CENTRAL ADMINISTRATIVE TRIBUNAL

MADRAS BENCH

DATED THIS THE 29TH DAY OF MARCH, TWO THOUSAND NINTEEN

PRESENT:

THE HON'BLE MR. T. JACOB, MEMBER (A)

RA/310/00005/2019
in
OA/310/01375/2016

1. The Union of India
   rep., by the Chief General Manager,
   BSNL. Chennai Telephones.,
   No.78, Purasawalkam High Road,
   Chennai 600 010.

2. The Deputy General Manager (F&A)/CBA)
   BSNL, CHTD, Chennai.

3. The Deputy General Manager (Finance Cell),
   BSNL, CHTD, Chennai 600 010.

4. The Chief Accounts Officer (IFA)/CBA,
   BSNL, CHTD, Chennai 600 010.

5. The Accounts Officer (P7A) CBA,
   BSNL, Chennai Telephones,
   Chennai 600 010. ..Applicant/Respondent

-versus-

1. C. Indirani, W/o (Late) E. Sekar,
   Adyar Telephone Exchange.
   CHTD, Chennai.
   Resi: No.59, Puzhuthivakkam Main Road,
   Puzhuthivakkam, Chennai 600 091. ...Respondent/Applicant

By Advocates:

Mr. M.T. Arunan, for the applicant in RA.

M/s T.N. Sugesh, for the respondents in RA.

ORDER

This RA has been filed by the respondents in the OA to review the order of this Tribunal passed in OA.1375/2016 dated 29.10.2018 on the ground that DOT should have been impleaded as one of the respondents in the main case as it is the necessary competent authority to carry out the directions of the Hon'ble Court. Further the respondents have stated that the order of Hon'ble Supreme Court is for those employees who retired on superannuation and were running short of qualifying service for the pension, whereas in the instant case, the employee retired on compulsory retirement in the year 2011 and was not sanctioned pension till 2015, when he expired. The order of this Tribunal dated 29.10.2018 is in contradiction to Rule 54 (2) of CCS (Pension) Rules on family pension. The Scheme of temporary status has no provision of weightage for the service rendered as casual worker unlike the Railway Rules. The temporary status is granted when there are no vacancies in Group 'D' and the casual employee is working on a non sanctioned post and already 50% of the service rendered as TSM is counted for pensionary benefits. There is no provision in the scheme to take 50% of the casual service as was available in Railway Rules. The part of the order of the Hon'ble Supreme Court ordering 50% weightage to Temporary Status Mazdoor (TSM) service is already extended to the deceased official as provided in the Scheme. The deceased employee had never represented for granting pension and had not represented against the order of the disciplinary authority and the applicant had also not approached the

department with any representation when the deceased employee was alive till 2015. The applicant did not give any valid reason for approaching this Tribunal after a long gap of five years.

2. I have perused the order of this Tribunal dated 29.10.2018 in OA.1375/2016. The main ground on which the applicant has filed this RA is that the DOT has not been impleaded as one of the respondents in the OA. This point ought to have been raised by the respondents when the case was taken up for hearing and also agitated the matter by raising preliminary objection at the relevant point of time. After the OA was finalised and order passed on 29.10.2018, the respondents are raising this issue by filing the present RA and are trying to reargue the matter.

3. The RA was posted before the Bench and notice was issued to the respondents.

4. Heard the learned counsel for the respective parties in RA and perused the pleadings and documents on record.

5. It could be seen on perusal of the records that the respondents have taken up the issue with the DOT vide Sr.AO (Admn) e-mail dated 16.01.2019 and the DOT has also given a reply vide letter dated 30.01.2019 (Annexure A17 in the RA) rejecting the claim of the applicant. The issue relating to non joinder of parties ought to have been raised at the threshold level of the case which the applicants in R.A. have not done.

6. With regard to the treatment of qualifying service for the purpose of pension, the Hon'ble Supreme Court and High Courts have passed several Judgements/orders. The Hon'ble High Court of Madras in W.P.12 of 2015

dated 23.2.2015 has dealt with the issue of pensionary benefits to those who had not completed 10 years of service. The said Judgement reads as follows:-

> **"3....Thereafter he was absorbed in a Group 'D' post and in the Group D post, he had served for 9 years, 4 months and 23 days. Since the said period of service after absorption was less than 10 years, the pension claimed by the petitioner was rejected by the department, which was also upheld by the Central Administrative Tribunal by holding that the earlier service cannot be counted for pension.....**
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> **4. The said issue was already considered by the Central Administrative Tribunal, Cuttack Bench in OA.No.614 of 2010 dated 08.07.2011, wherein a similarly placed person was ordered to be sanctioned pension by treating the said person has served for a period of 10 years for the purpose of pension. The said order was affirmed by the Orissa High Court in W.P.(C) No.29574 of 2011 and the Special Leave Petition filed before the Hon'ble Supreme Court was also dismissed.**
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> **5. Further, a Division Bench of this Court considered the similar issue in W.P.No.23652 of 2014 and by order dated 27.10.2014, dismissed the said writ petition filed by the department, whereas also similar relief was granted by another applicant who rendered over 7 years in Group D service in OA.No.48 of 2013 by order dated 09.06.2014. Following the said order, this Court has upheld the claim of another petitioner in W.P.No.547/2015 dated 19.01.2015.**
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> **6. Applying the said Judgments to the facts of this case, this Writ Petition is allowed with a direction to the respondens 1 to 3 to treat the petitioner as completed 10 years of qualifying service for the purpose of pension as on 31.5.2007. The petitioner is entitled to get arrears of pension from 1.6.2007...."**

7. Having regard to the above facts and circumstances, this Tribunal passed order dated 29.10.2018 directing the respondents to consider and dispose of the pending representation of the applicant dated 21.6.2016 and process the case for payment of family pension. As such, I do not find any error apparent on the face of the record or arithmetical mistake to review the order of this Tribunal.

8 The scope of review of the order of this Tribunal lies in a narrow compass as prescribed under order XLVII, Rule (1) of CPC. None of the grounds raised in the RA brings it within the scope and purview of review. It

appears that the review applicant is trying to reargue the matter afresh, as if in appeal, which is not permissible. If in the opinion of the review applicant the order passed by the Tribunal is erroneous, the remedy lies elsewhere. Under the garb of review, he cannot be allowed to raise the same grounds, which were considered and rejected by the Tribunal while passing the order under review. This is obviously an after thought of the Review Applicants.

9. Existence of an error apparent on the face of the record is *sin qua non* for reviewing the order. The review applicant has failed to bring out any error apparent on the face of the order under review.

10. On 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 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 of CPC.
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> (ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.
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> (iii) The expression "any other sufficient reason" appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.
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> (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).
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> (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.

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