

CENTRAL ADMINISTRATIVE TRIBUNAL AHMEDABAD

**R.A. No.11/2019 in OA No.359/2018
Ahmedabad, this the 5th day of September, 2019**

CORAM :

Hon'ble Shri M.C. Verma, Judicial Member

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1. Union of India
Through : General Manager,
Western Railway, Churchgate,
Mumbai – 400 020.

2. The Divisional Railway Manager(E),
O/O. DRM-BRC, Western Railway,
Pratapnagar, Vadodara – 390 004. .. Applicants

Mr.M.J.Patel, Advocate.

Versus

Shri Ramsinh P. Varachhiya,
S/o. Prabhastsinh Varachhiya,
Age: 77years, Ex. Pointsman at BRCY
R/o 12, Vihar Society, Narmadanagar,
Bharuch – 395 015.

... Respondent

ORDER

1. Review Application No.11/2019 is filed by the Original Respondents / UOI & Ors. in OA No.359/2018, seeking review of order dated 12.07.2019 or in alternative put up the same for hearing afresh. Following reliefs are sought by the applicants through this Review Application:-

“(i) This application may be allowed and the order passed in OA No.359/2018 dated 12.07.2019 may be recalled/reviewed or OA may be again put up for hearing as fresh.

(ii) Any just and proper order may be passed in the interest of justice."

2. The case of the Applicant in the OA No. 359/2018 was that his resignation may be treated as voluntary retirement and he made prayer for release of all retirement benefits and pension and also for

direction to respondents to recalculate the service period as per decisions of various Hon'ble High Courts.

3. Respondents/Review Petitioners stated that original applicant has not mentioned about filing of the OA 373/2004 nor has he provided copy of the order in OA 373/2004 but in para-2 of the order dated 12.07.2019, Applicant has mentioned both OA 373/2004 and 63/2018. It is pleaded that O.A. No. 373/2004 was for release of retiral benefits including pension which was dismissed on merits vide order dated 14.10.2005. It is pleaded that the challenge in OA No. 359/2018, review of which is sought, decided on 12.07.2019 was to accept the applicant's resignation as Voluntary Retirement. While disposing of the said OA it was directed to respondents to *"reconsider the case of applicant taking into account the period he worked as Casual Labour and Temporary Status, and if found eligible to treat his resignation as voluntary retirement and to grant him admissible pension and other retirement benefits at the earliest, at any rate within three months from the date of receipt of this order."* Respondents have pleaded that original applicant has filed multiple OAs one after another on same facts, and had this fact been brought to the notice of this Tribunal by filing copies thereof at the time of hearing, the order in O.A. 359/2018 would have been different. In other words it is the case of the respondents herein that original applicant filed O.A. Nos. 373/2004 and 63/2018 before filing OA No. 359/2018 wherein direction for reconsideration was given to the respondent-department, which was not warranted particularly when this Tribunal had already adjudicated the issue previously, therefore, review of order passed in OA No. 359/2018 is sought on the ground that the order was not on true facts, hence deserves to be recalled.

4. I have gone through the order under review and the record of the case carefully. It appears from paper book that filing of O.As by the applicant viz. O.A. No. 373 and 63/2018 was brought to the notice of this Tribunal and secondly, as regards O.A. No. 63/2018, the same was disposed of at the admission stage without entering into the

merits. Needless to say that the order in rest of the two OAs was passed in presence of the respondents' advocate, hence, it cannot be said that the Tribunal committed an error. Respondents/UOI, during arguments of OA No. 359/2018 specifically submitted that "Learned counsel for respondents Ms. Nisha Parikh does agree that period, prior to regularisation of his service in 1961, wherein applicant had worked as Casual Labour and as Temporary Status needs to be taken note of. She requested that appropriate order may be passed", and consequently taking note of in entirety, respondents were directed to reconsider the case of applicant taking into account the period he worked as Casual Labour and Temporary Status, and if found eligible to treat his resignation as voluntary retirement and to grant him admissible pension and other retirement benefits at the earliest, at any rate".

5. Apart from above narration of facts, apparently, the scope of review is very limited and the Courts / Tribunals should not enter or re-appraise the facts as propounded by several Hon'ble High Courts and Hon'ble the Supreme Court in catena of judgments. Hon'ble Supreme Court in the case of **State of West Bengal & others v. Kamal Sengupta and another** (2008) 3 AISLJ 209 has held that the Tribunal can exercise the powers of a Civil Court in relation to matters enumerated in clauses (a) to (i) of sub-section (3) of Section 22 of the Administrative Tribunals Act including the power of reviewing its decision. By referring to the power of a Civil Court to review its judgment/decision under Section 114 CPC read with Order 47 Rule 1 CPC, the Hon'ble Supreme Court laid down the principles subject to which the Tribunal can exercise the power of review. At para 28 of the said judgment the Hon'ble Supreme Court culled out the principles which 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. The review applicants has not brought out anything new, which were not in the knowledge of the Tribunal while adjudicating the issue, and there is no error apparent on the face of record which warrants review of the Tribunal's order dated 12.07.2019 passed in OA 359/2018. Thus, since the applicants have failed to point out any error much less an error apparent on the face of record justifying the exercise of power under the rules (supra) the Review Application deserves to be dismissed and accordingly, the same is dismissed by Circulation.

(M C VERMA)
Member(J)

