

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

**R.A. No.60/2018 In
O.A. No.3517/2013**

New Delhi this the 6th day of September, 2019

HON'BLE MS. NITA CHOWDHURY, MEMBER (A)

1. Union of India through
The Secretary,
Ministry of Urban Development,
Nirman Bhawan, New Delhi-110011
2. Director General, CPWD,
Nirman Bhawan, New Delhi-110011
3. Pay & Accounts Officer,
No.12, Govt. of NCT, MSO Building,
IP Estate, New Delhi - Review Applicants

(By Advocate: Mr. GD Chawla for Ms. Harvinder Oberoi

Versus

Shri Shri Ram,
Ex-Executive Engineer (Civil)
Under PWD Zone M-1,
Govt. of NCT of Delhi,
R/o D-127, Krishna Park,
Khanpur, New Delhi-110062 - Respondent
(Applicant in OA)

(None)

ORDER (Oral)

The review applicants have filed the present Review Application bearing No.60/2018 for reviewing the order

of the Tribunal dated 14.11.2017 in OA No. 3517/2013

which read as under:-

“6. The only point, which arises for consideration in this case, is whether judicial proceedings were instituted/pending against the applicant on the date of his retirement on attaining the age of superannuation on 31.1.2010, and the respondents were justified in withholding payment of gratuity and final pension as well as commuted value of pension.

7. For deciding the point in issue, it would be apposite to refer to the relevant provisions of Rule 9 and Rule 69 of the CCS (Pension) Rules, 1972 and Rule 4 of the CCS (Commutation of Pension) Rules, 1981.

7.1 Rule 9(4) & (6) of the CCS (Pension) Rules, 1972 reads thus:

“9(4). In the case of Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in Rule 69 shall be sanctioned.

xx

xx

xx

(6) For the purpose of this rule –

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to be instituted –

(i) in the case of criminal proceedings, on the date on which the complaint or report of a Police Officer, of which the

Magistrate takes cognizance, is made, and

(ii) in the case of civil proceedings, on the date the plaint is presented in the Court."

7.2 Rule 69 of the CCS (Pension) Rules, 1972, reads thus:

"69. Provisional pension where departmental or judicial proceedings may be pending.

(1) (a) In respect of a Government servant referred to in sub-rule (4) of Rule 9, the Accounts Officer shall authorize the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service up to the date of retirement of the Government servant, or if he was under suspension on the date of retirement up to the date immediately preceding the date on which he was placed under suspension.

(b) The provisional pension shall be authorized by the Accounts Officer during the period commencing from the date of retirement up to and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the Competent Authority.

(c) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon:

Provided where departmental proceedings have been instituted under Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, for imposing any of the penalties specified in Clauses (i), (ii) and (iv) of Rule 11 of the said rules, the payment of gratuity shall be authorized to be paid to the Government servant.

(2) Payment of provisional pension made under sub-rule (1) shall be adjusted against final retirement benefits sanctioned to such Government servant

upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.”

7.3 Rule 4 of the CCS (Commutation of Pension) Rules, 1981, reads thus:

“4. Restriction on commutation of pension-No Government servant against whom departmental or judicial proceedings, as referred to in Rule 9 of the Pension Rules, have been instituted before the date of his retirement, or the pensioner against whom such proceedings are instituted after the date of his retirement, shall be eligible to commute a fraction of his provisional pension authorized under Rule 69 of the Pension Rules or the pension, as the case may be, during the pendency of such proceedings.”

8. Under Rule 9(6)(b)(i) of the CCS (Pension) Rules, 1972, criminal proceedings shall be deemed to be instituted against a Government servant on the date on which the complaint or report of a Police Officer, of which the Magistrate takes cognizance, is made. Undoubtedly, „report” of a Police Officer, referred to in Rule 9(6)(b)(i) *ibid*, of which the Magistrate takes cognizance, is the report of the Police Officer under Section 173(2) of the Code of Criminal Procedure, 1973, made to the Magistrate. The said report is commonly known as „charge sheet”. In the instant case, admittedly, the CBI had registered the FIR against the applicant on 15.4.2004 and had filed Closure Report before the learned Special Judge on 30.5.2005. It is also the case of the respondents that the learned Special Judge had not accepted the Closure Report and had, vide order dated 23.8.2010, directed the C.B.I. to carry out further investigation in the case under Section 173(8) Cr.P.C. and to submit a fresh report, which fact had been intimated by the S.P., C.B.I., SPE, Gandhinagar, to the Chief Vigilance Officer, C.P.W.D., New Delhi, vide his letter dated 28.9.2010, i.e., after about eight months of the date of retirement of the applicant on attaining the age of

superannuation. Apparently, thereafter the CBI had further investigated the case and submitted the charge sheet before the learned Special Judge much after 31.1.2010, i.e., the date of retirement of the applicant on attaining the age of superannuation. Thus, it is clear that the report/charge sheet was filed by the CBI in the criminal case and the learned Special Judge took cognizance of the said report/charge sheet against the applicant much after the date of retirement of the applicant on attaining the age of superannuation. Therefore, it cannot be said that judicial proceedings were instituted or pending against the applicant on the date of his retirement, i.e., 31.1.2010.

7.2 From the foregoing, it is clear that no „judicial proceedings“ were instituted/pending against the applicant on the date of his retirement, i.e., 31.1.2010, and, therefore, the provisions of Rules 9 and 69 of the CCS (Pension) Rules, 1972 and Rule 4 of the CCS (Commutation of Pension) Rules, 1981, as regards payment of provisional pension, and withholding of payment of gratuity and final pension as well as commuted value pension, are not attracted in the case of the applicant. The respondent-departmental authorities have misread and/or misunderstood the relevant provisions of Rules 9 and 69 of the CCS (Pension) Rules, 1972 and Rule 4 of the CCS (Commutation of Pension) Rules, 1981, and have withheld the payment of gratuity, final pension and commuted value of pension. Thus, the respondents cannot be held to be justified in withholding the applicants gratuity and in not making payment of final pension as well as commuted value of pension to the applicant.

8. The applicant has not rebutted the statement made by the respondent-departmental authorities that in compliance with the order dated 23.8.2010 passed by the learned Special Judge, the CBI had further investigated the case and submitted charge sheet against the applicant before the learned Special Judge, and that the criminal case was at the stage of framing of charge as on 30.7.2012. It also transpires from the letter dated 30.7.2012 issued by the S.P., C.B.I., SPE, Gandhinagar, that the criminal case was posted to 14.8.2012. Although

the present O.A. was filed by the applicant on 26.9.2013, the applicant did not whisper about the submission of charge-sheet by the CBI and taking of cognizance by the learned Special Judge in the criminal case against him as well as the progress of the said criminal case. During the course of hearing on 8.11.2017, the learned counsels for the parties were also unable to apprise this Tribunal of the present stage of the criminal proceedings in the court of the learned Special Judge. The other aspect of the matter is that it is the case of the applicant that he had made representations on 12.4.2010 and 25.8.2010 requesting the respondent-departmental authorities to release in his favour the gratuity and final pension as well as commuted value of pension. If at all no decision was taken by the respondent-departmental authorities on his representation dated 12.4.2010, the applicant, instead of making the second representation dated 25.8.2010, ought to have approached the Tribunal within the period of limitation prescribed under the Act. Section 20(1) of the Act, 1985, stipulates that a Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances. Sub-section(2) of Section 20 of the Act stipulates, *inter alia*, that for the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances, where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired. It is, thus, clear that in the present case, the cause of action arose on 12.10.2010, when the period of six months from 12.4.2010, i.e., date on which the applicant claimed to have made the representation to the respondent-departmental authorities for redressal of his grievance as regards release of gratuity and final pension as well as commuted value of pension. Section 21(1)(b) of the Act stipulates, *inter alia*, that a Tribunal shall not admit an application in a case where an appeal or

representation such as is mentioned in clause (b) of sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months. In view of the provisions contained in Section 20(2)(b) and Section 21(1)(b) of the Act, the applicant ought to have approached the Tribunal within one year from 12.10.2010 when the cause of action arose. That is to say, the period of limitation for filing the O.A. by the applicant expired on 12.10.2011. But the present O.A. was filed by him on 26.9.2013, i.e., after a delay of one year eleven months and fourteen days, the reason of which has not been explained by the applicant. Considering the fact that the present O.A. was filed by the applicant challenging the legality and validity of the action of the respondent-departmental authorities in withholding his retirement gratuity and in not making payment of final pension as well as commuted value of pension, and in view of the findings recorded in the preceding paragraphs that no judicial proceedings were instituted/pending against the applicant on the date of his retirement, and that the respondent-departmental authorities were not justified in withholding the retirement gratuity and in not making payment of final pension as well as commuted value of pension, this Tribunal refrains from rejecting the O.A. as being barred by limitation, and feels that it would meet the ends of justice if the applicant's prayer for payment of interest @ 12% per annum on the entire dues for the period from the date following the date of his retirement till the date of actual payment is disallowed, and the respondents are directed to make payment of gratuity, final pension, and commuted value of pension, along with interest at GPF rate on the gratuity amount alone for the period from 26.9.2013, i.e., the date of filing of the present O.A., till the date of actual payment thereof.

9. In the light of what has been discussed above, the respondents are directed to pay to the applicant gratuity, final pension, and commuted value of pension, along with interest at GPF rate on the gratuity amount alone for the period from 26.9.2013, i.e., the date of filing of the present O.A.,

till the date of actual payment thereof, within a period of three months from today.

10. In the result, the O.A. is partly allowed to the extent indicated above. No costs

2. The review applicants have sought to review of the aforesaid order of the Tribunal on the grounds that the parties could not be brought to the notice of the Tribunal order F.No.14/13/6/4/2004-VS.I dated 28 June, 2017 passed by the President imposing the penalty of “withholding of 100% of monthly pension otherwise admissible to the CO” nor could they apprise the Tribunal of the present stage of the criminal proceedings in the Court of 1d. Special Judge.

3. It is well settled principle of law that the earlier order can only be reviewed if the case squarely falls within the legal ambit of review and not otherwise. Order 47 Rule 1 CPC read with Section 22(3)(f) of the Administrative Tribunals Act, 1985 regulates the provisions of review of the orders. According to the said provision, a review will lie only when there is discovery of any new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by the review applicant seeking the review at the time when the order

was passed **or made on account of some mistake or error apparent on the face of the record.** It is now well settled principle of law that the scope for review is rather limited and it is not permissible for the forum hearing the review application to act as an Appellate Authority in respect of the original order by a fresh and re-hearing of the matter to facilitate a change of opinion on merits. The reliance in this regard can be placed on the judgments of the Hon'ble Supreme Court in cases of

Parson Devi and Others vs. Sumitri Devi and Others (1997) 8 SCC 715, Ajit Kumar Rath Vs. State of Orissa (1999) 9 SCC 596, Union of India Vs. Tarit Ranjan Das (2003) 11 SCC 658 and Gopal Singh Vs. State Cadre Forest Officers' Association & Others (2007) 9 SCC 369.

4. An identical question came up to be decided by Hon'ble Apex Court in case **State of West Bengal and Others Vs. Kamal Sengupta and Another (2008) 8 SCC 612.** Having interpreted the scope of review and considering the catena of previous judgments mentioned therein, the following principles were culled out to review the orders:-

“(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 of 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".

5. Meaning thereby, the original order can only be reviewed if case strictly falls within the domain of Order

47 Rule 1 CPC read with Section 22(3)(f) of the Administrative Tribunals Act, 1985 and not otherwise. In the instant RA, the review applicant has not pointed out any error apparent on the face of record warranting a review of the order dated 14.11.2017. Moreover, the issues now sought to be urged, were subject matter of the OA and had already been adjudicated upon by the Tribunal.

6. In the light of the aforesaid reasons, as there is no apparent error on the face of record, hence no ground is made out to entertain the present Review Application, which is accordingly dismissed. No costs.

**(NITA CHOWDHURY)
MEMBER (A)**

/1g/