

By Circulation
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Review Application No. 16 of 2019

(Inre O.A. No. 533 of 2017)

Monday, the 18th 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. 6287314-H, Ex. Rect. Saljor Ram son of Late Ghunna Ram, R/o Village & Post – Nizampur, Mutalikey, Sultanpur, District – Mau. .

..... Review Applicant

By Legal Practitioner – **Shri Parijaat Belaura, Advocate**
Learned counsel for the Applicant

Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, Integrated Head Quarters, Ministry of Defence, South Block, New Delhi.
3. Officer-in-Charge, The Signal Records, PIN 901124, C/o 56 APO.
4. The Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (U.P.).

..... **Respondents**

By Legal Practitioner – **Ms. Anju 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 the order dated 11.01.2019 and set aside the same and Original Application be decided on merit after providing opportunity of hearing to the applicant.

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 11.01.2019 passed in O.A No. 533 of 2017. In the aforesaid O.A., following order was passed:-

*“13. Accordingly, the Original Application No. 533 of 2017 is partly **allowed**. The impugned order passed by the respondents is set aside to the extent that the complete disability pension cannot be stopped as a result of RSMB. Only disability element can be stopped and service element will have to continue for life. We also award compensation of Rs.2,00,000/- (Rupees two lacs) which shall be paid by the respondents to applicant for wrongful denial of disability element @20% for 10 years w.e.f. 17.05.1990. The same shall be deposited in the Registry by the respondents within three months from today and shall be released to the applicant.”*

3. In this case, the applicant was discharged from service on 05.10.1963 under Rule 13(3) Item iv of the Army Rules, 1954. The Invaliding Medical Board assessed his disability @80% for one year and considered it as attributable to Military Service. He was granted disability pension from date of discharge and thereafter from 1965 till June 1990 as per recommendation of periodical Resurvey Medical Board (RSMB) held from time to time. Last RSMB held at 12 Air Force Hospital, Gorakhpur re-assessed the disability of the applicant @20% w.e.f. 17.05.1990 for 10 years. However, Medical Advisor, PCDA (P), Allahaabd reduced his disability percentage as 6-19%

for 5 years and rejected the disability of the applicant on the plea that his disability is less than 20%. The Appeal preferred by the applicant against the rejection of disability claim was subsequently rejected vide letter dated 29.07.2015. Accordingly, the impugned order was set aside to the extent that the complete disability pension cannot be stopped as a result of RSMB. Only disability element can be stopped and service element will have to continue for life and awarded compensation of Rs.2,00,000/- (Rupees two lacs) for wrongful denial of disability element @20% for 10 years w.e.f. 17.05.1990.

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 05.10.1963 and he approached this Tribunal on 17.02.2017. The complete disability element cannot be stopped as a result of RSMB. Only disability element can be stopped and service element will have to continue for life. In these circumstances the Tribunal awarded compensation of Rs.2,00,000/- for wrongful denial of disability element @20% for 10 years w.e.f. 17.05.1990.

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 11.01.2019, which may be corrected in exercise of review jurisdiction.

8. Accordingly, the Review Application No. 16 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 : 18 February, 2019
AKD/-