

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Court No. 1

**Review Application No 88 of 2018
(In re : O.A. No. 84 of 2016)**

Tuesday, this the 22nd day of May, 2018

**“Hon’ble Mr. Justice S.V.S.Rathore, Judicial Member
Hon’ble AIR Marshal BBP Sinha, Administrative Member”**

Col NK Kohli (Retd)
IC-37856H

...Review Applicant

Versus

Union of India & Ors

... Review Respondent

Ld. Counsel for the Applicant - Shri Rajiv Manglik, Advocate.

Ld. Counsel for the Respondent-Shri MK Goswami, Advocate.

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 09.11.2017 rendered in Original Application No 84 of 2016. 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 4th

situation, mentioned in the order dated 26.03.2018 of the Hon'ble Chairperson which being relevant is quoted below.

"4th 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.

2. The relief sought in this Review Application is excerpted below.

"(a) To recall the order dated 09 Nov 2017 and reconsider the matter for adjudicating all issues including the issue as decided by this Hon'ble Tribunal and thereafter grant all reliefs as prayed for in the OA.

(b) Pass such order/further orders in the instant matter as deemed appropriate by this Hon'ble Tribunal."

3. It may be noticed here that Original Application aforesaid was finally decided by this Tribunal on 09.11.2017 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 being dismissed.

4. A prayer for review of the order has been made challenging the order of this Tribunal passed in O.A. No 84 of 2016.

5. By means of O.A. the applicant had sought the relief of directing the respondents to revise the pensionary benefits of the applicant in the rank of Brig considering the applicant to have been deemed promoted to the rank of Brig from the date when the vacancy fell vacant in 2009 i.e. 01 Jul 2009. The facts in nutshell are that the applicant was commissioned as Short Service Commissioned Officer on 14.03.1981 in the JAG Branch of the Army. He was granted Permanent Commission and his seniority for the purpose of promotion was fixed as 12.11.1981. Therefore, he belonged to 1981 batch. He was promoted from time to time upto the Rank of Colonel. The Applicant was considered for promotion to the rank of Brigadier as fresh case with the batch of 1981, first review case with 1982batch and final review case with 1984 batch and was not approved. The applicant since finally superseded, sought premature retirement from Indian Army and retired from service on 20 Jul 2009.

6. After considering all the legal points raised at the time of arguments, this Tribunal dismissed the O.A. by a detailed

order. Now applicant has again raised different new issues in this review application. The scope of review is very limited. On this point, I would like to refer to the legal position dealing with the scope of review application.

7. It is settled proposition of law that any other attempt of Court except an attempt to correct an apparent error or an attempt not based on any ground mentioned in Order 47 Rule 1 and 2 CPC, would amount to an abuse of power to review its judgment, vide, (1999) 9 SCC 596 ***Ajit Kumar Rath, Vs. State of Orissa.***

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 Deviu**, their lordships of Honible 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. In JT 2012 (12) SC 565: **Akhilesh Yadav Vs. Vishwanath Chaturvedi** and others, their Lordships of Hon'ble Supreme Court held that an erroneous decision in itself does not warrant a review of each decision in absence of error apparent at the face of record.

14. In view of the above, the present application for review appears to be not sustainable and deserves to be rejected.

15. It is accordingly **rejected**.

(Air Marshal BBP Sinha)
Member (A)

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

Dated: May ,2018