

By Circulation
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Review Application No. 77 of 2022
Inre O.A. No. 643 of 2021

Monday, this the 29th day of August, 2022

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

No. 4003249-W Ex Hav (Clk SD) Ajeet Singh Yadav
S/o Shri Ram Kewal
R/o Village – Kadanpur, Post – Kadanpur,
District – Ayodhya (UP) – 224228

..... Applicant

Ld. Counsel for the Applicant: **Shri V.P. Pandey**, Advocate

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi-110011.
2. The Chief of Army Staff, Integrated Headquarters, Ministry of Defence (Army), South Block, New Delhi-110011.
3. Officer in Charge Records, The Dogra Regiment, PIN- 900235, C/o 56 APO.
4. PCDA (Pension), Draupadi Ghat, Prayagraj-211014.

..... Respondents

Ld. Counsel for the Respondents : **Shri Asheesh Agnihotri**,
Central Govt Counsel

ORDER

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 for the following reliefs :-

- (a) Allow the Review Application and the order passed on 11.07.2022 in Original Application as mentioned in para 1 of this Review Application may kindly be set-aside.

(b) issue/pass an order or direction to the respondents to pay arrears of difference of salary with effect from 01.02.2008 i.e. due date of actual promotion.

(c) Issue/pass an order or direction to the respondents to pay reviewed pension based on amendment in the last drawn salary of applicant.

(d) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.

(e) Allow this application with costs.”

2. The matter came up before us by way of Circulation as per provisions of Rule 18 of the Armed Forces Tribunal (Procedure) Rules, 2008, whereby the applicant has prayed for review the order dated 11.07.2022 passed in O.A No. 643 of 2021, by means of which this Court had dismissed the Original Application for grant of battle casualty status/War Injury Pension.

3. 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.

4. 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. For ready reference, 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, 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."

5. 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.

6. 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 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."

7. Further, the Hon'ble Supreme Court in Para 26 of its judgment in the case of **S. Madhusudhan Reddy Versus V. Narayana Reddy and Others**, Civil Appeal Nos. 5503-04 of 2022, decided on 18.08.2022, has observed as under :-

"26. As can be seen from the above exposition of law, it has been consistently held by this Court in several judicial pronouncements that the Court's jurisdiction of review, is not the same as that of an appeal. A judgment can be open to review if there is a mistake or an error apparent

on the face of the record, but an error that has to be detected by a process of reasoning, cannot be described as an error apparent on the face of the record for the Court to exercise its powers of review under Order XLVII Rule 1 CPC. In the guise of exercising powers of review, the Court can correct a mistake but not substitute the view taken earlier merely because there is a possibility of taking two views in a matter. A judgment may also be open to review when any new or important matter of evidence has emerged after passing of the judgment, subject to the condition that such evidence was not within the knowledge of the party seeking review or could not be produced by it when the order was made despite undertaking an exercise of due diligence. There is a clear distinction between an erroneous decision as against an error apparent on the face of the record. An erroneous decision can be corrected by the Superior Court, however an error apparent on the face of the record can only be corrected by exercising review jurisdiction. Yet another circumstance referred to in Order XLVII Rule 1 for reviewing a judgment has been described as “for any other sufficient reason”. The said phrase has been explained to mean “a reason sufficient on grounds, at least analogous to those specified in the rule”.

8. In the instant case, grounds/details mentioned in the Review Application had already been taken into consideration and discussed in detail and thereafter, the order was passed. 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 11.07.2022, passed in O.A No. 643 of 2021, which may be corrected in exercise of review jurisdiction.

9. Accordingly, Review Application No. 77 of 2022 is hereby **rejected.**

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 29th August, 2022

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