

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

**Court No. 1**

**Review Application No 7 of 2018  
(In re : O.A. No. 325 of 2015)**

Tuesday, this the 22<sup>nd</sup> day of May, 2018

"Hon'ble Mr. Justice S.V.S.Rathore, Judicial Member  
Hon'ble AIR Marshal BBP Sinha, Administrative Member

Union of India and others  
**Applicant**

**...Review**

Versus

Maj (Retd) R.K.Singh  
**Respondent**

... **Review**

Ld. Counsel for the Applicant - Sri A.K.Gautam,

Ld. Counsel for the Respondent-

**ORDER**

1. Present Review Application under section 14 (4) (f) read with Rule 18 of the Armed Forces Tribunal (Procedure) Rules, 2008 has been preferred by the Review Applicant against the verdict of the Armed Forces Tribunal, Principal Bench, Delhi vide Judgment and Order dated 06.11.2017 rendered in Original Application No 325 of 2015. The matter came up before us by way of Transfer from the Principal Bench, Delhi as per section 12 of the Armed Forces Tribunal Act, 2007

read with Rule 18 (2) of the Armed Forces Tribunal (Procedure) Rules, 2008 for being dealt with as per 4<sup>th</sup> situation, mentioned in the order dated 26.03.2018 of the Hon'ble Chairperson which being relevant is quoted below.

"4<sup>th</sup> situation

*Where Hon'ble Member (Judicial) or Hon'ble Member (Administrative) as, the case may be, who was one of the partners of the Bench was, which has passed the order in the original matter, is not available on account of his nomination and/or transfer;*

*RA shall be disposed of by way of circulation, in terms of Rule 18 (3) of the Armed Forces Tribunal (Procedure) Rules, 2008, by the Bench, where the said Hon'ble Member (Judicial) or Hon'ble Member (Administrative), as the case may be, is currently available ad constituting the Bench. Further necessary steps may be taken in accordance with the directions to be issued by the said Bench.*

1. The relief sought in this Review Application is excerpted below.
  1. *Review the judgment dated 06.11.2017 passed in OA No 325/2015 and set aside/recall the same to decide the matter afresh after considering the entire factual circumstances of the case as enumerated hereinabove.*
  2. *Pass such other orders as the court may deem fit in the light of the above mentioned facts of the case."*

2. It may be noticed here that Original Application aforesaid was finally decided by this Tribunal on 06.11.2017 by the Bench comprising **(Hon'ble Mr. Justice S.V.S.Rathore, Judicial Member and Hon'ble Air Marshal D.C.Kumaria, Administrative Member)**. The decision culminated in disposed of.

3. Before proceeding further, it may be noted that there is a delay of 36 days in filing the review Application. Learned counsel for the Review Applicant explained the circumstances which led to filing of the present Review Application after a delay of 36 days and prayed for condonation of delay. We have given our anxious consideration and we are of the view that the review applicant has satisfactorily explained the delay in filing the Review Applicant. Hence delay in filing the review application is accordingly condoned.

4. The material grounds urged before us for consideration are excerpted below.

"(i) Because there is an error apparent on the face of record.

(ii) Because it has escaped the attention of the Hon'ble Tribunal that the applicant in the OA had taken premature retirement from service on 01.04.1988. The RMB found his disability "scalenus acticus syndrome (LT) 349, V68" as neither attributable to nor aggravated by service (NANA), with degree of disablement @ 20% for 2 years.

(iii) Because the GoI/MoD, vide letter No. 16950 2008/D (Pension/Policy) dated 19.05.2017 read with

letter dated 29.09.2009, has extended the benefit of disability element of disability pension to such personnel also who have prematurely retired prior to 01.01.2006, with benefits w.e.f. 01.01.2006.

(iv) Because the applicant in the OA is not entitled to disability element of disability pension for any period prior to 01.01.2006 and hence the Hon'ble Tribunal has erred in granting the disability element of disability pension for 2 years from the date of his discharge, i.e. 01.04.1988, vide judgment dated 06.11.2017 and thus, the same deserves to be reviewed and set aside.

5. We have given our anxious consideration to the grounds urged in the Review Application. We have also perused the records as well as the Judgment and Order at issue.

6. In the instant case the Applicant was discharged on his own request on completion of pensionable services on 01.04.1988. The dispute is that the applicant cannot be granted disability element prior to 01.1.2006. Accordingly, we confine ourselves to adjudicating the issue regarding Review respondent's entitlement to disability element of pension from the date of discharge. We feel called to refer to the judgment of the Armed Forces Tribunal, Principal Bench at New Delhi, in OA No. 336 of 2011 (with OA Nos. 205/11 & 189/11) Maj (Retd) Rajesh Kumar Bhardwaj v. UOI and others dated 7.2.2012 and argued that vide Notification dated 29.9.2009, the Government has allowed the benefits of

disability pension to the persons who retired/discharge on or after 01.01.2006 irrespective of the fact that they sought voluntary retirement. In this view of the matter, the judgment dated 06.11.2017 shall stand modified to the extent that the review respondent shall be entitled to disability element of disability pension with effect from 01.01.2006 and not from the date of discharge.

7. In so far as other grounds are concerned i.e. ground no (ii) and (iii) are concerned, we are of the view that the ground No. (ii) and (iii) urged as aforesaid, have been taken into consideration and the same are nothing but repetition which has already been dealt with in the judgment under review in all its pros and cons.

8. Power of review conferred on the Court may be exercised when error is apparent at the face of record under Order 47 Rule 1 and 2 of CPC. It is the statutory power conferred on Court. It is neither inherent power nor a power to re-appreciate the evidence, vide (2000) 6 SCC 224: **Lily Thomas vs. Union of India.**

9. It must be borne in mind that review is perfectly distinguished from an appeal i.e.; quite clear from statutory provision (Order 47 Rule 1 of CPC) that the primary intention of granting a review is the reconsideration of the same subject by the same Judge as contra-distinguished to an

appeal which is a hearing before another Tribunal, vide (2005) 2 SCC 334 ***Ishwar Singh, Vs. State of Rajasthan and others.***

10. In sum and substance, review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error where without any elaborate argument one could point to the error and say here is a substantial point of law which states one in the face, and there could reasonably be no two opinion entertained about it, a clear case of error apparent on the face of the record would be made out vide, (2006) 4 SCC 78 ***Haridas Das. Vs. Usha Rani Banik.***

11. In (2008) 9 SCC 612: ***State of west Bengal and others. Vs. Kamal Sen Gupta,*** their lordships of Hon'ble Supreme Court held that error apparent at the face of record means mistake which prima facie is visible and does not require any detailed examination.

12. In (1995) 1 SCC 170: ***Meera Bhanja (Smt.). Vs. Nirmala Kumari Chaudhary (Smt.)*** followed by (1997) 8 SCC 715: ***Parsion Devi Vs Sumitri Devi & others,*** their lordships of Hon'ble Supreme Court held that power of review does not mean to exercise de novo hearing except the error apparent at the face of record in view of Order 47 Rule 1 of CPC.

13. As a result of foregoing discussion, the Review Application is partially allowed and it is directed that the judgment dated 06.11.2017 shall stand rectified/modified to the extent that the review respondents shall be entitled to disability element of disability pension with effect from 01.01.2006 and not from the date of discharge. In respect of other grounds, the Review Applicant shall stand dismissed.

**(Air Marshal BBP Sinha) (Justice S.V.S. Rathore)**  
**Member (A) Member (J)**

Dated: May, ,2018  
MH/-