CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH:
NEW DELHI

MA 3758 of 2018 and R.A. NO.167 of 2018
IN
O.A. NO.1250 of 2016

This the 17th day of September 2019

Hon'ble Ms. Nita Chowdhury, Member (A)

Pradeep Kumar Saxena,
S/o late Sh. M.N. Saxena
B/o-Deceased Miss. Beena Saxena (LDC)
R/o 677, Sector – 7, Pushp Vihar,
New Delhi – 110 017.

.... Review Applicant

(By Advocate : Shri U. Srivastava)

VERSUS

Union of India through the Deputy Commissioner,
Directorate of Data Management, Erstwhile Directorate of Statistic & Intelligence, Central Excise & Customs (Finance Revenue) A-Wing, 3rd Floor, Pushpa Bhawan,
New Delhi – 110 062.

..... Review Respondent

(By Advocate : Shri Y.P. Singh)

O R D E R (Oral)

Heard learned counsel for the parties.

MA 3758/2018

This MA has been filed by the Review Applicant seeking condonation of delay in filing the RA 167/2018. For the reasons stated therein, the same is allowed. The delay in filing the RA 167/2018 is condoned.

RA 167/2018

The present Review Application is filed by the Review Applicant seeking review of the Order dated 6.11.2017 passed in OA 1250/2016 by this Tribunal. Both parties were heard at length and orders passed in OA 1250/2016 were perused.

2. Before adverting to the contentions raised by the review applicant in the instant RA, this Court deem it fit to refer the Hon'ble Supreme Court's decision on the issue of Review. Some of which are as under:-

In the case of ***Aribam Tuleshwar Sharma vs. Aribam Pishak Sharma,*** [AIR 1979 SC 1047], the Hon'ble Supreme Court has observed as follows:-

> "It is true as observed by this Court in Shivdeo Singh v. State of Punjab, AIR 1963 SC 1909, there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which is inherent in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of appeal. A power of review is not to be confused with appellate power which may enable an

> Appellate Court to correct all matters or errors committed by the Subordinate Court."

Again in the case of ***Ajit Kumar Rath vs. State of Orissa and others***, 1999 (9) SCC 596, the Hon'ble Supreme Court has observed as follows:-

> "The provisions extracted above indicate that the power of review available to the Tribunal is the same as has been given to a court under Section 114 read with Order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of a person on the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it. **It may be pointed out that the expression "any other sufficient reason" used in Order 47 Rule 1 means a reason sufficiently analogous to those specified in the rule.**
>
> **Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment.**"
>
> [Emphasis added]

In the case of ***Gopal Singh vs. State Cadre Forest Officers' Assn. and others***, (2007 (9) SCC 369), the Hon'ble Supreme Court observed as follows:-

> "The learned counsel for the State also pointed out that there was no necessity whatsoever on the part of the Tribunal to review its own judgment. Even after the microscopic examination of the judgment of the Tribunal we could not find a single reason in the whole judgment as to how the review was justified and for what reasons. No apparent error on the face of the record was pointed, nor was it discussed. Thereby the Tribunal sat as an appellate authority over its own judgment. This was completely impermissible and we agree with the High Court (Justice Sinha) that the Tribunal has traveled out of its jurisdiction to write a second order in the name of reviewing its own judgment. In fact the learned counsel for the appellant did not address us on this very vital aspect."

2. This Court very carefully perused the said Order under Review. It is noted that in the Order under Review, this Tribunal categorically observed that:

> "8. It is not in dispute that Ms. Beena Saxena (deceased employee) died on 01.04.1999 whereas she was to retire voluntarily on 11.04.1999. It is also not in dispute that the applicant and other beneficiaries have already been paid their legitimate dues as per the succession certificate issued by the court of Sh. Sandeep Garg, Administrative Civil Judge-cum-Additional Rent Controller (Central) Delhi. The twin issues which need to be adjudicated is that whether the applicant is entitled to get added 5 years of service in the service rendered by the deceased employee for getting the retiral dues on the basis of enhanced qualifying service and whether the applicant is entitled for the family pension.

9. Insofar as the issue no.1 is concerned, I am of the considered opinion that if the employee had died after 11.04.1999 i.e. the date of voluntary retirement, the applicant would have got the benefit of addition of 5 years qualifying service. But, since the employee died before the date of voluntary retirement, I agree with the argument of the respondents" counsel that the benefit of extension of 5 years qualifying service cannot be given. As regards other reliefs claimed by the applicant in respect of gratuity, leave encashment, GPF etc., the respondents in their written statement have clarified that these dues have been disbursed as per rules and the succession certificate issued by the competent authority. Some of the dues have been paid to the applicant, who was an alternative nominee, while some other dues have been paid to the applicant along with some other family members as per the succession decree issued by the court of Sh. Sandeep Garg, Administrative Civil Judge-cum-Additional Rent Controller (Central) Delhi.

10. Insofar as prayer for family pension is concerned, as has been submitted by the respondents that brother of the deceased employee is not in line of family members either in Category I or in Category II, the applicant, being brother of the deceased employee, is not entitled to the family pension. I also find that even in the succession certificate so obtained by the applicant from the court of Sh. Sandeep Garg, Administrative Civil Judge-cum-Additional Rent Controller (Central) Delhi and submitted before the respondents, there is no whisper about the family pension to be released to the applicant. In any case, the grant of family pension is governed by Rule 54 of CCS (Pension) Rules, 1972, relevant portion pertaining to family is reproduced below:-

> "*'Family' for Family Pension – For the purpose of grant of Family Pension, the 'Family' shall be categorized as under:-*
>
> ***Category-I***
>
> *(a) Widow or widower, up to the date of death or re-marriage, whichever is earlier;*
>
> *(b) Son/daughter (including widowed daughter), up to the date of his/her marriage/re-marriage or till the date he/she starts earning or till the age of 25 years, whichever is the earliest.*

Category-II

(c) Unmarried/Widowed/Divorced daughter, not covered by Category I above, up to the date of marriage/re-marriage or till the date she starts earning or up to the date of death, whichever is earliest.

(d) Parents who were wholly dependent on the Government servant when he/she was alive, provided the deceased employee had left behind neither a widow nor a child.

Family pension to dependant parents unmarried/ divorced/ widowed daughter will continue till the date of death.

Family pension to unmarried/widowed/divorced daughters in Category-II and dependent parents shall be payable only after the other eligible family members in Category I have ceased to be eligible to receive family pension and there is no disabled child to receive the family pension. Grant of family pension to children in respective categories shall be payable in order of their date of birth and younger of them will not be eligible for family pension unless the next above him/her has become ineligible for grant of family pension in that category."

It can be seen from the above that there is no provision that entitles a brother to make a claim for family pension."

3. During the course of hearing or in the review application, counsel for the applicant has not stated any rule or regulations which enable this Tribunal to review the Order dated 6.11.2017 passed in OA 1250/2016. It is also relevant to note here that the Hon'ble Delhi High Court in its Order dated 24.7.2018 in WP(C) 3255/2018, which was filed by the review applicant to challenge the Order under review, specifically raised a query to the learned counsel for the applicant to show the rule position, which would entitled him

to such relief as this Tribunal already held in the Order in review that there is no provision that entitles a brother to claim family pension in respect of a deceased employee (sister) as he does not fall under Category-I or Category-II of family members. When, he was not able to show any rule, counsel for the review applicant withdrew the said petition. This Tribunal is of the considered view that the grounds taken in the present Review Application are not based on any error apparent on the face of record. In fact, the review applicant is questioning the conclusion arrived at by this Bench in the said Order. If this Court agrees to his prayer, this Court would be going into the merits of the case again and re-writing another judgment of the same case. By doing so, this Court would be acting as an appellate authority, which is not permissible in review.

4. Thus, on the basis of the above citations and observations made hereinabove, this Court comes to the conclusion that it was not open to the review applicant to question the merits of the decision taken by this Tribunal. In fact, he could have pointed out only some mistake or error apparent on the face of the record or for any other sufficient reason or on the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within their knowledge or could not be produced by him at the time when the order was made, but no such thing is

pointed out in any of the grounds taken in the Review Application. As such this Review Application is devoid of merit and the same is accordingly dismissed.

(Nita Chowdhury)
Member (A)

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