

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
Court No. 1 (By Circulation)

R.A. No. 50 of 2023 with M.A. No. 1278 of 2023
Inre :
O.A. No. 754 of 2021

Union of India & Others

Review Applicants

By Legal Practitioner for the Applicants : Dr. Chet Narayan Singh, Advocate

Versus

Ex. Nk. Santosh Kumar Singh

Respondent

By Legal Practitioner for Respondent : None

Notes of the Registry	Orders of the Tribunal
	<p><u>14.08.2023</u> <u>Hon'ble Mr. Justice Ravindra Nath Kakkar, Member (J)</u> <u>Hon'ble Vice Admiral Atul Kumar Jain, Member (A)</u></p> <p>1. The file has been placed before us by Circulation.</p> <p><u>R.A. No. 50 of 2023 with M.A. No. 1278 fo 2023</u></p> <p>2. The Review Applicants have filed this application under Rule 18 of the Armed Forces Tribunal (Procedure) Rules, 2008 by which applicants have prayed for review and setting aside the judgement and order dated 04.03.2022 of this Tribunal passed in Original Application No.754 of 2021. The order reads as under :-</p> <p style="padding-left: 40px;"><i>“In view of the above, the Original Application No. 754 of 2021 deserves to be allowed, hence allowed. The impugned orders, rejecting the applicant's claim for grant of disability element of disability pension, are set aside. The disability of the applicant is held as aggravated by Army Service and above @20% for two years. The applicant is entitled to get disability element @20% for two years which would be rounded off to 50% for two years from the next date of his discharge. The respondents are directed to grant disability element to the applicant @20% for two years which would stand rounded off to 50% for two years from the next date of his discharge. The respondents are further directed to conduct a Re-Survey Medical Board for the applicant to assess his further entitlement of disability pension. 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. Default will invite interest @ 8% per annum till the actual payment.”</i></p> <p>3. The order of which review has been sought was passed by the Bench comprising of (Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J) (since retired) and Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A</p>

(since transferred to AFT, Regional Bench, Mumbai).

4. There is a delay of 01 year, 04 months and 04 days in filing of Review Application.

5. Submission of Ld. Counsel for the applicants – Union of India & Others is that delay in filing Review Application is not deliberate. His further submission is that since the order of the Tribunal dated 04.03.2023 has been obtained after a month, and a letter dated 25.05.2023 was issued by the Directorate General to file Review Application. After consultation with the concerned authorities instructed to file Review Application and thereafter immediately Review Application has been filed. Thus, his submission is that delay is not deliberate, but for the reasons stated above.

6. Having heard the submission of Ld. Counsel for the applicants – Union of India & others and considering the facts and circumstances of the case, we find that explanation offered by the applicants for delay in filing Review Application is not sufficient. It is settled in law that if time limit is given for filing of any application and the same is not filed within that time limit, delay should be explained on day to day basis which applicant has utterly failed in the present case.

7. In the result, we find that delay is not condonable.

8. Accordingly, delay condonation application is **dismissed**.

9. Further, 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 judgment and order sought to be reviewed, the same cannot be reviewed.

10. 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.”

11. 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."

12. 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"

13. In the light of the legal position crystalized above, we have gone through the judgment and 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.

14. Review Application is also **dismissed** being time barred as well as on merit.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

AKD/-