

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****REVIEW APPLICATION NO. 35 of 2019**

Inre: Ex.A.No.64 of 2018 Inre Ex.A.No.107 of 2017  
(O.A. No. 211 of 2010)

**Tuesday this the 14<sup>th</sup> day of May, 2019**

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

**Shyam Kumar**

**Applicant**

By Legal Practitioner for Applicant

**Versus**

**Union of India & others (Army)**

**Respondents**

By Legal Practitioner for Respondents

**Learned counsel for the Applicant :Col AK Srivastava (Retd),**  
**Learned counsel for the applicant**

**Learned counsel for the Respondents: Dr Chet Narayan Singh,**  
**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 against the order dated 12.04.2019 passed in Ex. Application No.64 of 2018.
2. At the very outset, it would be appropriate to mention here that the aforesaid Review Application has been filed against the order passed in Ex. Application and not against the final order passed in O.A.
3. Ex. A. No.64 of 2018 has been moved by the learned counsel for the applicant for execution of the order dated 02.03.2017 passed in O.A.No.211 of 2010. The said Ex. Application has been dismissed as infructuous by a detailed order on 12.04.2019, which reads as under :

**"Ex. A.No. 64 of 2018**

*This is an application for execution of the order dated 02.03.2017 passed in O.A.No. 211 of 2010. The operative portion of the order reads as under :*

*"10. As a result of foregoing discussion, since statutory procedure/provisions have not been complied with as stated (supra), we converge to the view that the punishment and sentence awarded to the applicant suffer from the vice of arbitrariness and the O.A. deserves to be allowed.*

11. *The O.A. is accordingly allowed. The impugned order dated 27.12.2008 is set aside with all consequential benefits.”*

*During the course of hearing, learned counsel for the applicant has fairly conceded that the applicant has been reinstated and promoted after judgment and he has received salary for the period during which he remained out of service. Now he is claiming for payment of certain allowances.*

*On behalf of the respondents, it is submitted that the applicant has already received what was due to him by the order under execution and he was not entitled for the allowances, which he is claiming because he was not in service at the relevant point of time.*

*Learned counsel for the applicant has drawn our attention towards Annexure 1 of the supplementary affidavit, whereby a reply has been given to the applicant that these allowances cannot be given to him and for the same, he may raise his claim before the higher authorities.*

*As per the Execution Application, the claim of the applicant is for payment of CILQ which means Compensation in lieu of Quarter Allowance, Children Education Allowance, Ration Allowance, Medical Reimbursement, Composite Transfer Grant/Allowance to his home after dismissal from service and from his home to AMC Centre & College, Lucknow on rejoining duty. Thus, virtually the applicant has claimed these allowance while he was not in service.*

*Apart from it, by any stretch of imagination, the applicant is not entitled to any other allowances as claimed by him because he was not in service and, therefore, there is absolutely no occasion for payment of these allowances. Admittedly, the claim of the applicant for promotion and for payment of salary has been complied with by the respondents and, therefore, no claim remains to be executed. Thus, the applicant has no locus nor there is any specific direction for payment of allowances which the applicant was due. The word ‘consequential benefits’ cannot be stretched to such an extent to include all the allowances which are available only to the persons, who were in service at the relevant point of time because these allowances are meant to compensate the expenses under these heads by a person who is actually in service and not for notional service.*

*Since the applicant is not held entitled for payment of these allowances, therefore, the order under execution has been fully complied with and the Ex. Application has become infructuous.*

*Accordingly, the Ex. Application is dismissed as infructuous.”*

4. Under Rule 18 (4) of the Armed Forces Tribunal (Procedure), Rules 2008, a review is maintainable only against a judgment and order. For ready reference, Rule 18 is reproduced as under :

**“18 Application for review. —**

*(1) 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.*

*(2) An application for review shall ordinarily be heard by the same Bench which has passed the order, unless the Chairperson may, for reasons to be recorded in writing, direct it to be heard by any other Bench.*

*(3) Unless otherwise ordered by the Bench concerned, an application for review shall be disposed of by circulation where the Bench may either dismiss the application or direct notice to be issued to the opposite party.*

*(4) Where an application for review of any judgment or order has been disposed of, thereafter no application for further review shall lie.*

*(5) No application for review shall be entertained unless it is supported by a duly sworn affidavit indicating therein the source of knowledge, personal or otherwise. The counter-affidavit in review application will also be a duly sworn affidavit wherever any averment of fact is disputed. “*

5. Since this Review Application has been preferred against an order passed in the Ex. Application, as such, this Review Application is not maintainable and deserves to be **dismissed**.

6. 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.

7. 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.

8. We have also gone through the order sought to be reviewed. Even from the grounds taken therein, no illegality or irregularity or error apparent on the face of record has been shown to us so as to review the aforesaid order of this Court. We are of the considered view that there is no error apparent on the face of record in the impugned order dated 12.04.2019, which may be corrected/reviewed in exercise of review jurisdiction.

9. Accordingly, Review Application No.35 of 2019 is hereby **rejected**.

**(Air Marshal B.B.P. Sinha)**  
**Member (A)**

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

Dated: 14<sup>th</sup> May, 2019  
PKG