

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
Court No. 1 (Sl. No. 38)
T.A. No. 28 of 2023

Rajendra Prasad Mishra Applicant
By Legal Practitioner for the Applicant : Shri Satya Narayan Mishra, Advocate
Shri Raj Kumar Mishra, Advocate

Versus

Union of India & Others Respondents
By Legal Practitioner for Respondents : Dr. Shailendra Sharma Atal, Advocate

Notes of the Registry	Orders of the Tribunal
	<p><u>17.07.2023</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Atul Kumar Jain, Member (A)</u></p> <p>1. Vakalatnama filed by Shri Satya Narayan Mishra and Shri Raj Kumar Mishra on behalf of the applicant is taken on record.</p> <p>2. Name of Shri Rahul Pal, shown as learned counsel for the applicant erroneously by taking Vakalatnama on record, be deleted as he is not counsel for the applicant in the case.</p> <p>3. Heard Shri Satya Narayan Mishra and Shri Raj Kumar Mishra, learned counsel for the applicant and Dr. Shailendra Sharma Atal, learned counsel for the respondents.</p> <p>4. This application has been filed by the applicant for grant of 50% disability pension for life and payment of commutation amount from the date of discharge from service, i.e. 11.07.1978.</p> <p>5. Submission of learned counsel for the applicant is that applicant was enrolled in the Army on 15.12.1962 and discharged from service on 11.07.1978 in low medical category and his disability was assessed @ 30% by the RMB but no disability pension has been paid to the applicant. The applicant has also not been paid commutation amount. In this regard, applicant submitted a representation on 21.09.2020 but no reply received from the respondents. Thereafter, applicant filed a C.M.W.P. No. 11995 of 2020 before the Hon'ble High Court of Allahabad which was disposed off vide order dated 08.12.2020 directing the respondents to decide representation of the applicant. The applicant approached the Record Office but nothing was done in favour of the applicant. Thereafter, applicant approached the respondent no. 3 on 31.12.2020 alongwith copy of letter dated 15.12.2020 but no reply received by the applicant. The applicant also sent a reminder on 16.03.2021 and 03.01.2022. Thereafter, applicant filed another Writ Petition before the Hon'ble High Court which was transferred to this Tribunal.</p>

	<p>6. Learned counsel for the applicant further submitted that applicant has made all efforts to get his dues but he has been deprived from the valuable fundamental rights. Therefore, he should be paid 50% disability pension giving the benefit of rounding off and commutation amount from the date of discharge from service, i.e. 11.07.1978.</p> <p>7. In reply, learned counsel for the respondents submitted that applicant applied for premature discharge on extreme compassionate grounds and thus, he was discharged from service before fulfilling the conditions of enrolment after rendering 15 years, 07 months and 06 days of service. The RMB assessed applicant's disability, 'TRANSIENT SITUATIONAL DISTURBANCE' @ 20% for two years as NANA being a constitutional in origin and manifested during service. The applicant's claim for grant of disability pension was processed but rejected by the CDA (P) Allahabad being a NANA case. Thereafter, applicant submitted an application dated 31.05.2016 raising his grievance after a lapse of 36 years which was suitably replied by AOC Records.</p> <p>8. Learned counsel for the respondents further submitted that applicant has filed Civil Writ petition No. 11995 of 2020 before the Hon'ble Allahabad High Court which was disposed off with liberty to the applicant to make a fresh representation. The applicant's representation was considered and rejected being devoid of merit. Since the applicant has approached this Tribunal after a lapse of 36 years and at this belated stage, degree of disablement cannot be ascertained and therefore, applicant cannot be granted any relief with regard to grant of disability pension.</p> <p>9. Learned counsel for the respondents further submitted that applicant was discharged from service on 10.07.1978 and he was not granted commutation amount because may be, he would have not opted to commute his pension. However, it cannot be ascertained at this belated stage whether applicant opted for commutation and, if opted, what was the reason for non payment of commutation amount.</p> <p>10. We find that applicant was suffering from the disability, 'TRANSIENT SITUATIONAL DISTURBANCE' at the time of discharge from service and his disability was assessed @ 20% for two years. The disability pension claim of the applicant was rejected by the CDA (P) Allahabad being a NANA case. Since, the applicant has approached the respondents after a lapse of 36 years and present degree of disablement of the applicant cannot be ascertained at this belated stage without holding a Re-survey Medical Board, hence, in view of above, a Re-survey Medical Board (RSMB) is required to be conducted for the applicant to assess present degree and duration of disability from which the applicant was suffering at the time of discharge from service.</p> <p>11. In view of aforesaid, the respondents are directed to conduct a Re-Survey Medical Board for the applicant to assess his medical condition</p>
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	<p>recommending the percentage of disability, if any. The respondents are directed to inform applicant the place and date where RSMB is to be conducted and give effect to this order positively within a period of four months from the date of receipt of certified copy of the order.</p> <p>12. As far as grant of commutation amount to the applicant is concerned, the respondents are directed to verify the records to find whether applicant has opted for commutation of pension at the time of discharge from service and, if opted, whether it was approved by the competent authority and if so, what are the reasons for non payment of commutation amount to the applicant. If the applicant has opted and it was not granted by the respondents, then respondents shall pay the commutation amount to the applicant from the date of discharge from service alongwith interest @ 6% per annum verifying the fact with regard to payment of full pension or after deduction of commutation amount. In the event being not opted for commutation of pension, the correctness of applicant's present service pension to be also verified that it is being paid to the applicant @ 100% as per entitlement.</p> <p>13. The respondents are further directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order.</p> <p>14. With the above, Transferred Application stands disposed off.</p> <p>15. No order as to costs.</p> <p>16. Pending Misc. Application, if any, also stands disposed off.</p> <div><div>(Vice Admiral Atul Kumar Jain) Member (A)</div><div>(Justice Umesh Chandra Srivastava) Member (J)</div></div>
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**R.A. No. 42 of 2023 with M.A. No. 1025 of 2023
(Inre : O.A. No. 737 of 2020)**

Versus

Notes of the Registry	Orders of the Tribunal
	<p><u>17.07.2023</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Atul Kumar Jain, Member (A)</u></p> <p><u>M.A. No. 1025 of 2023</u></p> <p>1. The present Review Application, filed by the applicant, has been placed before us for disposal by circulation.</p> <p>2. As per office report, there is delay of 403 days in filing the Review Application.</p> <p>3. We have gone through the affidavit filed in support of delay condonation application and find that application is time barred and has been moved beyond statutory period. It is well settled proposition of law that the Tribunal is not empowered to condone delay under the Armed Forces Tribunal Act, 2007 in moving review application beyond a reasonable time. Accordingly, application for condonation of delay in moving review application is rejected.</p> <p><u>R.A. No. 42 of 2023</u></p> <p>4. The applicant has filed this Review Application under Rule 18 of the Armed Forces Tribunal (Procedure) Rules, 2008 with prayer '<i>to review the order dated 01.02.2022 passed in O.A. No. 737 of 2020 and direct the respondents to expeditiously to set aside the illegal SCM proceedings dated 13.11.2004 awarding 28 days RI and 14 days detention for an offence u/s 39(b) of the Army Act and also set aside applicant's administrative discharge from service on 16.12.2004 in the interest of justice</i>'.</p> <p>5. We have gone through the grounds and reasons indicated in the review application and have also gone through the judgment and order sought to be reviewed. The judgment and order sought to be reviewed was passed in proper prospective after considering all the facts and circumstances and also in view of the several pronouncement of the Hon'ble Apex Court. No illegality or irregularity or error apparent on the face of record has been shown to us so as to review the aforesaid judgment of this Court.</p>

	<p>6. That apart, it is a settled proposition of law that the scope of the review is limited and until it is shown that there is error apparent on the face of record in the order sought to be reviewed, the same cannot be reviewed vide Order 47, Rule 1 sub-rule (1) of the Code of Civil Procedure.</p> <p>7. Law is settled on the point that the scope of review is very limited. It is only when there is an error apparent on the face of record or any fresh fact/material brought to notice which was not available with the applicant inspite of his due diligence during hearing. Review is not an appeal in disguise. It is nowhere within the scope of review to recall any order passed earlier and to decide the case afresh.</p> <p>8. In view of the principles of law laid down by the Hon'ble Supreme Court in various decisions, it is settled that the scope of review jurisdiction is very limited and re-hearing is not permissible as held by the Hon'ble Supreme Court in Para 9 of its judgment in the case of <i>Parsion Devi and others vs. Sumitri Devi and others</i>, reported in (1997) 8 Supreme Court Cases 715 and in the case of <i>S. Madhusudhan Reddy Versus V. Narayana Reddy and Others</i>, Civil Appeal Nos. 5503-04 of 2022, decided on 18.08.2022.</p> <p>9. In the light of the legal position crystalized above, we are of the considered view that there is no illegality or irregularity or error apparent on the face of record being found in the impugned order dated 01.02.2022, passed in O.A. No. 737 of 2020, which may be corrected in exercise of review jurisdiction.</p> <p>10. Accordingly, Review Application No. 42 of 2023 is hereby rejected on delay as well as on merit.</p> <div><div>(Vice Admiral Atul Kumar Jain) Member (A)</div><div>(Justice Umesh Chandra Srivastava) Member (J)</div></div> <p>SB</p>
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