

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

**Review Application No.10 of 2019
In
Original Application No.21/165/2018**

Date of Order: 25.04.2019

Between:

N. Chittibabu, S/o. late Vardhanaiah,
aged 82 years, R/o.5-12-2011,
Mangapuram Colony, Moulali, Hyderabad – 500 040.

..Applicant

And

The Union of India, represented by

1. The FA & CAO, Office of the General Manager,
East Coast Railway, Bhubaneshwar – 751 017.
2. The General Manager, East Coast Railway, Bhubaneshwar – 751 017.
3. The Senior Divisional Finance Manager,
East Coast Railway, Visakhapatnam.

...Respondents

Counsel for the Applicant	...	Mr. E. Krishna Swamy
Counsel for the Respondents	...	Mr. S.M. Patnaik, SC for Railways

CORAM:

<i>Hon'ble Mr. B.V. Sudhakar</i>	...	<i>Member (Admn.)</i>
<i>Hon'ble Mr. Swarup Kumar Mishra</i>	...	<i>Member (Judl.)</i>

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

2. This Review Application has been filed in regard to the decision of this Tribunal dated 16.11.18 in OA No. 165 of 2018. The operative portion of the said order, reads as under:

“16. Therefore the respondents are directed to consider:

- 1) Revising pension of the applicants based on the recommendation of the 6th CPC and accepted by the Govt, by working out the pension as 50 percent of last pay drawn using the Concordance Table issued

pursuant to the Government's Resolution No. 38/37/08-P&PW(A) dated 29.08.2008.

- 2) Working out and release the arrears of pension for a period of 3 years prior to the date of filing the OA as per para 5 of the verdict of the Hon'ble Supreme Court in CA No. 5151 of 2008 – 5152 of 2008 in Union of India & Others Vs. Tarsem Singh.
- 3) Time calendared to comply with the order is 7 months from the date of receipt of this order”

3. As no hearing is considered necessary, the Review Application is being disposed under circulation as per Rule 17(3) of the C.A.T. (Procedure) Rules, 1987.

4. In a review, new facts cannot be considered. Therefore, the GOI order dt 4.1.19 does not come to the rescue of the applicant as the judgment in respect of the OA is dt. 16.11.18. Restriction of pension is for 3 years based on Honourable Supreme Court Judgment in Union of India & Others Vs. Tarsem Singh in CA No. 5151 of 2008 – 5152 of 2008. Hon'ble Supreme Court has given elaborate reasons as to why it should be so and hence need not be reiterated. Time allowed to implement the judgment is 7 months as it has to be examined by different wings of the Ministry and if necessary consult other Ministries. The verdict has financial repercussions which would have all India ramifications and hence reasonable time has to be given and accordingly ordered. The applicant claims that the order of the Tribunal should not be a directive to consider but it should be a straight forward directive to the respondents to enforce the order. The applicant claims in RA that this Tribunal should not issue an order wherein the word “Consider” is used to direct the respondents. This is a mistaken perception of the applicant that every order of the Tribunal has to be an open directive so that the order is

enforceable and actionable. The term “consider” came up for interpretation of the Apex Court. Any order issued by the Tribunal is enforceable and actionable based on law. Use of the word “Consider” is based on the Hon’ble Supreme Court directive in the case of Divisional Personnel Officer, Southern Railway vs T.R.Chellappan (1976) 3 SCC 190 wherein the said term has been interpreted as under:-

The word “consider” has been used in contradistinction to the word “determine”. The rule-making authority deliberately used the word “consider” and not “determine” because the word “determine” has a much wider scope. The word “consider” merely connotes that there should be active application of the mind by after considering the entire circumstances of the case.

5. The Tribunal, after proper rumination, spelt out the law on the subject and determined the extent of applicant’s entitlement to pension. That far and no further. It is for the authority to keep in view the above decision and with various kindred subjects has to work out the extent of amount due and payable to the applicant. For this purpose, the respondents are to apply their mind and pass orders, though they cannot sit in appeal over the decision already made and indicated in the order under review. Their consideration of the case is from the facts available on record and should there be any relevant facts which have not been taken into consideration by the Tribunal the same could be brought to the notice of the Tribunal. Needless to mention that if there is no impediment in the entitlement of pension to the applicant on the basis of the legal issue decided by the Tribunal, the applicant cannot have any grievance. If, after consideration, the respondents come to a conclusion which is not, according to the applicant, in order, he always has a right to approach the Tribunal again. Secondly, the use of the term “consider” has been consciously

and judiciously used by the Tribunal and certainly, it is not an inadvertent error to have it rectified under the Review jurisdiction. It is a term judiciously used by the Tribunal under the discretion available to it and no one can dictate as to how to use that discretion wherein it was held that the orders of the Tribunal has to be. Consequently, the plea of the applicant in this regard has no legal leg to stand.

6. Besides, a plea for review, unless the first judicial view is manifestly distorted, is like asking for the moon. A forensic defeat cannot be avenged by an invitation to have a second look, hopeful of discovery of flaws and reversal of result. [Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi, (1980) 2 SCC 167]. The review should be as per guidelines of Apex Court in the case of State of W.B. vs Kamal Sengupta (2008) 8 SCC 612 which are as under:-

“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. Applying the above norms, the only area where a relook is required is in regard to the period for which arrears of pension was allowed. It was directed that it shall be for a period of 3 years prior to the date of filing of the OA. The OA was filed in February 2018. The 6th CPC has covered the period from 1.1.2006 to 31.12.2015. The applicant, in the OA, sought the following prayer:

“..Direct respondent -1 to revise/ refix the pension of the applicant @ Rs.8,366/- with effect from 01.01.2006 and pay the arrears of pension from 01.01.2006 till the date of payment of the refixed pension (calculation upto 30.06.2015 enclosed) within two (2) months from the date of receipt of the order of this Tribunal and pay interest at 12% on the delayed payment, and ..”

Therefore, the arrears ought to be confined to this time span. The judgment per se is not erroneous but there is a self evident error of clerical nature, in regard to period of arrears. Accordingly, para 16(2) of the order in OA No. 165/2018 & batch, dated 16.11.2018, in so far as OA No. 165/2018 is modified as under. Respondents are directed to consider the same:

- i) Work out and release the arrears of pension for a period of 3 years covering the calendar years 2013, 2014 & 2015 as per para

5 of the verdict of the Hon'ble Supreme Court in CA No. 5151 of 2008 – 5152 of 2008 in Union of India & Others Vs. Tarseem Singh.

8. Accordingly, with the modification as at para 7 (i), the RA is partly allowed. Respondents to take note and accordingly act. No order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (JUDL.)

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

Dated, the 25th day of April, 2019

evr