

By Circulation
Court No. 1

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

Review Application No. 33 of 2019

(Inre O.A. No. 295 of 2017)

Monday, the 13th day of May, 2019

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

No. 8935129T Ex AC (U/T) Abhay Kumar
Son of Mahendra Prasad
Care of Devendra Upadhyay
House No. 249/2, Sikandarpura Naxul Bara Barha
Alambagh, Lucknow

..... Applicant

By Legal Practitioner – Shri Om Prakash Kushwaha,
Learned counsel for the Applicant

Versus

1. Union of India, through Secretary,
Ministry of Defence,
Government of India,
New Delhi.
2. Chief of the Air Staff,
Air HQ, Vayu Bhawan,
New Delhi, PIN - 110106.
3. The Chief Record Officer,
Air Force Record Office,
Subrato Park, New Delhi – 110010.
4. The Chief Controller Defence Accounts,
Draupadi Ghat,
Allahabad (U.P.)

.....Respondents

By Legal Practitioner – Shri Namit Sharma,
Learned counsel for the Respondents

ORDER

1. The applicant has filed this Review Application under Rule 18 of the Armed Forces Tribunal (Procedure) Rules, 2008. By means of this Review Application, the applicant has prayed *“It is, therefore most respectfully prayed that this Hon’ble Tribunal may review and set-aside its judgment order dated 02.04.2019 to the extent.”*

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 applicant has prayed for review the order dated 02.04.2019 passed in O.A. No. 295 of 2017, by means of which this Court had dismissed the Original Application as the applicant was suffering from “Epilepsy” prior to joining the service and the disease was detected within 6 days of his enrolment and thus it was inferred as a constitutional disease which could not be detected during medical examination at the time of enrolment. Accordingly, the applicant was invalided out of service for not meeting the medical standards required by the organisation.

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. By the order under review, claim of the applicant for grant of disability pension was rejected on the ground that the applicant had rendered only 115 days of service. He was invalided out due to disease of ‘Epilepsy’. In the opinion of Medical Board, it is constitutional disease which existed before his entering into the service and such disease cannot be detected at the time of formal medical check up at the time of enrolment. The argument of the learned counsel for the applicant was found to be without substance,

contrary to the aforesaid medical opinion, in view of the pronouncement of the Hon'ble Apex Court on the point.

7. In the instant case, the grounds mentioned in the review application have 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 02.04.2019, passed in O.A. No. 295 of 2017, which may be corrected in exercise of review jurisdiction.

8. Accordingly, Review Application No. 33 of 2019 is hereby **rejected.**

(Air Marshal BBP Sinha)
Member (A)

Dated : 13th May, 2019
SB

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