

By Circulation
Court No. 1

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

Review Application No. 29 of 2019

(Inre O.A. No. 591 of 2017)

Tuesday, the 23rd day of April, 2019

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

Ex Sep Onkar Nath Shukla
Son of Jagan Nath Shukla
Resident of Village & Post Office – Chandanpur
District – Unnao (U.P.)

..... Petitioner

By Legal Practitioner – Shri V.P. Pandey,
Learned counsel for the Petitioner

Versus

1. Union of India, through the Secretary,
Ministry of Defence,
101 South Block,
New Delhi-110011.
2. Chief of the Army Staff,
South Block,
New Delhi-110011.
3. Officer-in-Charge Records,
Rajput Regiment,
Fatehgarh (U.P.), PIN – 209601.
4. PCDA (Pension),
Draupadi Ghat,
Allahabad (U.P.)

.....Respondents

By Legal Practitioner – Shri Shyam Singh,
Learned counsel for the Respondents

ORDER

1. The petitioner has filed this Review Application under Rule 18 of the Armed Forces Tribunal (Procedure) Rules, 2008. By means of this Review Application, the petitioner has prayed “*Allow the Review Application and the order dated 28.03.2019 passed by this Hon’ble Tribunal in O..A. No. 591 of 2017 as mentioned in Para 10 of this Review Application may kindly be reviewed.*”

2. The matter came up before us by way of Circulation as per provisions of Rule 18 of the Armed Forces Tribunal (Procedure) Rules, 2008, whereby the petitioner has prayed for review the order dated 28.03.2019 passed in O.A No. 591 of 2017, by means of which this Court had allowed the Original Application and passed the following order :

*“10. Accordingly the O.A. is **allowed**. The impugned orders passed by the respondents are set aside. The respondents are directed to grant disability pension to the applicant @ 50% for two years from the date of his discharge i.e. 30.04.1993. However, due to law of limitations, the applicant will not be entitled to arrears of disability element during this two years period. Arrears of service element, if any, will be restricted to three years prior to filing of this Original Application. The date of filing of Original Application is 03.08.2017. The respondents are further directed to refer the applicant’s case to Re-survey Medical Board for deciding his further entitlement of disability element. The respondents are directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. In case the respondents fail to give effect to this order within the stipulated time, they will have to pay interest @ 9% on the amount accrued from due date till the date of actual payment.”*

3. We have gone through the grounds and reasons indicated in the affidavit filed in support of the application and have also gone through the judgment and order sought to be reviewed. The judgment and order sought to be reviewed was passed in proper prospective after considering all the facts and circumstances and also in view of the several pronouncement of the Hon’ble Apex Court. No illegality or irregularity or error apparent on the face of record has been shown to us so as to review the aforesaid judgment of this Court.

4. That apart, it is a settled proposition of law that the scope of the review is limited and until it is shown that there is error apparent on the face of record in the order sought to be reviewed, the same cannot be reviewed. For ready reference, Order 47, Rule 1 sub-rule (1) of the Code of Civil Procedure is reproduced below :-

“1. Application for review of judgment.- (1) any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.”

5. In view of the principles of law laid down by the Hon’ble Supreme Court in various decisions, it is settled that the scope of review jurisdiction is very limited and re-hearing is not permissible. Hon’ble the Supreme Court in Para 9 of its judgment in the case of **Parsion Devi and others vs. Sumitri Devi and others**, reported in (1997) 8 Supreme Court Cases 715, 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 of 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."

6. In the instant case, the details mentioned in the review application had already been taken into consideration and discussed in

detail and thereafter the order was passed. In view of the principle of law laid down by Hon'ble the Apex Court in the case of **Parsion Devi and Others** (supra), we are of the considered view that there is no error apparent on the face of record in the impugned order dated 28.03.2019, passed in O.A. No. 591 of 2017, which may be corrected in exercise of review jurisdiction.

7. Accordingly, Review Application No. 29 of 2019 is hereby **rejected.**

(Air Marshal BBP Sinha)
Member (A)

Dated : 23rd April, 2019

SB

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