

ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

Review Application No. 58 of 2021

Inre:

O.A. No. 129 of 2020

No. 13994500-K Hav (Nur Asst) Lalendra Kumar Choudhary, S/O Shri Siya Ram Choudhary, R/O Village & Post- Lakhanpur, Tehsil-Tarapur, District-Munger (Bihar)-813201.

.....Review Applicant

vs.

Union of India & Ors

.....Respondents

Thursday, this the 27th day of January, 2022

ORDER (Oral)

1. This application has been filed under Rule 18 of the Armed Forces Tribunal (Procedure) Rules, 2008 for review of order dated 10.09.2021.

2. This Tribunal vide order dated 10.09.2021 has dismissed the petition on the ground that service extension of two years tenure cannot be granted to an Army person being placed in low medical category. The applicant suffered two disabilities i.e. 'Obesity' and 'Primary Hypertension'. Though applicant's medical disability for obesity was

upgraded to medical category P1 on 05.12.2019, yet he remained in low medical category for primary hypertension.

3. Additionally, the law on Review is well enunciated that the scope of Review is limited. The Review Application can be heard if there is an error apparent on the face of record and only to that extent order can be corrected. In connection with it, Order 47 Rule 1 Sub Rule (1) of the Code of Civil Procedure being relevant 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."*

4. We find that there is no error apparent at the face of record while disposing O.A. vide order dated 10.09.2021.

5. The Hon'ble Supreme Court in various decisions has clearly laid down that the scope of Review jurisdiction is very

limited and re-hearing is not permissible. The Hon'ble Supreme Court has drawn a clear distinction between an erroneous decision and an error apparent on the face of the record. It has been laid down by the Hon'ble Supreme Court that while the first can be corrected by the higher forum, the latter only can be corrected by exercise of the Review jurisdiction. In the case of ***Parsion Devi and Others vs. Sumitri Devi and others*** reported in (1997) 8 SCC 715 (Para 9) of the Judgment of the Hon'ble Supreme Court 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. While passing the impugned order, Sharma, J. found the order in Civil Revision as an erroneous decision, though without saying so in so many words. Mechanical use of statutorily sanctified phrases cannot detract from the real import of the order passed in exercise of the Review jurisdiction. Recourse to Review petition in the facts and circumstances of the case was not permissible. The aggrieved judgment-debtors could have approached the higher forum through appropriate proceedings to assail the order of Gupta, J. and get

it set aside but it was not open to them to seek a Review of the order of Gupta, J, on the grounds detailed in the Review petition. Therefore, the impugned order of Sharma, J. cannot be sustained.”

6. In view of the principles of law laid down by Hon'ble Supreme Court in the case of ***Parsion Devi and others*** (supra), we are of the considered view that to recall/review an order passed after hearing both the parties on merits is beyond the scope of review jurisdiction. Such a jurisdiction vests only in Appellate Court to set aside the order and decide it. Since the prayer made by the applicant is beyond the scope of review jurisdiction, hence it deserves to be rejected.
7. The review application is accordingly, **rejected**.
8. The review applicant may be informed accordingly.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 27.01.2022
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