

**Court No. 1**

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

**Review Application No 06 of 2018**

**Inre**

**O.A. No. 530 of 2017**

Ex. No. 8365073W, Warrant Officer Ram Nakshatra Singh ... Applicant

vs.

Union of India & ors

... Respondent

**Friday, this the 27th day of April, 2018**

**Hon'ble Mr. Justice SVS Rathore, Member (J)**

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

**ORDER (Oral)**

1. This review application was placed before us through circulation. Vide order dated 31.01.2018 we had directed the same to be listed in Court for hearing.

2. Heard learned counsel for the parties.

3. By means of this application for review, the applicant has prayed for review of order dated 18.12.2017 passed by a co-ordinate Bench of this Tribunal in O.A. No. 530 of 2017. In said O.A. the applicant had prayed for grant of disability pension. The O.A. was allowed and the following order was passed, to quote:-

*“7. We dispose of the present O.A. in terms of the above judgment with a direction to the respondents to release the disability pension @ 50% along with arrears within a period of four months from the date of receipt of a certified copy of this order. In case this order is not complied with within the stipulated period, the amount so accrued shall carry interest*

*@10% oer annum from the due date, till actual payment thereof.”*

4. By means of this review application, the applicant has now made a prayer for grant of relief in the case of ***Union of India vs. Tarsem Singh***, reported in 2008 (8) SCC 648 and in view of the policy of Government of India dated 15.09.2014 which provides that benefit of broad banding of percentage of disability/war injury shall be allowed with effect from 01.01.1996. Applicant was admittedly discharged on 16.10.1982. The case of ***Tarsem Singh*** (supra) relied upon by learned counsel for the applicant was with regard to condonation of delay. On the point of payment of arrears, the Hon'ble Apex Court in the case of ***Shiv Dass vs. Union of India***, reported in 2007 (3) SLR 445 (para-9), has observed:

*“9. In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.”*

(Emphasis supplied)

5. Apart from it, the applicant being retiree of 1982 is not entitled to the benefit of policy letter dated 15.09.2014. Relevant portion of policy letter (supra) is quoted as under:

*“.... In partial modification of this Ministry's above said letter dated 19<sup>th</sup> January 2010, the President is now pleased to decide that with effect from 1.1.1996, the benefit of broad banding of percentage of disability/war injury shall be allowed to Armed Forces Officers and POBR pensioners who were invalided out of service prior to 1.1.1996 and were in receipt of disability element/war injury element as on 1.1.1996... ”.*

6. This Circular letter was applicable to those Armed Forces personnel who were invalided out of service prior to 1.1.1996 and were also receiving disability pension. Admittedly, the applicant was not receiving disability pension on 1.1.1996 and disability pension was granted to him under orders of this Tribunal dated 18.12.2017. The O.A. wherein disability pension was granted to the applicant was filed after lapse of more than 21 years. Therefore, in view of pronouncement of Hon'ble Supreme Court in the case of *Shiv Dass* (supra) restriction of a period of three years was perfectly justified and there is no error in the order sought to be reviewed.

7. Learned counsel for the applicant has also placed reliance on the Full Bench decision of the Armed Forces Tribunal, Principal Bench, New Delhi rendered in O.A. No. 1439 of 2016, ***Ex Sgt Girish Kumar vs. Union of India & Ors.*** The applicant is not entitled to the benefit of said judgment for the reason that direction in the case of *Girish Kumar* (supra) was available to such Armed Forces personnel in whose favour orders were passed for rounding off of disability pension. The case of the applicant was for grant of disability pension and not for rounding off of disability pension.

7. Besides, the law on Review is well enunciated that the scope of Review is limited. The Review Application can be heard if there is error apparent on the face of record. 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. 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 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, in 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 judgement-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.”*

8. In view of our observations made herein above, the review application being devoid of merits deserves to be rejected; hence **rejected**.

**(Air Marshal BBP Sinha)**  
**Member (A)**

**(Justice SVS Rathore))**  
**Member (J)**

27.04.2018  
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