

**By Circulation
Court No. 1**

ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

M.A. No 1307 of 2016 with Review Application No. 64 of 2016

Monday this the 18th day of July, 2016

Hon'ble Mr. Justice Abdul Mateen, Member (J)
Hon'ble Lt Gen Gyan Bhushan, Member (A)

1. Union of India through Secretary, Ministry of Defence,
Govt. of India, New Delhi - 110011.
2. The Officer –In-Charge, ASC Records (South),
Bangalore - 560007
3. Principal Controller of Defence Accounts (Pension),
Draupadi Ghat, Allahabad (U.P.) - 211014

... Applicants

By Legal Practitioner - Shri Amit Sharma, Learned Counsel for
the Central Government /Applicants

Versus

No.8021152M Ex. Hav. (Hony Nb Sub) Hari Ram Tiwari, aged
about 65 years, S/o Sri Parmeshwar Tiwari, R/o Village – Charnad,
Post – Basiyakhori, District – Gorakhpur (U.P.)

.....Opp. Party

ORDER

1. The applicant has filed this Review Application under Rule 18 of the Armed Forces Tribunal (Procedure) Rules, 2008 alongwith an application for condonation of delay. The matter came up before us by way of Circulation as per provisions of Rule 18 (3) of the AFT (Procedure) Rules, 2008 whereby the applicant has prayed *“that the Hon’ble Tribunal may graciously be pleased to review/recall the judgement and order dated 18.11.2015 passed in O.A. No. 44 of 2014 [No. 8021152M Ex. Hav. (Hony Nb Sub) Hari Ram Tiwari Vs. Union of India and others] in the interest of justice, fair play and equity.”*

2. As per stamp reporter’s report, it is delayed by 05 months and 10 days. Rule 18 of the Armed Forces Tribunal (Procedure) Rules, 2008 postulates that no application shall be entertained beyond the period of thirty days. Review Application No. 64 of 2016 seeks review of judgment and order dated 18.11.2015 passed in O.A. No. 44 of 2014 by the Bench comprising Hon’ble Mr. Justice V.K. Dixit, Member J, (since retired) and one of us (Hon’ble Lt Gen Gyan Bhushan, Member A). Admittedly, the Review Application has been filed beyond the period of 30 days; as such it cannot be entertained. 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

review do not appear to be germane, rather casual in nature and each day's delay has not been explained. Rule 18 (1) of the Armed Forces Tribunal (Procedure) Rules, 2008 postulates that no application for review shall be entertained unless it is filed within 30 days from the date of receipt of copy of the order sought to be reviewed. As such this application having been filed beyond 30 days, cannot be entertained.

3. In view of the above, the application for condonation of delay is hereby rejected.

4. That apart, it is settled proposition of law that the scope of the review is limited and the applicant has to show that there is error apparent on the face of the record. For ready reference the 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. We have also gone through the judgment and order sought to be reviewed and the Review Application, which is time barred.

Even from the grounds taken therein we do not find that the judgment under review suffers from any illegality or irregularity or error apparent on the face of record, so as to review the judgment passed by this court. We are of the considered view that there is no error apparent on the face of record in the impugned order dated 18.11.2015, which may be corrected/reviewed in exercise of review jurisdiction.

7. Accordingly, the application for condonation of delay as well as Review Application No. 64 of 2016 is rejected.

(Lt Gen Gyan Bhushan)
Member (A)

(Justice Abdul Mateen)
Member (J)

Dated : July, 2016
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