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**CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH**

Misc Application No.350/00032/2019

With

Review Application No.350/00001/2019

In

Original Application No.350/00747/2012

Date of Order: This, the 22<sup>nd</sup> Day of February, 2019.

**THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER**

**THE HON'BLE DR (SMT) NANDITA CHATTERJEE, ADMINISTRATIVE MEMBER**

**BHABATOSH CHOUDHURI**

S/o Late Suresh Chandra Chaudhuri,  
Aged about 62 years.  
Worked as Dy. CEE/EMU/ERIN/HQ  
R/o 16 Rammohan Road  
PO – Nabagram, Dist. – Hooghly,  
Pin – 712246.

... Review applicant

- Versus -

1. Union of India,  
Through the General Manager,  
Eastern Railway,  
Fairlie Place,  
Kolkata – 700001.
2. The Chief Personnel Officer,  
Eastern Railway.,  
Fairlie Place,,  
Kolkata – 700001

... Opposite Party

For review applicant : Mr.A.Chakraborty, counsel

For the opposite party: Mr.B.L.Gangopadhyay, counsel

**ORDER (In Circulation)**

**MANJULA DAS, MEMBER (J):**

Having regard to the facts and circumstances in the matter and the explanation put forth in the MA for causing the delay, the delay in filing the RA is condoned. Accordingly, MA is allowed.

2. By this review application, the review applicant has prayed for recall of the order dated 14.11.2018 passed in OA. No.350/00747/2012 and prayed as under:-

"In view of the above the applicants humbly pray that your Lordships will graciously be pleased to allow the application for review of the order dated 14.11.2018 passed by the Hon'ble Manjula Das & Hon'ble Dr. Nandita Chatterjee and pass appropriate order and/or orders direction and/or directions as your Lordships may deem fit and proper."

3. This Tribunal after considering the pleadings and hearing both the parties, vide order dated 14.11.2018 had passed the following order in the said OA:-

"6. Having heard the Id. Counsel for the parties and perusal of the pleadings and materials placed before us and the rules and regulations, we have noted that the applicant who was initially appointed as Group 'C' post in Indian Railway Service was promoted subsequently to Group 'B' post and thereafter promoted to Senior Scale purely on ad hoc basis vide order dated 14.1.2005 and the ad hoc period continued till the officer concerned is inducted to Group 'A' service. The admission to Group 'A' service for the promote officers are done on All India Zonal Railway Seniority basis in consultation with the UPSC. Accordingly the applicant in his turn was inducted to Group 'A' service w.e.f. 8.4.2008. The grievances accordingly made by the applicant before the authority vide his appeal, was rejected by the respondent authorities and the same is under challenge before this Tribunal.

7. The basic grievance of the applicant exists for fixation of pay from 8.4.2008 in the junior scale and fixation of pay to the new post (Senior Scale) w.e.f. the date of increment in the lower post i.e. April 2005 instead of January 2005.

8. For coming to a logical conclusion for a decision for fixation of pay in the case of the applicant we are in hand with Rule 1313 [FR 22(1)(a)(i)] of Indian Railway Establishment Code Volume II, 2005 which reads as hereunder :

"The initial pay of a railway servant who is appointed to a post on a time scale of pay is regulated as follows :

(a)(1) Where a railway servant holding a post, other than a tenure post, in a substantive or temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity as the case may be, subject to the fulfilment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initial pay in the time scale of the higher post shall be fixed at

the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees twenty five only, whichever is more.

Save in cases of appointment on deputation to an ex cadre post, or to a post on ad hoc basis, the railway servant shall have the option, to be exercised within one month from the date of promotion or appointment as the case may be, to have the pay fixed under this rule from the date of such promotion or appointment or to have the pay fixed initially at the stage of the time scale of the new post above the pay in the lower grade or post from which he is promoted on regular basis, which may be re-fixed in accordance with this rule on the date of accrual of next increment in the scale of the pay of the lower grade or post. In cases where an ad hoc promotion is followed by regular appointment without break, the option is admissible, as from the date of initial appointment/promotion, to be exercised within one month from the date of such regular appointment.

(b) Secondly we are in hand with the clarification of the Railway Board's letter No. PC IV/86/Imp/36 dated 21.12.1999 (RBE 313/1999) addressed to General Managers, All Indian Railways and others, which reads as hereunder :

"Queries are being received from a few railway administration regarding admissibility of options for fixation of pay from the date next increment when a Group 'B' officer is promoted directly to Group 'A' Sr. Scale on ad hoc basis and at the time of re-fixation on induction in Group 'A' (JTS).

2. In this connection attention is drawn to the clarification given against point No.4 of Board's letter No. E(P&A)II-81/PP\_4 dated 19.3.1985 wherein it was clarified that option under FR-22C is not permissible in respect of ad hoc promotions further, in the revised rule 1313(FR-22(1)(a)(i) R.II (erstwhile FR-22C) also, it is

specifically laid down that above option is not permissible in ad hoc promotions.

3. The above option is also not envisaged in the specific method of pay re-fixation allowed to Group B Officers on induction in Group 'A' JTS w.e.f. 1.1.86, vide Board's letter of even NO. Dated 10.9.92 and 22.6.93. The above position was already clarified to CPOs and FA&CAOs of All Indian Railways and Production Units vide this office endorsement of even number dated 15.2.96.

The pay of the concerned officers may please be regulated/re-fixed accordingly, if already not done.

Index NO. 1057, Option of fixation of pay under FR 22C is not permissible in respect of ad hoc promotion of Group 'B' officers.

(c) Thirdly, we again come to the clarification dated 29.1.2003 issued by Members Staff of the Railway Board on the subject of fixation of pay which reads as hereunder :

MEMBER STAFF, RAILWAY BOARD  
&  
EX OFFICIO SECRETARY,  
GOVERNMENT OF INDIA,  
MINISTRY OF RAILWAYS  
NEW DELHI - 110001.  
29<sup>th</sup> January, 2003.

DO No. PC-IV/86/Imp/36

My dear Sen Gupta,

Sub : Fixation of pay of group 'B' officers on promotion to Senior Scale on ad hoc basis and on induction in Junior Scale Gr.'A'.

As you are aware there is a practice on the Railways to promote Group 'B' officers on ad hoc basis to Gr. 'A' (Senior Scale), even before they are substantively appointed in Group 'A' (Junior Scale).



On such promotion, their pay is fixed under Rule 1313 FR-22(1)(a)(i) R-II (erstwhile FR 22-C). When such Gr. 'B' officers are inducted into Gr. 'A' (Junior Scale), while officiating in Senior Scale on ad hoc basis, their pay is re-fixed from the date of appointment to Group 'A' Junior Scale and again from Junior Scale to Senior Scale under FR 22C. It was also clarified vide Board's letter of even number dated 21.12.1999, that benefit of fixation from the date of next increment is not admissible in ad hoc promotion to Group A (Senior Scale) as well as on re-fixation on induction in Group A (Junior Scale). The Railways were also advised to regulate/re-fix the pay of the concerned officers accordingly, if not already done.

It had come to the notice of the Board that on some of the Railways, refixation carried out pursuant to issue of the above letter dated 21.12.99 had resulted in the recoveries of the over payments from working as well as retired officers. Board had desired vide letter of even number dated 21.11.2001 (copy enclosed) that the action of refixation of both pay as well as pension, wherever applicable, should be completed and quantum of overpayments involved worked out in a tight time frame. The Railways were requested to complete the exercise as above positively within a period of one month and furnish complete details about the amount of overpayments/recoveries involved (for the period 1.1.86 to 21.12.99) without putting on hold the ongoing recoveries. It is observed that position in respect of our Railway has not been received in this office, till now.

I request you to please look into the matter personally and ensure that exercise as above is completed and results advised to the Board positively by 28.2.2003.

With best wishes.

Yours sincerely,  
Sd/-



(B.S.Sudhir Chandra)."

The applicant failed to contradict the rule provisions as narrated above either by way of rejoinder or by making any argument.

9. In the above circumstances by taking the entire conspectus of the case, more particularly the rules and provisions and clarifications ad discussed in the foregoing paragraphs, we do not find any reason to interfere with the decision taken by the respondent authorities, particularly the respondent No.2, the Chief Personnel Officer. Hence we do not find any merit in the present case and the same is dismissed."

4. Order XLVII, Rule 1, Code of Civil Procedure provides the grounds on which a prayer for review can be entertained, namely, (i) discovery of new and important matter or evidence which after exercise of due diligence was not within his knowledge or could not be produced by him; (ii) some mistake or error apparent on the face of the record; and (iii) any other sufficient reasons.

5. The law relating to review is well settled as succinctly summarized by the Hon'ble Supreme Court in **State of West Bengal and others vs. Kamal Sengupta and another, (2008) 2 SCC (L&S) 735**, para 35 which reads thus:-

"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 CPC.
- (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. We have carefully perused the RA and the order sought to be reviewed. The review applicant in his review application has failed to project any ground which falls under Order XLVII, Rule 1, Code of Civil Procedure. Review applicant has also failed to produce any case law in support of his grounds raised in the RA. Basically the review applicant in the review application has reiterated the contentions in the proceeding of OA, and the same had been considered by this Tribunal while dismissing the OA. In our considered view, the review applicant is basically challenging the findings recorded by this Tribunal vide Order dated 19.09.2018, which is impermissible.

7. In view of the above, there is no merit in the present R.A. and the same is accordingly dismissed.

(DR.NANDITA CHATTERJEE)  
ADMINISTRATIVE MEMBER

(MANJULA DAS)  
JUDICAIL MEMBER

/BB/