

**ARMED FORCES TRIBUNAL REGIONAL BENCH, LUCKNOW****Review Application No. 74 of 2022****In Re: O.A. No. 689 of 2020**Thursday, the 18<sup>th</sup> day of August, 2022**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)  
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**No 14455851W Ex Hav Mohd Idu Ansari S/o Algu Ansari, R/o Village Chandrauta, P.S.-  
Turk Patti, Tehsil-Tamkahi Raj, Distt-Kushinagar (previously Deoria) U.P.-274001.

.....Review Applicant

Versus

1. Union of India, through Secretary of Defence, Ministry of Defence, D (Pension Grievances), 227-B Wing, Sena Bhawan, New Delhi-110011.
2. The Chief of Army Staff, Integrated Headquarters of MoD (Army), Sena Bhawan, DHQ, PO-New Delhi-110011.
3. The Commandant, Artillery Centre, Nasik Road Camp, Distt-Nasik (Maharashtra).

..... Respondents

**ORDER**

1. The file has been placed before us by Circulation.
2. The applicant has filed this application under Rule 18 of the Armed Forces Tribunal (Procedure) Rules, 2008 by which applicant has prayed for review of the order dated 07.07.2022 passed by this Tribunal in Original Application No. 689 of 2020. In the review application it has been prayed that the applicant who is having 14 years service deserves pensionary benefits. In this regard it is submitted that the review applicant was enrolled in the Army on 17.07.1978 and he was declared a deserter w.e.f. 28.11.1991 and never returned to the unit till his dismissal from service. Also, earlier he was absent without leave for 05 days in the year 1980, 531 days in the year 1981/82 and 40 days in the year 1984, making total absence without leave for 576 days. Thus, if absence period is deducted from total service it comes to less than 10 years service at the time of his desertion. With regard

to conduct of Court of Inquiry (C of I) and applicant's non participation in the said C of I, it may be stated that how a deserted person could take part in C of I who never returned to unit w.e.f. his desertion i.e. 28.11.1991 till his dismissal from service. The applicant was stated to be suffering from mental ailment and he was under treatment of a civilian Dr. Sulaiman Ali, BUMS (Aligarh) of Kushinagar. Medical certificate issued by the said doctor is not acceptable in the Army for the reason that the disease with which applicant was suffering could be well treated in Military Hospitals. The fact is that applicant was placed in low medical category for 'Sciatica (Lt)' and since his unit was moving to field area, he was issued a movement order dated 04.11.1991 to report to Artillery Depot Regiment where he never reported and deserted the Army. Consequently, he was dismissed from service by following due procedure.

3. It is 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 judgment and order sought to be reviewed, the same cannot be reviewed. For ready reference, Order 47, Rule 1 sub-rule (1) of the Code of Civil Procedure, 1908 is reproduced below :-

*"1. Application for review of judgment.- (1) any person considering himself aggrieved-*

*(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,*

*(b) by a decree or order from which no appeal is allowed, or*

*(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record , or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order."*

4. 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. The Hon'ble Supreme Court in Para 9 of its judgment in the case of ***Parsion Devi and others vs. Sumitri Devi and others***, reported in (1997) 8 Supreme Court Cases 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". There is a clear distinction between an erroneous decision and an error apparent on the face of the record. While the first can be corrected by the higher forum, the latter only can be corrected by exercise of the review jurisdiction. A review petition has a limited purpose and cannot be allowed to be "an appeal in disguise."*

5. We have gone through the order sought to be reviewed and no illegality or irregularity or error apparent on the face of record being found therein, we are of the view that there is no force in the grounds taken in the review application so that order may be reviewed.

6. In the result, Review Application is **rejected**.

**(Vice Admiral Abhay Raghunath Karve)**  
**Member (A)**

Dated : 18.08.2022  
rathore

**(Justice Umesh Chandra Srivastava)**  
**Member (J)**