

CHAMBERS
(By circulation)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

R.A. No. 39 of 2019 alongwith M.A. No. 532 of 2019

In re:

T.A. No. 233 of 2017

Saturday, this the 25th day of May, 2019

Hon'ble Mr. Justice S.V.S. Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)

Rama Shankar Bharti - Review/Applicant

Ld. Counsel for the : **Shri Om Prakash Kushwaha, Advocate**
Applicant

Vs.

Union of India and others -Respondents

ORDER

1. This application has been placed in Chamber by the registry under the provisions contained in AFT Act and Rules framed thereunder, which is for review of the judgment and order dated 15.03.2018, passed in O.A. No. 233 of 2017 by the Bench consisting of both of us (Justice S.V.S. Rathore, Member 'J' and Air Marshal BBP Sinha, Member 'A'). Accordingly, this review application has come for hearing by circulation before this Bench.

2. The only ground taken by the review applicant for review of the judgment is that since the applicant was found fit at the time of his recruitment in the Army in the medical examination, hence he is entitled for disability pension and therefore the judgment delivered in

the O.A. under review deserves to be reviewed. Virtually this is a prayer to rehear the matter.

3. At the very outset it may be mentioned here that in the present case while rejecting the claim of applicant for grant of disability pension the Tribunal has recorded a specific finding in the order dated 15.03.2018 under review that the disability in question was neither attributable to nor was aggravated on account of his serving the Army as opined by both the medical board constituted for the purpose. It was also held that otherwise also the mandatory second medical examination of all recruits is an extension of the first medical examination and since the disability in question was detected during second medical examination, hence it was held that it will be deemed to have been detected at the time of applicant's enrolment.

4. In view of categorical findings arrived at and also settled position of law discussed in the judgment under review once the finding is arrived at after hearing and going through the pleadings on record of both the parties, a litigant cannot be permitted to avail appellate forum under the guise of review. 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.**

5. 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.**

6. 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.**

7. 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.**

8. 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

9. 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 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.

10. 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.

11. Besides the above, as per office report there is delay of 02 months and 11 days in filing this Review application. Rule 18 (1) of the Armed Forces Tribunal (Procedure) Rules, 2008 provides that no application for review shall be entertained unless it is filed within thirty days from the date of receipt of copy of the order sought to be reviewed. Apart from it, we have also gone through the grounds and reasons indicated in the affidavit filed in support of the application. In our considered opinion, the grounds urged in support of the prayer for condoning the delay are general in nature and do not appear to be germane in view of the law laid down by the Hon'ble Apex Court in **Office of the Chief Post Master General and others vs Living Media India Ltd and another** reported in 2012 STPL (LE) 46200 SC.

12. As a result of foregoing discussion, the application for condonation of delay as well as Review Application, being devoid of merit, are liable to be dismissed, hence **dismissed** accordingly.

13. The Review Applicant may be informed accordingly.

(Air Marshal BBP Sinha)
Member (A)

Dated: May 25, 2019
JPT

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

