have been interpreted by the Hon'ble Courts in such a way. To sum up, it can be said that applicant is seeking equivalence of his pension to a person who retired in 6th Pay Commission. Whereas, while implementing the recommendations of 6th Pay Commission, as approved by the Cabinet, the minimum pension has only been ensured, i.e. revised pension, in no case, shall be lower than fifty percent of the minimum of the pay in the pay band plus the grade pay corresponding to the pre-revised pay scale from which the pensioner had retired. However, in view of various judgments of Hon'ble Courts, the rule position has only been clarified to the extent that while ensuring minimum revised pension, the corresponding pay scale attached to the post is to be taken into consideration instead of replacement scale, for the purpose of ensuring minimum revised pension @ 50% of minimum of the pay in the pay scale.

6. The respondents did ensure 50% of minimum of the pay in the corresponding pay scale whereas the respondents had to ensure that the revised pension of the applicant should not be less than 50% of minimum of pay in the pay scale attached to the post applicant held instead of replacement pay scale. The applicant's pension was fixed at Rs 9130 vide order dated 19.10.2016 (Annex. A/1). The respondents ensured the minimum revised pension of the applicant by taking into account general replacement corresponding pay scales with respect to pay scale of Rs 2000-60-2300-75-3200-100-3500 (Pay scale on which applicant actually retired) while ensuring minimum pension w.e.f. 01.01.2006 on implementation of 6th CPC. Whereas, this Tribunal in order dated 26.10.2018 while taking into consideration various pronouncement of Hon'ble High Courts held that respondents shall ensure that pension of the applicant should not be less than 50% of minimum of pay in the pay scale which is attached to the post and not corresponding replacement pay scale. In other words, if pay scale of a certain post is upgraded under 6th CPC then respondents shall ensure as per para 4.2 of the OM dated 01.09.2008 that minimum revised pension shall not be less than the 50% of minimum of the pay in the pay scale taking into account such upgradation of pay scale of relevant post. In the review of the applicant's case, the minimum basic pay in the pay scale of post held by the applicant is Rs 2000/-, Rs 7500 and Rs 18750/- in 4th Pay Commission, 5th Pay Commission and 6th Pay Commission respectively (Pay scales Rs **2000**-60-2300-75-3200-100-3500, Rs **7500**-250-12000 and **Rs 18750/-** [PB-2 Rs 9300-34800 + Rs 4800 G.P./Pre-revised (S-14)] respectively). In view of discussions made in the

order dated 26.10.2018 passed in OA No. 71/2017, the respondents would have ensured that the applicant should not have been getting minimum basic pension less than Rs 9,375/- w.e.f. 01.01.2006, i.e. 50% of Rs 18750 (50% of minimum of the basic pay) = Rs 9,375/- (Annex. RA/1), whereas, the applicant was getting Rs 9,130/-. Therefore, there is no question of taking last pay drawn by the applicant in account as the scope is limited to ensure minimum pension not fixation of pension. Hence, in view of directions to the respondents in the OA, I find no error apparent on face of record in the order dated 26.10.2018 which is under review. Rather, the applicant is seeking review on merits of the case.

7. The scope of review has been considered by the Hon'ble Apex Court in the case of **State of West Bengal and Ors. Vs. Kamal Sengupta and Anr.**, reported in **(2008) 8 SCC 612** wherein in paragraphs 22 and 35, the Hon'ble Apex Court 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.

35. The principles which can be culled out from the abovenoted 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. While hearing the matter, this Tribunal had considered all the documents available on record including judgment of Hon’ble High Courts and decided the matter on merits. Therefore, no scope for review is available as per Order 47 Rule 1 of CPC and the judgment of Hon’ble Supreme Court cited in preceding paragraph.

8. Accordingly, Review Application is dismissed by circulation.

[Hina P. Shah]
Judicial Member

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