REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Claim No. CV 2016-03330
Civil App. No S-407 of 2017

IN THE MATTER OF THE JUDICIAL REVIEW ACT NO. 60 OF 2000

AND

IN THE MATTER OF AN APPLICATION BY THE NATIONAL INSURANCE BOARD OF TRINIDAD AND TOBAGO TO APPLY FOR JUDICIAL REVIEW IN ACCORDANCE WITH PART 56.3 OF THE CIVIL PROCEEDINGS RULES 1998 (AS AMENDED)

AND

IN THE MATTER OF THE NATIONAL INSURANCE ACT CHAPTER 32:01 AND THE REGULATIONS MADE THEREUNDER

Between

THE NATIONAL INSURANCE BOARD OF TRINIDAD AND TOBAGO

Appellant

And

THE NATIONAL INSURANCE APPEALS TRIBUNAL OF TRINIDAD AND TOBAGO

Respondent

PANEL:
Alice Yorke-Soo Hon JA
Peter A. Rajkumar JA
Mira Dean-Armorer JA

DATE: 1 February 2022

APPEARANCES:

Mr. V. Deonarine instructed by Ms. L. Rajkumar on behalf of the appellant
Ms. R. Thurab, Ms. C. Findlay, Ms. Z. Smith instructed by Ms. K. Matthew on behalf of the respondent

I have read the reasons of Rajkumar JA. I agree with them and I have nothing to add.

…….

Alice Yorke-Soo Hon

Justice of Appeal

I have read the reasons of Rajkumar JA. I also agree with them and have nothing further to add.

…….

Mira Dean-Armorer

Justice of Appeal

REASONS

1. On 12 January 2022 we heard the appellant's appeal and dismissed it, summarising our reasons with an indication that further written reasons would be provided. The opportunity is taken to now do so.

Background

2. The National Insurance Board, (NIB), or the Appellant is a body corporate[1] established under the National Insurance Act Chapter 32:01 (the Act). It is responsible for managing a system of National insurance[2] and providing various benefits including retirement benefits. Retirement benefits can take the form of a lump sum **retirement grant** payable to persons who have made less than 750 national insurance contributions[3] (contributions), and retirement **pensions**[4] payable monthly over the lifetime of a person who has made 750 or more contributions.

3. The National Insurance Appeals Tribunal, (the tribunal or the respondent) is a tribunal established under the Act empowered to hear and determine appeals from decisions of the appellant on questions of fact only. Appeals on questions of law or partly of law and partly of fact lie to the High Court[5].

4. On 26 July 2007, Ms. Muriel Hardit Singh, (the claimant)[6] applied for a retirement benefit under the Act. The Appellant determined that the claimant had made a total of 683 contributions and was thereby eligible for a **retirement grant** of $39, 249.90. That sum was paid to the appellant in two tranches dated 21 February 2008 and 16 June 2008.

5. In February 2013 the claimant wrote to the appellant. That letter was not before the trial judge. In response by letter dated 27 December 2013 headed "RE: REVIEW OF RETIREMENT CLAIM" the claimant confirmed that the Appellant had "*qualified for a*

[1] section 3(1)
[2] Section 8(1)
[3] Regulation 17(1) National Insurance (Benefits) Regulations
[4] Regulation 16(1) of the National Insurance (Benefits) Regulations
[5] Section 62(1) of the Act
[6] In this judgment, unlike that of the trial judge, the term "*claimant"* refers to Ms. Hardit Singh

Retirement Grant with a total of 683 contributions" which had been forwarded to her requested financial institution.

6. The claimant appealed to the respondent tribunal on 26 May 2014. That was within 6 months of the letter of 27 December 2013. The appellant alleges that the decision to pay a retirement grant to the Appellant was made in 2008 and the 2013 letter merely confirmed that 2008 decision. If that were accepted then the Appellant's appeal of 26 May 2014 was outside the time limited by statute for appealing to the respondent.

7. The respondent did not agree. It considered that the letter of 27 December 2013 evidenced a separate **decision**. Therefore, the appeal would have been filed within six months of that decision and would not have been out of time. It therefore proceeded to hear the appeal.

8. It accepted evidence from the claimant's former employers and concluded that the claimant had paid more than 750 contributions and therefore qualified for a retirement pension. The appellant filed an application for judicial review in which it sought orders of certiorari to quash (a) The decision of 5 July 2016 that the appeal of Muriel Hardit Singh (the Claimant) was not statute barred by Regulation 13 of the National Insurance (Appeals) Regulations; and (b) The decision of (the Respondent) on 13 December 2016 to allow the Claimant's appeal. It further sought declarations that those decisions were unlawful, null and void. The appellant appeals the trial judge's dismissal of the appellant's application. The claimant was not made a party to the appeal or the proceedings at first instance.

Issues

9. The trial judge[7] identified the issues as follows (all emphasis added):

    i. Whether the (respondent) acted in excess of its jurisdiction by **interpreting** the word **"decision"** in regulation 13 of the National Insurance (Appeals) Regulations;

[7] At paragraph 18 of the judgment

ii. Whether the (respondent) misconstrued the legislation in finding that the (appellant) **reviewed** the 2008 decision; and

iii. Whether the (appellant) has the power to **review** its decisions.

Conclusion

10. The respondent did not act in excess of its jurisdiction or ultra vires. The respondent was empowered by statute to determine questions of fact, (though not questions of law or mixed law and fact). It was a question of fact whether such a further decision had been made. It did not need to engage in any exercise legal of interpretation of the word "decision" or to extend the meaning of that word beyond its ordinary English meaning. Nor did it do so. All it had to do was to examine the letter of December 27, 2013 and determine as a question of fact whether it reflected that a **decision** had been made in December 2013 which was separate from or further to the initial decision made in 2008, and not merely a confirmation that a decision in 2008 had been made.

11. The respondent did not misconstrue the Act by finding that the appellant reviewed the 2008 decision. The word review should not distract from the critical issue of whether the respondent considered whether a **decision** had been made in December 2013 separate from any other earlier decision. The evidence was that in fact the respondent did consider and focus upon whether the appellant had made a decision in December 2013[8]. There was sufficient material before it to support its conclusion that the December 2013 decision was separate from, further to, or based upon additional material from, the decision in 2008. If a decision had been made in 2013, and this was a question of fact, then under the Act time for an appeal ran from the date of the **decision of the board giving rise to the appeal**.

12. The appellant as an administrative body was entitled to revisit an administrative decision that it made to determine any allegation that it had made a mistake. The trial judge was correct in law to so find. Nothing in the Act prevented it from so doing. Even a public authority, which discovered it had inadvertently denied a citizen a benefit to

[8] Paragraph 16 affidavit of Azim Mohammed page 89, record of appeal.

which he was entitled, has the power to reconsider its decision and to correct its error. Similarly, it would also have the power to reconsider an earlier decision upon further representation being made to it, even if it ultimately came to the view that it had not made an error.

13. The term used to describe that exercise is immaterial. Whether a review, re-visitation, reconsideration or any similar term is used, the issue is whether the decision-making process involved further or additional considerations such as to constitute a further separate decision.

14. Further as a matter of law, grounded in logic, common sense and authority[9], the appellant did not need to wait to be sued or for its decision to be appealed before it considered representations by the claimant. In entertaining and considering further representations, the appellant committed no error. It did not act outside of its statutory mandate. In fact in so doing, rather than adopting in its letter of December 27, 2013 the excessively bureaucratic, time consuming, and frustrating position of refusing to reconsider its 2008 decision, it acted commendably in accordance with common sense and service oriented standards.

Order

15. The Appeal was dismissed and the appellant was ordered to pay costs of the hearing at first instance and the costs of the appeal as reflected in the Order of this Court at the hearing of the Appeal. An application for a stay of execution was also refused.

Analysis

Statutory framework

16. The statutory provisions relating to appeals to the Defendant are set out in section 62 of the Act and regulation 13 of the National Insurance (Appeals) Regulations[10], as set out hereunder

[9] ***R v Hertfordshire County Council, ex p Cheung (1986) The Times L.R. April, 1986***
[10] See paragraph 6 of the judgment of the trial judge.

62. (1) Appeals from decisions of the Board shall lie to the Appeals Tribunal on questions of fact only and to the High Court on questions of law or partly of law and partly of fact and from the High Court to the Court of Appeal. …

Regulation 13 of the National Insurance (Appeals) Regulations is set out hereunder[11]*:*

13. (1) Subject to this regulation, notice of appeal given after the expiration of six months ***from the date of the decision of the Board giving rise to the appeal****, shall not be considered by the tribunal. (all emphasis added)*

Issues before the trial judge

17. The issues before the trial judge included:

(i) Whether the (respondent) acted in excess of its jurisdiction by interpreting the word "decision" in regulation 13 of the National Insurance (Appeals) Regulations, and,

(ii) Whether the (respondent) misconstrued the legislation in finding that the (appellant) reviewed the 2008 decision.

18. Issues (i) and (ii) are considered together as they overlap. Regulation 13(1) provides that subject to that regulation[12] notice of appeal given after the expiration of 6 months from the date of the **decision** of the Board giving rise to the appeal shall not be considered by the tribunal. Whether a **decision** has been made and the **date** of that **decision** is a question of fact.

19. The letter dated December 2013 is as follows:[13]

"December 27, 2013 Ms. Muriel Hardit-Singh

51 Mc Inroy Street

[11] *(3) Where a notice of appeal is received out of time, but within one year from the date of the decision of the Board giving rise to the appeal, it shall be acknowledged by the Registrar who shall request the appellant to furnish reasons for its late submission. (4) Where an appellant furnishes reasons for the late submission of his appeal the Chairman shall decide whether or not the late appeal shall be considered. (5) No appeal shall lie against a decision of the Chairman under subregulation (4).*

[12] The case of an appeal being filed out of time but within one year does not here arise.

[13] See page 109 record of appeal

CUREPE

Dear Ms. Hardit-Singh,

Re: Review of Retirement Claim

I refer to your letter dated February 2013 on the matter at caption.

We confirm that based on your employment history and the evidence produced, you qualified for a retirement Grant with a total of 683 contributions.

The sum of Thirty Nine Thousand Two Hundred and Forty Nine Dollars and Ninety Cents ($39,249.90) was forwarded to your requested financial institution. Please be so guided.

Yours Respectfully

For and on behalf of the EXECUTIVE DIRECTOR THE NATIONAL INSURANCE BOARD OF TRINIDAD AND TOBAGO Greta Stephen-Henry EXECUTIVE MANAGER INSURANCE OPERATIONS (AG)"

20. The appellant is of the view that the decision of the Board that gave rise to the appeal occurred in 2008 when the Board decided to award a retirement grant based on 683 contributions rather than a pension.

21. There is no doubt that a decision had been made at that time. The question was whether that was the only decision that the Board had made. Whether the Board had made another decision in 2013 after reviewing its initial decision, which nevertheless produced the same result confirming the initial decision, or merely confirmed that it had made a decision in 2008, was a question of fact. It did not require construction of any regulation or statute, or legal interpretation or extension of the meaning in English of the word "decision". It simply required a determination as to whether the respondent had decided the claimant's entitlement in December 2013 after revisiting or reconsidering her application, or had simply repeated something that it had already decided in 2008 and never revisited.

22. The respondent was equipped to make a determination on this issue of fact as it had before it the material upon which it could base its evaluation of fact. The evidence before the tribunal included the claimant's statutory declaration dated February 7, 2013[14] (which preceded the appellant's December 2013 letter, but was subsequent to its 2008 decision.) It also included the December 2013 letter itself, the terms of which did not preclude a finding of fact that it represented a further decision.

23. In fact the December 2013 letter: (i) referred to a **review** of the claimant's retirement claim, and (ii) although it confirmed its view that the claimant qualified for a retirement grant with a total of 683 contributions, significantly it did not state that the appellant had declined to reconsider the matter or that all that it was doing was repeating its 2008 decision. It specifically referred to a letter of the claimant dated February 2013, and to the **evidence** produced. Given the fact that the statutory declaration was dated February 7 2013, the respondent was entitled to consider that after the 2008 decision new material had been submitted by the claimant in support of its claim to a retirement pension based on more than 750 contributions.

The Statutory Declaration

24. The evidence before the respondent was that a statutory declaration had been filed on February 7, 2013 after the 2008 decision and before the appellants December 2013 response. The claimant in her statutory declaration asserted that after the retirement grant was paid by the appellant in 2008 she discovered from her contribution statement dated January 8, 2010 that 134 contributions had not been taken into account. The statutory declaration therefore contained material in support attempting to establish that she had made 134 more contributions than the 683 contributions that had been taken into account by the appellant. Once more than 750, these would have entitled her to a retirement pension. The respondent was of the view, and the trial judge agreed, that the decision that gave rise to the appeal was a further decision documented in letter of December 2013.

[14] Page 115 record of appeal

25. The response of the appellant was consistent with these matters being considered by the appellant on a review of its earlier 2008 decision culminating in a separate decision of December 2013. The trial judge noted for example[15]that the December 2013 letter did not state that it stood by its earlier decision in 2008, or that it fell outside its powers to review it or that the time for appealing had long passed. That would be the response expected if it had not in fact intended to take into account the material supplied to it subsequent to that 2008 decision. In fact there is nothing in the December 2013 letter which would suggest that the appellant was of the view that it was precluded by its 2008 decision from revisiting it.

26. To the extent that the appellant appears to have been open to revisiting that earlier letter, (despite not being persuaded on reconsideration that it was wrong), its position was commendable.

27. In calculating and determining entitlement to benefits the appellant is not performing any judicial or quasi-judicial function. There is no determination being made by it after a contest between opposing parties. There was only an application made by the appellant based upon a specific number of claimed contributions. No authority was cited to the effect that the doctrine of functus officio applicable to judicial bodies would be equally applicable to a body like the appellant engaged in administering the Act and determining the entitlement and payment of benefits. If accepted such a proposition, apart from being unsupported by authority, would codify and endorse an excessively bureaucratic, time consuming and frustrating approach, not only by the appellant, but by other similar bodies performing administrative functions for the benefit of the public.

28. The respondent was entitled to find as a question of fact that:
    (i) after its initial decision in 2008, that the appellant reexamined and reviewed that earlier decision,

[15] At paragraph 23 of her judgment

(ii) the decision that it communicated by the letter of the 27 December 2013, though confirmatory of the decision it made in 2008 to pay a retirement grant, was further to and separate from that earlier decision.

(iii) it was the decision in respect of which the appeal was filed, and

(iv) therefore 6 months had not expired from the date of the decision of the Board giving rise to the appeal.

The trial judge so found and there is no basis for faulting that finding. The trial judge's reasoning to this effect is found at paragraph 20 of her judgment.

> *"If Counsel for the Claimant is correct in the assertion that the Defendant interpreted the legal meaning of the word "decision" as a precursor to the exercise its appellate function under section 62, and that such interpretation was a question of law falling outside its jurisdiction, there would be no case in which the Defendant could lawfully embark on the hearing of an appeal. Section 62 of the Act would serve no useful purpose. In my opinion, the impossibility of Counsel for the Claimant's argument is immediately apparent and must be rejected".*

Anisminic

29. The case of **Anisminic v Foreign Compensation Commission [1969] 2 A.C. 147** at pages 194-195 (***Anisminic***) was cited by the appellant in support of its contention that the respondent in considering whether a decision had been made in December 2013 had extended its own statutory mandate and considered a question of law or mixed law and fact. The relevant passage is set out hereunder, (all emphasis added). Per Lord Pearce.

> *"My Lords, the courts have a general jurisdiction over the administration of justice in this country. From time to time Parliament sets up special tribunals to deal with special matters and gives them jurisdiction to decide these matters without any appeal to the courts. When this happens the courts cannot hear appeals from such a tribunal or substitute their own views on any matters which have been specifically committed by Parliament to the tribunal.*
> *Such tribunals must, however, confine themselves within the powers specially committed to them on a true construction of the relevant Acts of Parliament. It would lead to an absurd situation if a tribunal, having been given a circumscribed area of inquiry, carved out from the general jurisdiction of the courts, were entitled of its own motion to extend that area by misconstruing the limits of its mandate to inquire and decide as set out in the Act of Parliament.*
> *If, for instance, Parliament were to carve out an area of inquiry within which an inferior domestic tribunal could give certain relief to wives against their*

> *husbands, it would not lie within the power of that tribunal* ***to extend the area of inquiry and decision, that is, jurisdiction****, thus committed to it by* ***construing*** *"wives" as* ***including*** *all women who have, without marriage, cohabitated with a man for a substantial period,* ***or by misconstruing the limits*** *of that into which they were to inquire. It would equally* ***not be within the power*** *of that tribunal to* ***reduce*** *the area committed to it by* ***construing "wives"*** *as* ***excluding*** *all those who, though married, have not been recently co-habiting with their husbands. Again, if it is instructed to give relief wherever on inquiry it finds that* ***two*** *stated* ***conditions*** *are satisfied, it* ***cannot alter or restrict its jurisdiction*** *by* ***adding a third condition*** *which has to be satisfied before it will give relief.* ***It is, therefore, for the courts to decide the true construction of the statute which defines the area of a tribunal's jurisdiction.*** *This is the only logical way of dealing with the situation and it is the way in which the courts have acted in a* ***supervisory capacity****."*

30. This passage does not assist the appellant's argument. Lord Pearce does make the critical point[16] that statutory tribunals must confine themselves within the powers specifically committed to them on a true construction of the relevant Acts of Parliament. They cannot of their own motion extend their jurisdiction by misconstruing the limits of their mandate or by adopting a construction of that jurisdiction which either restricted or expanded it. He stated that it is for the courts to decide the true construction of the statute which defines the area of a tribunal's jurisdiction[17].

31. In this case, as recognised by the trial judge and the tribunal itself, the tribunal did no more than conclude, as it was expressly empowered to, that a decision had been made in December 2013. This was a question of fact. It did not need to extend the meaning of the word "decision" to expand its jurisdiction, nor engage in any considerations of

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[16] At page 194 f-g

[17] ***Page 194e-195d*** *"Lack of jurisdiction may arise in various ways. There may be an absence of those formalities or things which are conditions precedent to the tribunal having any jurisdiction to embark on an inquiry. Or the tribunal may at the end make an order that it has no jurisdiction to make. Or in the intervening stage, while engaged on a proper inquiry, the tribunal may depart from the rules of natural justice; or it may ask itself the wrong questions; or it may take into account matters which it was not directed to take into account. Thereby it would step outside its jurisdiction. It would turn its inquiry into something not directed by Parliament and fail to make the inquiry which Parliament did direct. Any of these things would cause its purported decision to be a nullity.*

Further, it is assumed, unless special provisions provide otherwise, that the tribunal will make its inquiry and decision according to the law of the land. For that reason the courts will intervene when it is manifest from the record that the tribunal, though keeping within its mandated area of jurisdiction, comes to an erroneous decision through an error of law. In such a case the courts have intervened to correct the error."

law as to whether the appellant had the power to reconsider or review an earlier decision. The passage from ***Anisminic*** cannot be read as meaning that the tribunal had to consider as a question of law whether a decision had been made, or that if it even considered the issue that this would convert this question of fact into one of law.

32. Nothing in Anisminic can be read as precluding a statutory tribunal from finding facts. Its decisions would be reviewable by a court where it mistakes the law applicable to those facts, as for example in the example provided in which the definition of " wife " was extended beyond the natural and ordinary English meaning of the word. ***Anisminic*** cannot support an argument that every time a tribunal makes a decision on fact which involves a finding whether a term bearing its natural everyday meaning exists or has occurred, it thereby engages in an exercise of determining law or mixed fact and law.

33. The effect of ***Anisminic*** has been considered in subsequent cases where individual sentences in the judgment were not taken out of context and it was not given any such strained interpretation. See for example **O' Reilly v Mackman [1983] 2 A.C. 237** at 278 per Lord Diplock.

> *"The breakthrough that the* Anisminic case *made was the recognition by the majority of this House that if a tribunal whose jurisdiction was limited by statute or subordinate legislation* ***mistook the law applicable to the facts as it had found them****, it must have asked itself the wrong question, i.e., one into which it was not empowered to inquire and so had no jurisdiction to determine. Its purported "determination," not being a "determination" within the meaning of the empowering legislation, was accordingly a nullity".* (All emphasis added)

34. Lord Pearce is saying no more than that the courts are the ultimate determinant of the limits of a tribunal's statutory jurisdiction. ***O'Reilly v Mackman***, a case explanatory of ***Anisminic***, clarifies the misconception inherent in the appellant's argument caused by its misreading of Lord Pearce's statement above. A tribunal empowered to make findings of fact exceeds its jurisdiction when it mistakes the **law** applicable to the facts, NOT when it makes the findings of fact themselves.

35. In fact, such a reading would eviscerate the jurisdiction of the respondent if every time it were to consider whether an appeal has been filed within the time limited from a

decision of the appellant it were to be accused of exceeding its statutory mandate by interpreting the word "decision" when in fact all it had done was to find as a fact whether a decision had occurred and the date thereof. The absurdity of such an argument was recognised by the trial judge and was reflected in her judgment at paragraph 20 as set out above.

36. Having found as a question of fact that the appellant had reviewed its earlier 2008 decision and confirmed the outcome of that review by letter dated December 27, 2013 which evidenced a further decision on or around that date, it was also simply a question of fact as to whether the appeal had been filed within 6 months of that date. There was no finding of law that was required by the respondent such that it would have traversed its statutory prohibition against making findings of law or mixed law and fact. The trial judge at paragraph 26 of her judgment came to the same conclusion[18]. What is a question of fact is necessarily context specific and no useful purpose would be served by attempting to define or describe factors which are applicable to any specific hypothetical situation.

Issue iii. Whether the (appellant) has the power to review its decisions

37. The issue was raised by the appellant as to whether it even had jurisdiction to review its 2008 decision or whether that would have been ultra vires, in furtherance of an argument that any further decision after an initial decision could not be considered **a decision** and must be ignored for the purpose of limitation. The tribunal correctly did not engage in any such analysis and confined itself only to the question of fact whether a decision had been made in December 2013. In fact the appellant cannot complain of this because if the tribunal had done so this would have been a matter of law outside of its statutory jurisdiction.

[18] *26. In light of the above, there was, in my view ample evidence on which the Defendant could reasonably conclude that the Claimant's letter of 27 December 2013 letter was the outcome of a review of the 2008 decision. In so finding, it was not necessary for the Defendant to decide, and neither did the Defendant purport to decide, whether the Claimant's power to review its decisions arose as a result of the legal interpretation of regulation 13 or any other statutory provision. Notwithstanding the Claimant's assertions to the contrary, the Defendant's decision was based purely on the history of the case, an examination of which led the Defendant to conclude that the 2013 letter did not simply record the 2008 decision but constituted a review of it, so that the Appellant's appeal was not time-barred.*

38. The trial judge referred to the case of ***R v Hertfordshire County Council, ex p Cheung (1986) The Times L.R. April, 1986*** in support of the proposition that a statutory body such as the appellant can review its decision to correct a mistake as follows:

> *In R v Hertfordshire County Council, ex p Cheung (1986) The Times L.R. April, 1986, the Court of Appeal held that a local authority which in 1978 had refused to grant a higher education award on the mistaken assumption that the applicant did not satisfy the requirement of ordinary residence under the Education Act 1962 had a power to reconsider its decision on an application in 1983, subject to a discretion governed by the principles of good administration. Sir John Donaldson, Master of the Rolls held that: "The Education Act 1962 did not merely impose a duty on authorities to bestow awards, but also required them to consider and determine whether each applicant qualified for one. The duty to pay the award was quite separate. In determining that the applicants did not qualify, the authorities had thus performed their duty, albeit mistakenly.* ***That was not to say that they had no power to reconsider their decisions. It would be strange indeed if a public authority which discovered it had inadvertently denied a citizen a benefit to which he was entitled, could not correct its error. Indeed, it would have a duty to consider doing so, subject to a discretion as to what action to take****, exercised in accordance with the requirements of good administration…* (All emphasis added)

39. The appellant contended that Cheung was distinguishable. Whether or not it may be distinguishable on its facts the proposition highlighted above is of general application representing both law and common sense and the trial judge was correct to apply it.

40. In fact that very position is expressed at **section 44 of the Interpretation Act, Chapter 3:01**, a section which was not drawn to the Court's attention by either party despite the court, on hearing of the appeal, expressly requesting the parties to examine and consider whether this Act addressed this very situation.

> *44. (a) Where a written law confers a power or imposes a duty, the power may be exercised and the duty shall be performed from time to time, as occasion requires. Exercise of powers before commencement of written law. Power exercisable from time to time.*
> *(b) Notwithstanding that a power given by a written law to do any act or thing or to make any appointment is not in general capable of being exercised from time to time,* ***that power is nevertheless capable of being exercised as often as is necessary to correct any error or omission in any previous exercise of the power****.*(Emphasis added)

41. There is therefore nothing that would prevent the appellant correcting a mistake or equally reviewing a decision by it to see whether it had in fact made a mistake. The chairman of the tribunal[19] was correctly of the view that while an appeal could have been filed in 2008 in respect of the earlier decision, nothing prevented the claimant from approaching the appellant to persuade it to take into account further material and review its initial decision.

42. If it was not prepared to entertain that material and insisted that the claimant appeal to the respondent itself then nothing prevented it from doing so. Of course it needed to do so as quickly as possible so as not to defeat the claimant's claim by allowing the limitation period to expire before replying. The respondent found as a fact that this is not what it did. The trial judge agreed and her reasoning cannot be faulted.

43. There is no basis in law for the appellant's contention that the appellant could not and did not engage in a review of its decision. The evidence is that in fact it did so. The issue was whether the claimant had made 683 contributions, falling short of the 750 required for a pension, or whether as a question of fact she had made or exceeded 750 contributions. The appellant was entitled to consider whether its initial view was correct and consider further representations rather than adopt the bureaucratic, time consuming, and frustrating position of waiting to defend its initial position without taking into account further material presented to it. The trial judge's reasoning to this effect, found at paragraphs 28 and 29 of her judgment as set out below, is supportable.

> *28. The question whether the Claimant has a power to review its earlier decisions must be considered in the context of its overall functions and the decision in question. For present purposes, the decision involves the payment of a retirement benefit.*
>
> *29. The number of national insurance contributions made by an insured person is a key factor in determining the retirement benefit to which he is entitled. Therefore, where the Claimant makes a material error in such calculation, resulting in the grant of the wrong retirement benefit or an overpayment or underpayment as the case may be, the Claimant is entitled to take remedial action to correct the error.*

[19] Paragraph 15 of his affidavit filed 23rd February 2017, page 89 record of appeal.

44. Finally, it may be noted that the fact that the appellant sought as part of its relief, an order of certiorari to quash the order of the respondent that the claimant receive a pension, is disturbing because the claimant was not made a party to the appeal although the appellant sought to deprive her of the fruits of her appeal to the respondent. The respondent found as a fact that the appellant had wrongly stood by its decision not to award a pension based on its view that 683 contributions had been made. The respondent found as a fact that more than 750 contributions had been made[20]. It was in those circumstances, as well as the lengthy period during which she had been so deprived, that an application for a stay was refused.

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Peter A. Rajkumar

Justice of Appeal

[20] Page 195 record of appeal