

By Circulation
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

**Review Application No. 12 of 2019
(Inre O.A. No. 699 of 2017)**

Monday, the 04th day of February, 2019

Hon'ble Mr. Justice S.V.S.Rathore, Member (J)
Hon'ble Air Marshal B.B.P. Sinha, Member (A)

No. 1457811N Ex. Hav. Samar Pal, S/o Sri Hukum Singh, R/o Rasulpur, PO Babugarh Cantt., District Hapur.

..... Review Applicant

By Legal Practitioner – **Shri K.K. Mishra, Advocate**
Learned counsel for the Applicant

Versus

1. Union of India, through its Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, Army Head Quarters, New Delhi.
3. Officer-in-Charge, Electrical and Mechanical Engineers, Records, Secunderabad.
4. PCDA (P), Allahabad.

..... **Respondents**

By Legal Practitioner – **Dr. Gyan Singh, Advocate**
Central Govt. Standing 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 made prayer to review

and re-consider the entire facts of the case, along with the ruling of Hon'ble Supreme Court and may grant disability pension to the applicant as prayed for.

2. The matter came up before us by way of Circulation as per provisions of Rule 18 (3) of the Armed Forces Tribunal (Procedure) Rules, 2008, whereby the applicant has prayed for review of the order dated 03.01.2019 passed in O.A No. 699 of 2017. In the aforesaid O.A., following order was passed:-

*“12. In view of the above, the Original Application No.699 of 2017 deserves to be **partly allowed**, hence, partly allowed. The impugned order dated 12.08.2017, enclosed as Annexure No. A-5 of the Original Application, is set aside. The disability of the applicant '**PRIMARY GENERALISED SEIZURES**' is to be considered as aggravated by military service. The respondents are directed to conduct RSMB for the applicant. His entitlement to disability element will depend on the outcome of the RSMB. The respondents are 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.”*

3. In this case, the applicant was discharged from service on 30.09.2000 on compassionate ground on own request before fulfilling the condition of his enrolment and his disability was held @20% for two years. Accordingly, the impugned order dated 12.08.2017 was set aside and the disability of the applicant was held to be considered as aggravated by military service. Further, the respondents were directed to conduct RSMB for the applicant and his entitlement to disability element will depend on the outcome of the RSMB.

4. 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.”

5. It is well settled proposition of law that the scope of review jurisdiction is very limited and re-hearing in the garb of review 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."

6. It is pertinent to mention that applicant was discharged on 30.09.2000 and he approached this Tribunal in the year 2017. Applicant is already receiving the service element. He took voluntary discharge. Applicant's Invalidment was for two years only. In these circumstances the Tribunal directed the fresh RSMB.

7. The judgment and order sought to be reviewed has been passed in proper prospective after considering all the facts and circumstances of the case. No error apparent on the face of record has been shown so as to review the aforesaid judgment of this Court. In view of the principle of law laid down by Hon'ble the Apex Court in the case of **Parsion Devi and Others vs. Sumitri 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 03.01.2019, which may be corrected in exercise of review jurisdiction.

8. Accordingly, the Review Application No. 12 of 2019 is **rejected**. There shall be no order as to costs. The Applicant may be informed accordingly.

(Air Marshal B.B.P. Sinha)
Member (A)

(Justice S.V.S.Rathore)
Member (J)

Dated : 04th February, 2019
AKD/-