

**CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH**

DATED THIS 17 DAY OF JULY, TWO THOUSAND NINETEEN

PRESENT:

**THE HON'BLE MR. P. MADHAVAN, MEMBER (J)
&
THE HON'BLE MR. T. JACOB, MEMBER (A)**

RA.9/2019 in OA.181/2013

S.K. Jhanakidjevi
Plot No. 170, 5th Street
M.C.N. Nagar, Thoraipakkam
Chennai 96.

... Applicant in RA

By Advocate M/s Profexs Associates

Vs.

1. Union of India, represented by
The Sr. Accounts Officer (Pension)
Zonal Accounts Office, CBDT, Chennai – 34.

2. The Deputy Controller of Accounts
Zonal Accounts Office
CBDT, Chennai – 34.

... Respondents in RA

By Advocate Mr. M.T. Arunan

ORDER

(Pronounced by Hon'ble Mr. T. JACOB, Member (A))

This RA has been filed by the applicant seeking to review the order passed by this Tribunal in OA.181/2013 dated 24.10.2013.

2. The applicant had earlier filed MA.564/2016 in unnumbered RA seeking to condone the delay of 816 days in filing the unnumbered RA. This Tribunal by order dated 27.7.2016 dismissed the MA on the ground of delay and consequently rejected the RA also on that ground.
3. Against the said order of the Tribunal, the applicant has filed a W.P.No.416 of 2018 before the Hon'ble High Court of Madras which by order dated 21.1.2019 has condoned the delay and directed the Tribunal to dispose of the RA after hearing petitioner.
4. Heard the learned counsel for the respective parties and perused the pleadings and documents on record.
5. According to the applicant, she retired from service on 30.09.2004 in the pay scale of Rs.5500-175-9000 while working as Office Superintendent. As per V CPC recommendation, 50% of dearness allowance/dearness relief had to be merged with basic pay and the same would be converted into dearness pay/dearness relief with basic pay/pension w.e.f. 01.04.2004. Accordingly dearness pay of Rs.3538/- (50% of the basic pay) was granted to the applicant. The applicant was drawing 10,613.- as her basic pay (ie. Pay + dearness pay) on the date of her retirement on 30.09.2004. On implementation of VI CPC

recommendation her pension was fixed at Rs.8274/-. Her contention is that her pension was not fixed correctly by the respondents. As per OM dated 1.9.2008, she ought to have been granted Rs.12,411/- as her pension from 01.01.2006.

6. This Tribunal after careful analysis of the OA and reply filed by the respondents, made it clear that the applicant was granted dearness pay only ie., 50% of dearness allowance was converted into dearness pay and merged with pay as per V CPC recommendation. Since her date of retirement falls between 01.04.2004 and 31.12.2005, ie., 30.09.2004, she could not be granted dearness pension. Dearness pension was granted only to those who retired prior to 01.04.2004. The contention of the applicant is that her pension should be Rs.12,411/- by giving 40% fitment for Rs.5491/-. Admittedly, the said amount of Rs.5491/- was 50% of the basic pay + dearness pay. If the above contention of the applicant is accepted then the applicant would be entitled to double benefit ie., the first one dearness pay which had been already granted to her and (ii) the dearness pension to be given to applicant. The applicant was never granted dearness pension.

7. As such, we do not find any infirmity for interference in the order passed by the respondents with regard to fixation of pension.

8. With regard to the power of the Tribunal to review its own orders, the Hon'ble Supreme Court has laid down clear guidelines in its judgment in the case of State of West Bengal & others vs. Kamal Sengupta and another (2008 (3) AISLJ 209) stating therein that "the

Tribunal can exercise powers of a Civil Court in relation to matter enumerated in clauses (a) to (i) of sub-section (3) of Section (22) of Administrative Tribunal Act including the power of reviewing its decision." At Para (28) of the judgment, the principles culled out by the Supreme Court are as under:-

- "(i) The power of Tribunal to review its order/decision under Section 22(3)(j) 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 enumerate din 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 specific grounds.*
- (iv) An error is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent in the fact of record justifying exercise of power under Section 22(2)(f).*
- (v) An error 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 a larger bench of the Tribunal or of a superior court.*
- (vii) A decision/order cannot be reviewed under Section 22(3)(f).*
- (viii) 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 the knowledge and even after the exercise of due diligence the same could not be produced before the Court/Tribunal earlier."*

9. For the reasons discussed in the foregoing paras, we do not find any merit in the RA. Accordingly, the RA is dismissed.