

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Review Application No 21 of 2018

Inre

O.A. No. 351 of 2017

No. 14324305-N Ex Hony Nb/Sub Ram Chet	...	Applicant
	vs.	
Union of India	...	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 is an application for Review of order dated 12.02.2018 passed in O.A. No. 351 of 2017, which was a case for grant of pension of Hony rank of Naib Subedar. This Tribunal vide order dated 12.02.2018 has observed as under:

*“5. We further take note of the fact that the matter has been finally settled by the Apex Court in **Union of India & dors vs. Subbash Chander Soni, Civil Appeal; No. 4677 of 2014**, decided on 20.05.2015 and a clarification has been given that no interest shall be payable in such cases. For the sake of convenience, the said judgment is reproduced below:*

*“From the reading of the impugned judgment of the Armed Forces Tribunal, it gets revealed that the Tribunal has relied upon its earlier judgment dated 08.02.2010 rendered in O.A. No. 42 of 2010 titled ‘**Virender Singh & Ors v. U.O.I.**’, where identical relief was granted to the petitioners therein who were similarly situated. Further, we note that against the said judgment of the Tribunal, SLP (C) CC No. 18582 of 2010 was preferred which was dismissed by this Court on 13.12.2010. We further find that by the impugned judgment, the Tribunal had decided 35 O.A.s and the Union of India has preferred the instant appeal only in one of those 35 cases. **For all these reasons, we are not inclined to entertain this appeal, which is dismissed accordingly. We, however, clarify that no interest shall be payable.***

Two months, time is granted to the appellants to comply with the impugned judgment passed by the High Court.”

6. Thus, we dispose of the present petition in terms of the above judgements with a direction to the respondents to release the enhanced service pension to the applicant in the rank of Hony Naib Subedar w.e.f. 01.012006 within a period of four months from the date of receipt of a certified copy of this order, further making it clear that no interest shall be admissible and payable to the applicant in this regard. In case this order is not complied with within the stipulated period, the amount of arrears shall carry interest @ 9% per annum from the due date, till actual payment thereof.”

2. Thus, it is clear that the aforesaid order under review was passed in consonance with the judgment passed by the Hon’ble Apex Court (supra).

3. 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.

4. 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."

5. At the cost of repetition it may be observed that the order under review has been passed in consonance with the decision of the Hon'ble Apex Court (supra). It is not the case of the applicant that Hon'ble Apex Court has changed its view expressed in the case mention hereinabove. Therefore, we do not find any error of fact and law apparent on the face of the record to justify interference by this Tribunal in this review application.

6. 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
anb

