

RESERVED
COURT NO.2

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Review Application No. 10 of 2018

In re:

O.A.No. 04 of 2017

Tuesday, this the 27th day of February, 2018

Hon'ble Mr. Justice S.V.S.Rathore, Member (J)

Hon'ble Air Marshal BBP Sinha, Member (A)

Service No. 775141-R Ex-Cpl Jeevan Chandra Pandey, son of Shri Bhawani Dutt, resident of C/o Saraswati Niwas, B-4 Adarsh Nagar, Kalyanpur, Post Office – Vikas Nagar, Lucknow, Pin code – 226022 Applicant

Ld. Counsel for the Applicant

: **Shri V.P. Pandey, Advocate**
(Counsel for the applicant)

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi - 110011
2. Chief of the Air Staff, Integrated Headquarters of the Ministry of Defence (Air) Vayu Bhawan, New Delhi - 110001.
3. Officer-in- Charge Records, Pension and welfare Wing, Air Force Record Office, Subroto Park, New Delhi – 110100.
4. Directorate of Air Veterans, Air Headquarters, AFRO Building, Subroto Park, New Delhi - 110010.
5. Joint Controller of Defence Accounts (Air Force), Subroto Park, New Delhi - 110100.
6. The Principal Controller Defence Accounts (Pension), Draupadi Ghat, Allahabad (U.P.) - 211014.

...Respondents

Ld. Counsel for the: **Dr. Shailendra Sharma Atal,**
Respondents. Sr.Central Govt Standing Counsel.

Assisted by : **Wg Cdr Sardul Singh,** OIC Legal Cell.

ORDER

“Per Hon’ble Air Marshal BBP Sinha, Member (A)”

1. This application for review has been filed under Rule 18(3) of the Armed Forces Tribunal (Procedure) Rules, 2008 for review of the judgment and order dated 02.01.2018 passed in O.A. No.04 of 2017 by the Bench consisting of Hon’ble Mr. Justice D.P. Singh, Member (J) as then was and one of us (Air Marshal BBP Sinha, Member (A). Since Hon’ble Mr. Justice D.P. Singh, Member (J) has demitted the office on completion of his term of appointment; this review application has come up for hearing before this Bench. The reliefs claimed in this review are abstracted as under:

“(I) Allow the Review Application and judgment and order passed in O.A No 4 of 2017 may be set aside.

(II) issue/pass an order to respondent to consider the applicant for grant of service element and disability element from the date of discharge i.e 224.09.2007.

(III) Issue/pass an order or direction to the respondent to extend benefit of rounding off of disability pension from the date of discharge i.e. 24.09.2007.”

2. This matter came up for consideration for review of the judgment and order dated 02.01.2018 (supra) by circulation in the Chambers but after going through the record, it was felt necessary

that the matter required hearing and it was accordingly directed to be listed for hearing vide order dated 01.02.2018.

3. The applicant initially preferred a petition, which was registered as O.A. No. 04 of 2017 under section 14 of the Armed Forces Tribunal Act, 2007 primarily for the twin reliefs of granting disability element of pension from the date of discharge and for rounding it off from 20% to 50%. The second relief sought is for grant of service element of pension. The other two reliefs have not been pressed into service.

4. The brief facts of the case are that the Applicant was enrolled in the Indian Air Force on 18.03.1996 and discharged from service at his own request on 24.09.2007 after rendering 11 years and 191 days of service on being selected to a Public Sector Unit. Before discharge, he was brought before Release Medical Board on 24.09.2007 which assessed his disability as 20% for life. However, his claim for disability pension was denied. Thereafter, he preferred first appeal in which disability element was granted with effect from 23.02.2013, that is, from the date of appeal.

5. We have heard learned counsel for the Applicant as also learned counsel for the respondents. We have also gone through the material facts on record.

6. In the instant case although the Applicant was discharged on 24.09.2007 but he preferred first appeal after considerable delay in the year 2013. It is not in the realm of dispute that the disability element was granted to the Applicant while deciding the first

appeal. Accordingly, we confined ourselves to adjudicating the issue regarding Applicant's entitlement to disability element of pension from the date of discharge along with the relief of rounding off of his disability from 20% to 50%. As far as disability element of pension is concerned after dealing with the matter in detail vide judgment and order dated 02.01.2018 under review in view of settled position of law by Hon'ble the Supreme Court in the case of **Shiv Das v Union of India and Ors** reported in **(2008) 2 PLR 573**, the applicant was held entitled to disability pension with effect from 23.02.2013.

7. On the issue of rounding off of disability pension, we have held vide our judgment and order dated 02.01.2018 under review that the case of the applicant is squarely covered by the decision of **K.J.S. Buttar vs. Union of India and Others**, reported in (2011) 11 SCC 429 and Review Petition (C) No. 2688 of 2013 in Civil appeal No. 5591/2006, **U.O.I. & Anr vs. K.J.S. Buttar and Union of India vs. Ram Avtar & Others**, (Civil Appeal No. 418 of 2012 decided on 10 December, 2014 and accordingly his disability assessed at 20% for life was rounded off to 50% for life.

8. 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 Apex 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 Apex 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; in Para 9 of the Judgment of the Hon'ble Apex 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."

9. As stated supra, one of the reliefs claimed in Review Petition is for grant of service element which we proceed to consider in the instant Review petition.

10. So far as the issue of service element of pension is concerned, we have heard both sides. In this regard the learned counsel for the applicant has relied upon the judgments and orders of Armed Forces Tribunal, Regional Bench, Kochi in O.A. No. 112 of 2014 **Ex**

AC George Alwin Thomas vs. Union of India and others and this Tribunal in O.A. No. 137 of 2017 **Awadhesh Kumar Pandey vs. Union of India and others**, copies of which have been filed by the applicant as Annexures No.R-2 and R-3 respectively to this application. On the other hand, this position has not been disputed by the learned counsel for the respondents. Accordingly, since in similar circumstances disability element as well as service element have been granted by the Armed Forces Tribunal (supra) to the applicants of respective petitions (supra), we are also of the view that there is no reason for us to deny the same benefit to the applicant of the present petition also.

11. Now we come to the relief of making it effective from the date of discharge. Since disability element has been granted only from 23.02.2013 i.e. the date of first appeal preferred by the applicant as admittedly the first appeal was filed by the applicant after a considerable delay in the year 2013. In our view, the respondents have rightly granted the disability element from the aforesaid date. In such circumstances, no interference is called for to make the date of his entitlement to disability and service element retrospective. The applicant earned his service element only as a part of disability pension since he has become entitled to disability pension only after the date of his first appeal i.e. 23.02.2013. Thus, since the applicant has not earned his service element of pension through qualifying service of fifteen years but has earned service element because of his eligibility to disability pension (consisting of

disability element and service element), hence it would not be justified to give him service element benefit from a date prior to the eligibility to disability pension.

12. In view of the above the review application is allowed partly and the applicant is held entitled to service element and rounding off of disability element to 50% w.e.f. 23.02.2013 only i.e. the date of his preferring his first appeal. The judgment and order dated 02.01.2018 under review to the above extent stands modified.

13. No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

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

Dated: February, 27, 2018
MH/-