

(2021) 01 DEL CK 0146

In the Delhi High Court

Case No : Civil Writ Petition No. 10903 Of 2019

N.K. Madhok

APPELLANT

Vs

Union Of India And Ors.

RESPONDENT

Date of Decision : 19-01-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Code Of Civil Procedure, 1908 — Section 114, Order 47, Order 47 Rule 1

Citation : (2021) 01 DEL CK 0146

Hon'ble Judges : Siddharth Mridul, J;Anup Jairam Bhambhani, J

Bench : Division Bench

Advocate : Anjana Gosain

Final Decision : Dismissed

Judgement

Anup Jairam Bhambhani, J

REVIEW PETITION NO. 1/2020

1. The petitioner, who appears in-person, seeks review of judgment dated 14.10.2019 made by this court in W.P. (C) 10903/2019, whereby the said

writ petition was dismissed and order dated 06.12.2018 made by the learned Central Administrative Tribunal (â??Tribunalâ??, for short) in O.A. No.

3517/2017 was upheld.

2. In order to get an overview of the petitionerâ??s grievance as raised in the O.A. before the Tribunal and subsequently in the writ petition before

this court, the prayers made in the O.A. and the writ petition are extracted below.

Prayers before the Tribunal in O.A. No. 3517/2017 :

â??(a) Directing the respondents to place the relevant records pertaining to the present O.A. before their Lordships for the proper

adjudication in the matter in the interest of justice.

(b) Quash and setting aside the order dt. 23.06.2017 (Annexure A/1) issued by Airports Authority of India further directing the respondents

to consider and finalize the requests of the applicant for (i) Pension should be calculated & paid @ Rs. 2120/- basic pay w.e.f. 02.10.04 to

31.03.15 with arrears and interest @ 18% compound on yearly basis

(ii) payment of interest on delayed restoration of 1/3rd pension after 10½ years

(iii) compensation for deprivation of medical facilities to

self and his family members for 22 long years @ 18% interest compound in yearly basis and (iv) non-payment of pension for his services of

4.2 years rendered with them with all other consequential benefits admissible to the applicant in accordance with the relevant rules and

instructions on the subject with cost within 30 days of CAT's rules.

(c) Allowing the O.A. of the applicant with all other consequential benefits and costs.

Prayers before this court in W.P. (C) No. 10903/2019 :

i. quash and set aside the order dated 06.12.2018 passed by the Hon'ble Tribunal in O.A. No. 3517/2017 and direct the respondent

to correctly calculate the pension and arrears of the Petitioner considering Rs. 2120/- as basic pay w.e.f. from 02.10.2004 till 20.04.2015 in

his pay scale of Rs.2000-3500 as his last pay drawn on 02.10.1989;

ii. direct the respondent to pay interest @ 18% for delayed payment of pension compounded on yearly basis till the date of payment;

iii. direct the respondent to consider all ad hoc promotions and the pay scale for the purpose of pension, direction against the respondent

authorities to consider and fix interest on the delayed amount of pension;

iv. direct the respondent to pay compensation of Rs.20 lacs for deprivation of medical facilities to the Petitioner and his family members for

22 long years along with 18% interest compounded on yearly basis till the date of payment;

v. Writ of Certiorari/Mandamus calling for records of O.A. No.3517/17 filed before the Hon'ble Tribunal and service book records of

the Petitioner maintained by the respondent authorities,

vi. Such other and further orders which this Hon'ble court deems fit and

proper in the interest of justice may also be passed.â??

3. As set-out in the review petition, the petitioner appearing in-person canvasses four principal grievances in relation to his services with the National

Airports Authority (â??NAAâ??, for short) as an absorbee from the Directorate General of Civil Aviation (â??DGCAâ??, for short). The

grievances are :

i. Claim for alleged interest on delayed payment upon restoration of 1/3rd pension, which the petitioner claims was paid to him 10½ years after his

entitlement, the delay alleged being from 02.10.2004 till 20.04.2015;

ii. Claim for alleged wrong calculation of arrears towards restoration of 1/3rd pension, as paid to him on 20.04.2015;

iii. Claim for compensation of Rs.20 lacs for alleged deprivation of medical facilities under the Central Government Health Scheme (â??CGHSâ??,

for short);

iv. Claim for alleged non-clubbing of services of 4.2 years rendered from 02.10.1989 to 30.11.1993 for calculation of the pensionary benefits.

4. It is pertinent to note that as stated in his review petition, and as also argued by the petitioner in-person, he alleges as under:

â??That the present Review Petition is being filed for seeking review of the Honâ??ble High Courtâ??s Judgment/Impugned Order dated

14th October 2019 in Writ Petition No. 10903 of 2019 and praying for a fresh/de novo Judgment after hearing the Petitionerâ??s

arguments in this Review Petition and for issuing directions to the Respondent authorities as sought for earlier and now in the present

Review Petition.â??

(emphasis supplied)

The petitioner further states in Grounds (a) and (b) of the review petition that :

â??(a) The Impugned Order of this Honâ??ble Court dated 14th October 2019 is based without looking into the merits of the real facts of

the case as put forth by the Petitioner in his Writ Petition No. 10903 of 2019 and as brought out now again before this Honâ??ble Court

citing Judgments of Honâ??ble Supreme Court and the Honâ??ble High Courts of Delhi and Andhra Pradesh besides other letters.

â??(b) Suppression of facts by the Respondents and new facts having emerged

and evidences produced now by the Petitioner in this Review

Petition.â??

(emphasis supplied)

5. It may be stated at the outset that upon being queried, the petitioner is unable to point-out any new facts or any new aspects on the merits of the case that were not argued before this court by his counsel at the time the writ petition was earlier heard and considered.

6. As can be gathered from the prayers in the O.A. and in the writ petition, the petitionerâ??s claims arise from his absorption into the NAA (now the Airports Authority of India) upon being transferred on technical deputation, after having served at the DGCA; and subsequently having been given ad-hoc promotion to Steno Grade â??Bâ?? at the NAA.

7. The petitioner subsequently opted to commute 100% of his pension for services rendered at the DGCA; and later resigned from services at the

NAA on 30.11.1993. Subsequently, in compliance of the judgment passed by the Honâ??ble Supreme Court in Welfare Association of Absorbed

Central Government Employees in Public Enterprises & Ors. vs. Union of India & Anr. : (1996) 2 SCC 187, the petitioner was also held entitled to the

benefit of restoration of 1/3rd pension after 15 years of retirement as an absorbed employee in the NAA. In compliance of the said judgment, O.M.

dated 30.09.1996 was issued by the Central Government, which however specifically required in â??Clause 5â?? that an absorbee in a

PSU/autonomous body â??shall have to formally applyâ? to the concerned Administrative Ministry/ Department/Office to get the benefit of

restoration of 1/3rd pension.

8. The petitionerâ??s grievances, as raised in the writ petition and argued before this court, were dealt with in impugned judgment dated 14.10.2019

in the following way:

â??8. Admittedly, the petitioner submitted his representation to the DGCA on 17.11.2014 and his request was forwarded to the Airports

Authority of India on 27.11.2014 as his service record was available with AAI. A calculation sheet was prepared by AAI for restoration of

one-third pension on 31.12.2014 and DGCA ordered for payment of arrears to the petitioner on 09.04.2015, which it transpired were

incorrect arrears. In supersession of its earlier order dated 09.04.2015, DGCA directed payment of corrected arrears of pension vide order

dated 16.04.2015. Arrears having been paid to the petitioner on 20.04.2015, the petitioner now claims interest for the period of ten-and-a-

half years for the delay in payment of arrears of pension, which was declined by the Tribunal. Ms.Rajeshwari H., counsel for the petitioner

submits that the onus was on the respondent to grant pension to the petitioner after the judgment was pronounced by the Supreme Court in

the year 1995 and the Office Memorandum was issued on 30.09.1996.

â??13. Reading of clause 5 leaves no room for doubt that for the purpose of receiving benefit of the O.M. the onus was on the petitioner to

formally apply to the Administrative Ministry/Department/Office from where he had retired and was paid lumpsum commuted value of

pension. Since undisputed facts show that once the application was made, the amount of pension due was released to the petitioner within

five-and-a-half months. Accordingly, we find no infirmity in the decision taken by the Tribunal on this issue.

â??14. As far as the second grievance of the petitioner is concerned, the Tribunal has also taken note of the fact that the petitioner

resigned from the NAA on 30.11.1993; and during the period between 2.10.1989 to 30.11.1993 there was no scheme for grant of pension;

and further that the AAI was formed on 01.04.1995 as an autonomous authority under the Airports Authority of India Act, 1994 and the

pension scheme was started only from 01.1.2006. Accordingly, notification dated 01.08.1988 does not apply to the facts of the present case.

The prayer of the petitioner for compensation of Rs.20 lakhs towards medical claim has also been rightly rejected by the Tribunal for the

reason that under the AAI rules medical reimbursement is not available upon resignation.â??

(emphasis supplied)

9. Accordingly, this court is of the view that the grievances set-out in the review petition have already been duly heard, considered and decided by this

court vidÃ© its judgment dated 14.10.2019 and no new material or facts have either emerged or been brought to the notice of this court by the

petitioner; who has, in essence only strenuously argued before this court that the conclusions contained in judgment dated 14.10.2019 are wrong.

10. However, such contention, we are afraid, cannot be the basis for seeking review of a judgment. The power in review proceedings, premised as it

is on the principles of section 114 and Order 47 of the Code of Civil Procedure 1908, even though the Code of Civil Procedure 1908 does not per se

apply to writ proceedings under Article 226 of the Constitution of India, is distinct from the power in appellate proceedings. The court must never lose

sight of such distinction which, in substance, is that in review proceedings the court may consider an error apparent on the face of the record or other

similar mistake, which is facially evident from the order; or some new and important material that was not available earlier but which necessitates a

relook into the matter. The court may have omitted to consider some material on record or made some other manifest error, which it could not have

intended; or some material evidence may have been discovered which was not within the knowledge of the review applicant earlier, which requires

the same court to reconsider the case. However an opinion formed or a decision taken by a court on the merits of a case, based upon its judicial view

in relation to any aspect of a matter cannot be subject matter of review; and a challenge to such opinion or decision can only be by way of appellate

proceedings before a superior court. In review proceedings a court may review an "evident error" but not its "judicial decision" merely

because one or more parties consider such judicial decision to be erroneous, incorrect or wrong. That would be the remit of an appellate court.

11. This position is supported by a recent decision of the Hon^{ble} Supreme Court in Ram Sahu (Dead) Through LRs & Ors. vs. Vinod Kumar

Rawat & Ors. : 2020 SCC OnLine SC 896, wherein the Hon^{ble} Supreme Court has held as under :

"26. In the case of Haridas Das v. Usha Rani Banik (Smt.), (2006) 4 SCC 78 while considering the scope and ambit of Section 114 CPC

read with Order 47 Rule 1 CPC it is observed and held in paragraph 14 to 18 as under:

"14. In Meera Bhanja v. Nirmala Kumari Choudhury, (1995) 1 SCC 170 it was held that:

"8. It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of

Order 47 Rule 1 CPC. In connection with the limitation of the powers of the court under Order 47 Rule 1, while dealing with similar

jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution, this Court, in *Aribam*

Tuleswar Sharma v. Aribam Pishak Sharma, (1979) 4 SCC 389 speaking through Chinnappa Reddy, J. has made the following pertinent observations:

“It is true there is nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres

in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are

definitive limits to the exercise of the power of review.

The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence

was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may

be exercised where some mistake or error apparent on the face of the record is found, it may also be exercised on any analogous ground.

But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A

power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed

by the subordinate court.”

34. To appreciate the scope of review, it would be proper for this Court to discuss the object and ambit of Section 114 CPC as the same

is a substantive provision for review when a person considering himself aggrieved either by a decree or by an order of Court from which

appeal is allowed but no appeal is preferred or where there is no provision for appeal against an order and decree, may apply for review

of the decree or order as the case may be in the Court, which may order or pass the decree. From the bare reading of Section 114 CPC, it

appears that the said substantive power of review under Section 114 CPC has not laid down any condition as the condition precedent in

exercise of power of review nor the said Section imposed any prohibition on the

Court for exercising its power to review its

decision. However, an order can be reviewed by a Court only on the prescribed grounds mentioned in Order 47 Rule 1 CPC, which has been

elaborately discussed hereinabove. An application for review is more restricted than that of an appeal and the Court of review has limited

jurisdiction as to the definite limit mentioned in Order 47 Rule 1 CPC itself. The powers of review cannot be exercised as an inherent power

nor can an appellate power can be exercised in the guise of power of review.â??

(emphasis supplied)

If it is the petitionerâ??s contention, as it evidently is, that the decision taken by this court vidÃ© judgment dated 14.10.2019 on the merits of the

petitionerâ??s case is wrong, the petitioner ought to avail appropriate appellate remedy, as may be available to him in law, if he is so advised.

12. In view of the above, we find no merit in the present review petition, which is accordingly dismissed; without however, any order as to costs.

13. Pending applications, if any, also stand disposed of.