

ARMED FORCES TRIBUNAL REGIONAL BENCH,
LUCKNOW

**R.A. No. 64 of 2022 with M.A. No 778 of 2022 In Re: O.A.
No. 34 of 2013 and O.A. No 218 of 2019**

Wednesday, the 10th day of August, 2022

**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

**Ex No. 13959962-X Hav/Clk Ram Chandra Tiwari, S/o Late
Surya Prasad Tiwari, Last Unit was 178 Military Hospital,
C/o 99 APO situated at Gangtok (Sikkim), R/o House No
16, Satti Chaura, Cantt Kanpur Nagar, Pin – 208004 (U.P.).**

.....Review Applicant

Counsel for the Applicant/: **Ex Hav/Clk Ram Chandra Tiwari,**
Respondents **In person**

Versus

**Union of India, Through Secretary, Ministry of Defence
(Army), South Block, Rashtrapati Bhawan Road, New
Delhi - 110001.**

.....Respondents

Counsel for the Respondents/: **Shri Namit Sharma,**
Applicant **Central Govt Counsel**

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

1. The applicant has filed this Review Application under Rule 18 of the Armed Forces Tribunal (Procedure) Rules, 2008. By means of this Review Application, the applicant has prayed to restore O.A. No 34 of 2013 to its original number by setting aside judgment and order dated 19.09.2013 passed in O.A. No 34 of 2013 (**Applicant has wrongly mention O.A. No 218 of 2019**) and the same be heard and decide on merits.

2. There is delay of 06 years, 09 months and 22 days in filing of Review Application regarding which an application for condonation of delay has been filed.

3. As per judgment of Larger Bench AFT, Principal Bench, New Delhi, dated 16.11.2021 passed in M.A. No 321 of 2018 in R.A. (Diary No 10920 of 2018 in O.A. No 64 of 2016, in the case of ***Union of India & Ors***

Versus Ex Sep M Anthony Victor, the delay in filing Review Application is condonable. In the said judgment, Hon'ble Principal Bench has held that:-

“The tribunal is conferred with power under the Act and the Rules framed thereunder to condone delay under Section 5 of the Limitation Act in filing the Review Application despite rule 18 of the Rules”.

4. In view of decision of larger Bench of AFT, New Delhi, application for condonation of delay in moving Review application is allowed and delay in filing the Review Application is condoned.

5. The matter came up before us under the provisions of Rule 18 (3) of the Armed Forces Tribunal (Procedure) Rules, 2008, whereby the applicant has prayed to review and set aside judgment and order dated 19.09.2013 passed in O.A. No 34 of 2013 whereby O.A. filed by the applicant challenging Summary Court Martial Proceedings and pre-trial proceedings was dismissed on merit and direction was

given to respondents to decide the statutory petition of the applicant dated 08.02.2012.

6. We have gone through the grounds and reasons indicated in the affidavit filed in support of the 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. 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.

7. Perusal of document available on record shows that Statutory petition of the applicant dated 08.02.2012 was decided by the respondents and the same was dismissed by a reasoned and speaking order dated 21.11.2014. The applicant challenged this order passed by Chief of the Army Staff (COAS) by filing O.A. No 218 of 2019 in this Tribunal. After hearing the matter, the O.A. was dismissed on merit vide order dated 25.03.2019 with cost quantifying to Rs. 5,000/-. The applicant was directed to deposit the cost in Registry of

this Tribunal within two weeks from the date of order. Till date cost has not been deposited by the applicant. Applicant filed application for grant of leave to appeal against the order dated 25.03.2019 which was dismissed vide order dated 26.04.2019. The applicant submitted number of statutory complaints which were decided by the respondents. Applicant again filed SLP/ Civil Appeal before the Hon'ble Apex Court which was also dismissed.

8. It is settled proposition of law that the scope of the review is limited and the applicant has to show that there is error apparent on the face of the record. For ready reference the Order 47 Rule 1 Sub Rule (1) of the Code of Civil Procedure 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 by this Code, 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 of the Court which passed the decree or made the order.”

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 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 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."

10. In the instant case, the details mentioned in the review application had already been taken into consideration and discussed in detail and thereafter the order was passed. Further the matter was considered in detail by this Tribunal as well as by various Courts.

11. In view of the points discussed above as well as in view of principle of law laid down by Hon'ble the Apex Court in the case of **Parsion Devi and Others** (supra), we are of the considered view that there is no error apparent on the face of record in the impugned order dated 19.09.2013, which may be corrected in exercise of review jurisdiction.

12. Accordingly, the Review Application No. 64 of 2022 is rejected. There shall be no order as to costs. The applicant may be informed accordingly.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 10 August, 2022
Ukt/-