

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: AT HYDERABAD**

**RA/021/00018/2018
In
OA/021/000954/2017**

Date of Order: 11.07. 2019

Between:

1. Union of India, Rep. by General Manager,
South Central Railway, Rail Nilayam,
Secunderabad.
2. The Chief Personnel Officer,
South Central Railway, Rail Nilayam,
Secunderabad.
3. The Senior Divisional Personnel Officer,
South Central Railway, Secunderabad Division,
Sanchalan Bhavan, Secunderabad.

..Applicants

And

Hemili Bai, W/o. Rawojee Kheemia,
Aged about 70 years, Occ: House Hold,
Tukkaram Nayak Station Tanda,
Chittapur, Gulburga Dist., Karnataka State.

...Respondent

Counsel for the Applicants	..	Mrs. Vijaya Sagi
		SC for Railways
Counsel for the Respondent	...	Mr. M.C. Jacob

CORAM:

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORAL ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.)}

2. Heard learned counsel for both sides and perused the material on record.

3. This RA has been filed with a prayer to review the order dt. 26.10.2018 passed in OA No. 954/2017. Operative portion of the said judgment is as under:

“Reliance is placed by the learned counsel for the applicant on Union of India vs. Rakesh Kumar & Ors in CA No. 3939/2017. In the said judgment the Hon'ble Supreme Court took the view that 50% of the casual labour service of the employee as well as 50% of the service after obtaining temporary status has to be reckoned along with the regular service for the purpose of calculating the pension. The applicant also relied on Sub-Rule (3) of Rule 69 of Railway Services (Pension) Rules, 1993 for the purpose of calculating the length of qualifying service according to which fraction of a year equal to three months and above shall be treated as a completed one half year and reckoned as qualifying service.

6. In the instant case, the applicant joined as a casual labour on 22.05.1978. He was granted temporary status on 22.09.1978. He was regularized on 01.10.1983 and retired on 30.11.1990. The total service of the applicant thus computed is 9 years 10 months and 4 days and his qualifying service would be 10 years and is eligible for pension as per Railway Services (Pension) Rules, 1993. The rejection of pension to the deceased employee therefore is contrary to the judgment of the Hon'ble Supreme Court (supra).

7. The respondents are therefore directed to grant pension and other benefits to the applicant considering that the deceased employee had completed 10 years qualifying service and pay the applicant from the date of retirement of the deceased employee within a period of eight weeks from the date of receipt of a copy of this order.

8. The OA is allowed accordingly. There shall be no order as to costs.”

4. The review applicants i.e. respondents in the OA state that they are willing to implement the verdict delivered in OA 954/2017 in regard to grant of pension to the respondent in the review application. However, their main

contention is that pension shall be calculated from the date of the Hon'ble Supreme Court judgment in Union of India Vs. Rakesh Kumar & ors, in CA No. 3939/2017, dated 27.04.2017. It is also submitted that the matter has been taken up with the Ministry of Finance and the DOPT for further consultation since it involves a policy decision and major financial implications.

5. While appreciating the positive outlook of the review applicants to implement the judgment, it has to be adduced that any legal principle laid down by the Hon'ble Supreme Court will have retrospective effect and the same has been observed by the Hon'ble Apex Court in General Manager, Uttaranchal Jal Sansthan v. Laxmi Devi, (2009) 7 SCC 205, as under:

“It is worth mentioning that judicial decisions unless otherwise specified are retrospective.”

Therefore, keeping in view the observations of the Hon'ble Apex Court, the review applicants have to necessarily implement the judgment as has been ordered in OA 954/2017.

6. Besides, it is well settled that the Tribunal has very little scope to review its own judgment. Hon'ble Supreme Court while adjudicating on an issue related to processing of review applications by the Tribunal, in *State of W.B. v. Kamal Sengupta*, (2008) 8 SCC 612, has observed as under:-

“17. The power of a civil court to review its judgment/decision is traceable in Section 114 CPC. The grounds on which review can be sought are enumerated in Order 47 Rule 1 CPC, which reads as under:

“1. Application for review of judgment.—(1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from 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 decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the court which passed the decree or made the order.”

- *Since the Tribunal’s power to review its order/decision is akin to that of the civil court, statutorily enumerated and judicially recognised limitations on the civil court’s power to review the judgment/decision would also apply to the Tribunal’s power under Section 22(3)(f) of the Act. In other words, a tribunal established under the Act is entitled to review its order/decision only if either of the grounds enumerated in Order 47 Rule 1 are available. This would necessarily mean that a tribunal can review its order/decision on the discovery of new or important matter or evidence which the applicant could not produce at the time of initial decision despite exercise of due diligence, or the same was not within his knowledge or if it is shown that the order sought to be reviewed suffers from some mistake or error apparent on the face of the record or there exists some other reason, which, in the opinion of the Tribunal, is sufficient for reviewing the earlier order/decision.*

.....

35. The principles which can be culled out from the above noted judgments 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.”

7. Keeping the above in view and the contentions raised in the review application, this Tribunal is of the view that the RA lacks merit and hence, merits dismissal. RA is accordingly dismissed. There shall be no order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated: the 11th July, 2019

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