CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

R.A.No.260/08/2018
(Arises out of M.A.Nos.267 & 329 of 2017 disposed of on 03.07.2018 in O.A.No.838 of 2010 – disposed of on 06.10.2015)

Date of Reserve:05.04.2019
Date of Order:05.07.2019

CORAM:

HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Sri Harsha Ranhan Khosla, aged about 67 years, S/o. Late Benjamin Khosla, At-Mission Road, PO/Dist-Koraput.

...Applicant

By the Advocate(s)-Mr.D.P.Dhalasamant

-VERSUS-

Union of India represented through:

1. The Director General of Posts, Ministry of Communication, Government of India, Dak Bhawan, Sansad Marg, New Delhi-110 001.

2. Chief Post Master General, Odisha Circle, Bhubaneswar, Dist-Khurda-751 001.

3. Senior Superintendent of Post Offices, Koraput Division, At/PO/Jeypore, Dist-Koraput-754 001.

...Respondents

By the Advocate(s)-Mr.S.Behera

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

This Review Application has been filed by Shri H.R.Khosla, applicant in O.A.No.838 of 2010 seeking review of the order dated 03.07.2018 passed by this Tribunal in M .A.Nos.267 & 329 of 2017.

2. Brief backgrounds leading to filing of this Review Application are thus: Applicant had approached this Tribunal in O.A.No.838 of 2010 for direction to respondents to regularize his service with effect from 01.12.2007 with all consequential benefits after quashing the impugned order dated 01.07.2011 as passed by Respondent No.2. This Tribunal vide order dated 06.10.2015 disposed of the said O.A. by quashing the impugned order dated 01.07.2011,

with direction to respondents to consider regularization of services of the applicant against any vacancy in Gr.D post irrespective of category and Postal Division arose from 2007 onwards with consequential financial benefits. The Respondents carried this order in appeal before the Hon'ble High Court in W.P.(C) No.5766/20126 and the Hon'ble High Court vide order dated 22.06.2016 dismissed the said Writ Petition. While the matter stood thus, the respondents filed M.A.No.669 of 2016 seeking three months time to implement the orders of this Tribunal dated 06.10.2015 in O.A.No.,838 of 2010. Thereafter, they filed M.A.No.38 of 2017 to stay the further proceedings as the orders of this Tribunal had been implemented by regularizing the services of the applicant with effect from 01.12.2007 vide order dated 19.01.2017. However, since the consequential benefits had not been granted, this Tribunal vide order dated 7.2.2017 directed the respondents to grant the consequential benefits within two months. Thereafter, the respondents again filed M.A.No.171/2017 praying for six months time to implement the order dated 7.2.2017 of this Tribunal and vide order dated 12.04.2017, this Tribunal granted eight weeks time to respondents as last chance to release the financial benefits and accordingly, directed the matter to be listed on 27.06.2017. In the above backdrop, the applicant filed M.A.No.267 of 2017 praying to recall the order dated 12.04.2017 passed in M.A.No.171/2017 and to direct the respondents to grant consequential benefits as per the order dated 06.10.2015 forthwith. This Tribunal, vide order dated 18.05.2017 did not incline to recall/modify the order dated 12.04.2017. However, this Tribunal held that if by 27.06.2017, orders are not complied with and the financial benefits are not released, the respondent no.3 should appear before this Tribunal to explain as to why suitable action would not be initiated against

him for non-compliance of the order and accordingly, the matter was directed to be listed on 27.06.2017. In the meantime, leave encashment and provisional gratuity were paid to the applicant vide orders dated 5.6.2017 and dated 6.6.2017. Since the applicant was not granted pension, this Tribunal vide order dated 26.10.2017 held that in case the final pension settlement is not made by way of payment all the pension dues before the next date of hearing on 014.01.2018, Respondent No.3 is directed to personally appear before this Tribunal on 04.01.2018 and explain the delay.

3. On 19.12.2017, Respondent No.3 filed a show cause which was numbered as M.A.No.329 of 2017. In that M.A., Respondent No.3 had prayed to stop further proceeding of the O.A. in view of the order dated 07.12.2017 passed by him, in which it was been stated that the Director of Accounts calculated the regular service period of the applicant to be 2 years 7 months 16 days and his duty period from temporary Gr.D status calculated to be 3 years 7 months 16 days, 50% of which is 1 years 10 months as per the provision laid down in Para-3 (b) of Postal Directorate letter No.1-7/2015 dated 22.06.2016. According to respondents, qualifying service for pension having been calculated to be 4 years 5 months, 16 days, the applicant was not eligible for pension as prescribed in the Pension Rules, the minimum eligibility period for pension being 10 years.

4. On 31.01.2018, Respondent No.3 filed a further show cause by stating that from 10.09.1990 to 30.11.2007, non-duty periods have been treated as dies-non, which do not qualify for pension and retiral benefits as per letter dated 22.07.2016 issued by the Directorate. In the said show cause, it was pointed out that from 10.09.1990 to 11/2007 the applicant had worked for 1329 days (3 years, 7 months and 24 days between 1990 to 2003) of which

50% works out to 1 year 10 months and they have treated the non-duty period as dies non which do not qualify for pensionable service. However, as per calculation made by the respondents, the applicant had rendered service for 2 years, 7 months & 16 days between 01.12.2007 and 30.06.2011, which according to them, after deducting the non-duty period, the qualifying service worked out to 4 years, 5 months & 16 days.

5. After hearing both the sides, the Single Member Bench reserved the matter on 16.05.2018. However, vide order dated 03.07.2018, M.A.Nos.267 & 329 of 2017 were disposed of in the following terms:

> "8. In the present case, the facts of the case clearly point out to the regular service of the applicant only from 1.12.2007 when he was conferred Group-D permanent post upto his retirement on 30.6.2011. The applicant will not be entitled to 50% of the entire 17 years, 2 months & 20 days for calculation of qualifying service towards pension. Going by the definition laid down by the Hon'ble Supreme Court (supra) the qualifying service should be restricted to the days on which the applicant had actually rendered service. I therefore, hold that the calculation made by the respondents in the present case need not be interfered with. M.A.No.267/2017 is therefore rejected. The contentions made in M.A.No.329/2017 are upheld. The applicant will not be entitled to pension in view of the fact that he has not actually rendered the minimum 10 years of qualifying service. Ordered accordingly".

6. Being not satisfied, the applicant in the O.A. No.838 of 2010 has filed the present Review Application in which it has been prayed for the following :

> i) "...to review the order dated 03.07.2018 passed in M.A.Nos.267 & 329 of 2017 arising out of O.A.No.838/2010.
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> ii) ...to declare that the applicant has completed more than 10 years as qualifying service;
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> iii) ...to direct the respondents, particularly, Respondent No.3 to release the pension in favour of the applicant with effect from 01.07.2011 with differential of service gratuity and other benefits.

7. The grounds on which this RA is based are that a Division Bench of this Tribunal after going through the show cause/counter (M.A.No.329 of 2017) filed by Respondent No.3 vis-a-vis the order dated 07.12.2017 passed by the said Respondent No.3, vide its order dated 04.01.2018 had not accepted the contention/explanation of the respondents that the total qualifying service of the applicant for pension worked out to 4 years, 5 months & 16 days. On the contrary, it was held by the Division Bench that the applicant was found to get 50% eligible service for the purpose of pension in between 1990-2007 besides 100% service after regularization till superannuation with consequential benefits and having so observed, this Tribunal had granted another opportunity to the respondents to comply with the order, as prima facie, the applicant was found to have completed more than 10 years qualifying service and directed the matter to be listed on 02.02.2018.

8. It has been submitted that the review applicant had filed written notes of arguments on 17.05.2018 enclosing thereto copy of the judgment of the Hon'ble Supreme Court in Union of India & ors. Vs. Rakesh Kumar & Ors. [2018(1) SCC (L&S) 51], in which it has been held that (i)the casual worker after temporary status is entitled to reckon 50% of his service till he is regularized on a regular/temporary post for the purposes of calculation of pension (ii) the casual worker before obtaining temporary status is also entitled to reckon 50% of casual service for the purposes of pension. However, the Single Member Bench while passing order dated 03.07.2018 did not take into consideration the ratio of this decision of the Hon'ble Supreme Court, which according to him is an error apparent on the face of the record.

9. It is the case of the review applicant that the Single Member Bench held that the applicant is not entitled to pension in view of the fact that he has not

actually rendered the minimum 10 years of qualifying service, which according to applicant runs counter to the findings recorded by the Division Bench vide order dated 04.01.2018 and thus, there occurs a judicial fallibility in order which is apparent in the face of the record. It has been pointed out that in view of law laid down by the Hon'ble Supreme Court in Jammu & Kashmir vs. R.K.Zalpuri & ors. [2016 (2) SCC (L&S) 228 that the power of its own order inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave palpable errors committed by it, order dated 03.07.2018 needs to be reviewed.

10. Review applicant has stated that he had placed reliance on the decision of the Hon'ble Supreme Court in Union of India vs. Pijush Kanti Nandy & ors. [2009 (2) SCC (L&S) 534], in which the Hon'ble Supreme Court had held that the term "otherwise" should be read ejusdem generis. The term ''otherwise' in the contest of 'the regulation' should be constructed so that it can become a meaningful one. For the said purpose, the employee concerned was required to be in service. According to applicant, it has been held by the Hon'ble Supreme Court that service may not be actually rendered but must be otherwise rendered. This presupposes that the relationship of employer and employee must continue at the relevant times". According to him, by a misinterpretation of this judgment of the Hon'ble Supreme Court, the Single Member Bench came to a conclusion which per se is contrary to what has been recorded earlier by the Division Bench vide its order dated 04.01.2018.

11. This Tribunal vide order dated 07.12.2018 had directed notice to be issued to the respondents requiring them to file objection to both on RA as well as on MA No.38/19 for condonation of delay. Vide order dated 01.03.2019, this Tribunal condoned the delay. However, despite adequate

opportunities having been given, the respondents did not file their objection to R.A.

12. During the course of hearing, learned counsel for the review applicant has brought to the notice of this Tribunal a decision of the Hon'ble Supreme Court in Rajender Singh vs. Lt. Governor, Andaman & Nicobar Islands & Ors [AIR 2006 SC 75) to fortify his stand point for review. The relevant paragraphs of the said decisions are extracted hereunder:

> "15. We are unable to countenance the argument advanced by learned Additional Solicitor General appearing for the respondents. A careful perusal of the impugned judgment does not deal with decide many important issues as could be seen from the grounds of review and as raised in the grounds of special leave petition/appeal. The High Court, in our opinion, is not justified in ignoring the materials on record which on proper consideration may justify the claim of the appellant. Learned counsel for the appellant has also explained to this Court as to why the appellant could not place before the Division Bench some of these documents which were not in possession of the appellant at the time of hearing of the case. The High Court, in our opinion, is not correct in overlooking the documents relied on by the appellant and the respondents. In our opinion, review jurisdiction is available in the present case since the impugned judgment is a clear case of an error apparent on the face of the record and non-consideration of relevant documents. The appellant, in our opinion, has got a strong case in their favour and if the claim of the appellant in this appeal is not countenanced, the appellant will suffer immeasurable loss and injury. Law is well-settled that the power of judicial review of its own order by the High Court inheres in every Court of plenary jurisdiction to prevent miscarriage of justice.
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> 16. The power, in our opinion, extends to correct all errors to prevent miscarriage of justice. The courts should not hesitate to review its own earlier order when there exists an error on the face of the record and the interest of justice so demands in appropriate cases. The grievance of the appellant is that though several vital issues were raised and documents placed, the High Court has not considered the same in its review jurisdiction. In our opinion, the High Court's order in the revision petition is not correct which really necessitates our interference".

13. This Tribunal has gone through the order sought to be reviewed. As a matter of fact, the Single Member Bench while passing order dated 03.07.2018 appears to have not taken into consideration the decision of the Hon'ble Supreme Court in Union of India & ors. Vs.Rakesh Kumar & Ors. (supra) as submitted by the applicant in his written notes of submission. At this juncture, we would like to note that in the O.A.No.838 of 2010 the applicant had prayed for direction to the respondents to regularize his service with effect from 01.12.2007 with all consequential benefits and this Tribunal vide order dated 06.10.2015 allowed the prayer of the applicant.

14. As a measure of compliance of the aforesaid orders of this Tribunal, the respondent have admittedly paid salary for the period in which he had rendered service between 1.12.2007 to 30.6.2011 when he retired from service on superannuation. This apart, the applicant has been paid provisional service gratuity of Rs.22,438/- and Rs.38,893/- towards cash equivalent to unutilized EL for 78 days and HPL of 52 days. However, according to respondents, the applicant was not entitled to any pension since he had not rendered 10 years of qualifying service for being eligible to the same. From this, a disputed point that had emerged for consideration is whether the services rendered by the applicant prior to 31.11.2007 and the regular service from 1.12.2007 to 60.06.2011 would work out to qualifying service to make him eligible for minimum pension and if so whether this Tribunal while disposing of O.A.No.838 of 2010 had ever issued any such direction. As already noted above, this Tribunal while quashing the order dated 01.07.2011(Annexure-7 to the OA) directed the respondents to consider regularization of the services of the applicant against any vacancy in Group D posts, irrespective of category and the Postal Division that arose from the year

2007 onwards and in such eventuality, the applicant shall be entitled to consequential financial benefits. The consequential financial benefits, in our considered view, have already been paid to the applicant. However, the dispute boils down to eligibility and/or entitlement of pension in favour of the applicant. In the show cause and/or M.A.No.329 of 2017, the respondents have urged that the applicant was not entitled to pension since he had not attained the qualifying service of 10 years. Whether the service rendered by the applicant prior to 31.11.2007 till the date of his regularization on 01.12.2007 would make him eligible in order to get pension and pensionary benefits was not the subject matter of dispute in O.A.No.838 of 2010 and as noted, his regularization from 01.12.2007 being the point discernible, the same was allowed by this Tribunal. Therefore, the eligibility or entitlement of the applicant to pension in respect of service rendered by him prior to 31.11.2007 being not the subject matter of consideration in O.A.No.838 of 2010 nor the Tribunal having issued any such direction in that behalf, it would amount to superimposition of orders in a matter of consideration of compliance or otherwise of the order dated 06.10.2015 in O.A.No.838 of 2010.

15. Having regard to the discussions held above, the order dated 03.07.2018 in M.A.Nos.267 & 329 of 2017 by holding that the orders of this Tribunal dated 06.10.2015 passed by this Tribunal in O.A.No.838 of 2015 have been complied with by the Respondents in letter and spirit. However, if the applicant is aggrieved with regard to treatment of the period as dies non which according to him is illegal and arbitrary since he was very much in casual service, this gives rise to a fresh cause of action and in this respect, the applicant is not remediless to take recourse to the law.

16. With the above direction, Review Application and M.A.Nos.267 & 329 of 2017 are disposed of.

17. Free copy of this order be made over to learned counsels for both the sides.

(SWARUP KUMAR MISHRA)

MEMBER(J)

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