

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Review Application No. 50 of 2017****(In re: T.A.No. 84 of 2013)**Monday, the 6th day of August, 2018**“Hon’ble Mr. Justice SVS Rathore, Member (J)
Hon’ble Air Marshal BBP Sinha, Member (A)**

1. Gurmeet Singh, son of late Gurcharan Singh,
 2. Shamsheer Singh, son of late Gurcharan Singh,
 3. Balpreet Kaur, daughter of late Gurcharan Singh,
 4. anpreet Kaur, daughter of late Gurcharan Singh
- All residents of village Lohari, P.O.Singh Bhagwantpur, District Ropar (Punjab).

..... Applicant

By Legal Practitioner: Shri Bachchan Singh, Advocate, learned counsel for the applicant.

Versus

1. The Union of India through Secretary to the Ministry of Defence, Government of India, New Delhi.
2. The Commandant, Sikh Light Infantry Regimental Centre, Fatehgarh.
3. The Commandant, 330, Infantry Brigade, C/o 56 APO
4. The Chief of the Army Staff, Integrated H.Q of MoD (Army), New Delhi.
5. The Commandant, 11 Sikh Light Infantry, through the Commandant, Sikh Light Infantry Regimental Centre, Fatehgarh.

..... Respondents

By Legal Practitioner: Shri Amit Jaiswal, CGSC

ORDER (Oral)

1. Heard learned counsel for the parties and perused the record.

2. By means of this Review Application, the applicants have made the prayer for review of the order dated 01.09.2017 passed in TA No. 84 of 2013 by a co-ordinate Bench comprising Hon'ble Mr. Justice D.P.Singh, Member (J) and Hon'ble Air Marshal Anil Chopra, Member (A), whereby the said TA was dismissed.

3. Late Gurcharan Singh, father of the applicants in the aforesaid TA, had challenged his discharge order dated 10.06.1987 on account of four red ink entries. It transpires from the order under review that it was argued on behalf of the applicants that no show cause notice was issued nor any preliminary inquiry was conducted. The Tribunal found that in the present case, show cause notice was served on the applicant, hence there was sufficient compliance of principles of natural justice. The Tribunal was also of the view that since the aforesaid argument was based on Policy dated 28.12.1988, so it cannot be given retrospective effect as the same was not applicable to the present case.

4. Apart from the above ground, no other ground was raised during the course of hearing of the aforesaid TA, as is evident from the last para of the order under review.

5. Learned counsel for the applicants has argued that in the aforesaid TA, a ground was also raised that the order of discharge was passed by an authority, who was not competent to pass such order; therefore, the order of discharge was illegal and not sustainable. According to him, this point has not been considered by the Tribunal while passing the order under review.

6. In response, learned counsel for the respondents has submitted that it was specifically pleaded in the written statement filed by the respondents that the authority, who had passed the order of discharge, was fully competent to

pass such order. He, however, submits that this ground was not raised on behalf of the applicant during the hearing of aforesaid TA; therefore, to raise this ground at this stage will amount to raising a fresh ground, which will not be within the scope of review as the scope of review is limited and for that, the applicants will have to show that there exists any error apparent on the face of the record

7. Keeping in view the limits of review jurisdiction, we have considered the aforesaid argument and prayer made on behalf of the review applicants. Learned counsel for the applicants has tried to impress on us that the order of discharge was passed by a Major, who was not competent to pass it. When we asked him to show any *prima facie* evidence to justify his submission, then he drew our attention to Discharge Book and thereafter to Part-II Order. In the said documents, the order or discharge was mentioned as a fact. On the contrary, it was specifically pleaded on behalf of the respondents that the order of discharge was passed by the Officiating Brigade Commander, who was competent to pass such an order under Army Rule 13 III (v).

8. The review applicants have utterly failed to establish *prima facie* that the order of discharge was passed by an authority, who was not competent to pass it.

9. 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. Hon'ble the Supreme Court in Para 9 of its judgment in the case of **Parsion Devi and others versus Sumitri Devi and others**, reported in (1997) 8 SCC 715, has observed as under:-

“9. Under Order 47 Rule 1 CPC a judgment may be open to review *inter alia* if there is a mistake or an error apparent on the

face of the record. An error which is not self evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be "reheard and corrected". A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise".

10. Further, the Hon'ble Supreme Court, reiterating the same principle in **Lily Thomas vs. Union of India, AIR 2000 SC 1650**, held that the power of review can only be exercised for correction of a mistake and not to substitute a view and that the power of review could only be exercised within the limits of the statute dealing with the exercise of such power. The review cannot be treated like an appeal in disguise. As stated above, re-appreciation of evidence is not permissible under law in review. The applicants have failed to show any error apparent on the face of record so as to call for an interference by this Tribunal in exercise of review jurisdiction.

Accordingly, this review application lacks merit. It deserves to be dismissed and is hereby **dismissed**.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

August 06, 2018
LN/-