

BY CIRCULATION

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Review Application No. 37 of 2019**Inre:****O.A. No. 257 of 2016**

Union of India and ors

...Applicants

vs.

Smt Bittan Devi

...Respondent

Tuesday, this the 21st day of May, 2019**ORDER**

1. Review Application under Rule 18 of the Armed Forces Tribunal (Procedure) Rules, 2008 has been preferred by the Applicant against judgment and order of the Armed Forces Tribunal, Regional Bench, Lucknow dated 22.04.2019 passed in O.A. No 257 of 2016. The matter has come up before us by way of Circulation as per provisions of Rule 18 (3) of the AFT (Procedure) Rules, 2008.

2. In the Review Application, the prayer made by the applicant is that the Tribunal may review its order dated 22.04.2019 whereby the O.A. was allowed and the late husband of Smt. Bittan, i.e. No. 15124675-A Gnr Rajesh Kumar, was 'presumed dead' and the respondents were directed to grant family pension to the respondent Smt. Bittan with all consequential benefits, be set aside

3. The law on Review is well enunciated that the scope of Review is limited. The Review Application can be heard if there is an error apparent on the face of record and only to that extent order can be corrected. In connection with it, Order 47 Rule 1 Sub Rule (1) of the Code of Civil Procedure being relevant 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 by this Code, or*
- (b) *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 of the Court which passed the decree or made the order."*

4. It is fairly well settled by a plethora of decisions of Hon'ble Supreme Court in various decisions 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 (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. In view of the principles of law laid down by Hon'ble Supreme Court in the case of *Parsion Devi and others* (supra), we are of the considered view that to recall an order passed after hearing both the parties on merits is beyond the scope of review jurisdiction. Such a jurisdiction vests only in appellate Court to set aside the order and decide it. Since the prayer made by the applicant is beyond the scope of review jurisdiction, hence it deserves to be rejected.

6. Moreover, this Tribunal had allowed the O.A. on merits after taking into consideration the beneficiary measures adopted by the Government of India, Ministry of Defence by Mod letter No.12(16)/86/D/Pen/Sers dated 03.06.1998 and subsequent amendments whereby the period of waiting for family pension with regard to Army personnel 'presumed dead' was reduced upto six months. It was held that from the original policy letter issued by the Government in 1998 and subsequent improvements from time to time it is explicit that lodging of FIR is not a must but an authenticated general diary entry by police authorities is sufficient to initiate further action in such matters. The Tribunal has also taken into account that the wife of deceased Army personnel is an illiterate lady and the Records Office concerned, in spite of being informed by the lady about the missing of her husband, failed to extend a helping hand or provide any meaningful advice to the distressed wife.

7. In view of our discussion made hereinabove, the Review Application being devoid of merit is liable to be dismissed, hence **dismissed** accordingly.

8. The applicant may be informed accordingly.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Dated 21.05.2019

anb