

**CENTRAL ADMINISTRATIVE TRIBUNAL****MADRAS BENCH**

**dated      the      day of November, Two Thousand Nineteen**

**RA/310/00018/2017 IN OA/310/01332/2016**

**PRESENT:**

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

Selvi Nunna Siva Priya,  
Daughter of Late Nunna Srinivasa Rao,  
Door no. 20-7-75, Lambhadidonka,  
Opposite to Kidney Hospital,  
Ongole, Pin 523 002.  
Andhra Pradesh,

...Applicant

(By Advocate M/s Ratio Legis)

Vs

1. Union of India rep. by  
The General Manager, Southern Railways,  
Park Town, Chennai - 600 003.

2. The Chief Personnel Officer,  
Southern Railways,  
Park Town, Chennai - 600 003.

3. The Senior Divisional Personnel Officer,  
Chennai Division, Southern Railways,  
Park Town, Chennai - 600 003.

....Respondents

(By Advocate Ms. Meera Gnanasekar)

**ORDER**

**(Pronounced by the Hon'ble Mr. T. Jacob, Member (A))**

This RA is coming up for hearing before this Tribunal after the matter has been remitted by the Hon'ble High Court of Madras in W.P.5618/2018 filed by the Union of India and others by setting aside the order of this Tribunal passed in RA.18/2017 dated 24.11.2017. The ground for challenge of the said review order of this Tribunal is that the principles of natural justice have been violated inasmuch as the Tribunal while passing order in RA has not afforded to the respondents an opportunity of being heard but modified the final order by circulation.

2. Before adverting further into the facts of the case, I deem it appropriate to reproduce the circumstances leading to filing of this OA by the applicant.

The applicant is an adopted daughter of the deceased Railway employee who died in harness on 19.06.2005 in unmarried state. During his lifetime, he adopted his brother's second daughter Nunna Siva Priya at the age of 7 years by way of an adoption deed. After the death of the said Srinivasa Rao, the applicant's name was included as adopted daughter in the family composition of the employee and the respondents had passed Pension Payment Order dated 27.12.2006 and also sanctioned family pension to the applicant by letter dated 29.08.2013. While so, the applicant sought for compassionate appointment under the relevant Scheme which was initially kept pending as she was a minor at the relevant point of time. Later on, the applicant made a representation dated 21.10.2011 through her guardian seeking appointment on compassionate grounds on attaining the age of majority but the the 3rd respondent

rejected her request on the ground that there was no dependency existing. The applicant submitted representation dated 14.03.2013 for review of her case but the same too was rejected by the respondents stating that the entire settlement dues had been paid to the applicant and she was also in receipt of family pension, she was living with her biological parents, there was no other dependent left to be taken care of in the deceased employee's family. Aggrieved by the rejection of her representation on the ground of 'no dependency', the applicant filed OA.333/2015 whereby and whereunder after hearing the learned counsel for either side, this Tribunal set aside the orders of the respondents dated 05.03.2013 and 05.06.2013 and directed the respondents to make an objective assessment of the claim of the applicant through the standard procedure as required in the scheme of compassionate appointment and pass a reasoned and speaking order. Pursuant to the above, the respondents have passed the impugned order dated 20.06.2016 rejecting the request of the applicant for appointment on compassionate grounds. Aggrieved by the above rejection, the applicant filed OA.1332/2016 whereby this Tribunal by order dated 03.05.2017 dismissed the OA. Being aggrieved, the applicant filed RA.18/2017 for review of the order of this Tribunal dated 03.05.2017 whereby the Single Bench of this Tribunal reviewed its own order and set aside the order of the third respondent dated 20.06.2016 and directed the respondents to consider the claim of the applicant in the light of the facts discussed by making an objective assessment of the claim of the applicant in accordance with the Scheme of compassionate appointment. This Tribunal observed at paras 7 and 8 of the order dated 24.11.2017 as follows:-

"7. It is also to be seen that the applicant was only 7 years old at the time of death of the deceased employee and it is only at the instance of the natural father, Guardianship order was obtained from the District Court which appointed him as Guardian to represent the applicant, based on which, terminal benefits were settled. When the applicant had completed 18 years, she has approached for compassionate appointment by submitting educational certificates, and her request was rejected as there is no other dependent to the deceased. When the applicant herself being 18 years of age, and expecting an employment to support her, she is not expected to support any other dependent of the deceased.

8. Though this Tribunal on earlier occasion, passed an order dated 08.02.2016 in OA.333/2015 directing the respondents to make an objective assessment of the claim and to pass order, there is no objective assessment of the claim. At the time of disposal of the OA.1332 of 2016, various facts referred to in the earlier paragraph have not been projected. Hence this Tribunal inclined to review the order dated 3.5.2017 passed in the OA.1332 of 2016."

3. Heard the learned counsel for the respective parties in the RA and the reply filed by the respondents. In the reply it is stated that the applicant's natural father submitted a representation dated 18.07.2011 requesting appointment on compassionate grounds to the applicant after she became a major followed by another representation dated 06.01.2012. Pursuant to the order passed by this Tribunal, first enquiry was conducted in the year 2012 after the applicant became major and a second enquiry was conducted in the year 2016. During the preliminary investigation conducted by the administration regarding the financial status of her family, it came to light that she was residing with her natural parents at that time and that there are no other family member to be supported by the applicant or depending on her which is a main criteria for considering appointment on compassionate grounds. The applicant was adopted by her own paternal uncle who is the applicant's father's brother and

adoption was made just 17 days before the death of the employee, all the settlement dues were paid on the basis of the adoption deed and it was reported that the applicant neither stayed with the deceased Railway employee nor took care of him at any point of time and the deceased was a bachelor and no other dependents were left behind him. There is no financial crisis at this distant date.

4. The object of compassionate appointment is to provide assistance to the family of a Government servant who die in harness leaving his family in penury and without any means of livelihood and to get over the financial crisis and to relieve the family of the deceased from financial destitution and to help it get over the emergency. As per this Scheme, the family living in indigent condition and deserving immediate assistance of financial destitution is eligible for compassionate ground appointment. But it is a non statutory scheme and is in the form of concession and it cannot be claimed as a matter of right. Mere death of a government employee in harness does not entitle the family to claim compassionate appointment. The concept of compassionate appointment has been recognised as an exception to the general rule carved out in the interest of justice in certain exigencies by way of a policy of an employer, which partakes the character of service rules. That being so, it needs little emphasis that the scheme or the policy as the case may be, is binding both on the employer and the employee, being an exception the scheme has to be strictly construed and confined only to the purpose it seeks to achieve. The philosophy behind giving compassionate appointment is just to help the family in harness to get

over the immediate crisis due to the loss of the sole bread winner. This category of appointment cannot be claimed as a matter of right after certain period, when the crisis is over.

5. Omission to file the important documents or present important points at the time of arguments has been projected as the spinal ground for review of the order. The question is whether such a ground could give passport for review of the order passed after consideration of all the documents presented along with the pleadings. It would have been a different matter that at the time of arguments reference to such documents is made and also establish that despite earnest attempt, the documents could not be accessed.

6. The Apex Court in the case of **Northern India Caterers Ltd., vs Lt. Governor of Delhi (1980) 2 SCC 167** had held as under:-

"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. "

7. The scope of review 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.

Existence of an error apparent on the face of the record is sine 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.

8. 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) 8 SCC 612** as under:-

“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.”

Again 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 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 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.

(ix) 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.”

The case of the Review applicant does not meet the requirement to justify review of the order in RA.18/2017 dated 24.11.2017.

9. Telescoping the above guidelines upon the case, it is observed that the review applicant could not make a proper case for review of the order passed. For the reasons discussed in the foregoing paras, this Tribunal does not find any merit in the RA. Accordingly, the RA is dismissed.

(T.JACOB)  
MEMBER(A)  
-11-2019

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