

**Form No. 4**  
**{See rule 11(1)}**  
**ORDER SHEET**  
**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**  
**Court No.1**

R.A.No.38 of 2021 with M.A. No. 475 of 2021  
& M.A.No. 476 of 2021 Inre O.A. No. 37 of 2020

**Union of India & Others**

By Legal Practitioner for the Applicants

Applicants-Respondents

Versus

**Ex Hav Shiv Saran & Others**

By Legal Practitioner for Respondents

Respondents-Applicants

Notes of the Registry	Orders of the Tribunal
	<p><b><u>30.09.2021</u></b></p> <p><b><u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u></b>  <b><u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></b></p> <p>Heard Shri Amit Jaiswal, Ld. Counsel for the applicants-respondents and Shri Shailendra Kumar Singh, Ld. Counsel for the respondents-applicants.</p> <p>The applicants-respondents have filed this Review Application under Rule 18 of the Armed Forces Tribunal (Procedure) Rules, 2008 alongwith application for condonation of delay (M.A. No. 475 of 2021) and Interim Relief application (M.A. No. 476 of 2021) whereby the applicant-respondents has prayed "<i>that this Hon'ble Court may very kindly be pleased to review the judgment and order dated 23.02.2021 passed by Hon'ble Justice U.C. Srivastava, Judicial Member and Hon'ble Vice Admiral A.R. Karve, Administrative Member in Original Application No. 37 of 2020, in Re. Shiv Saran and others Vs. Union of India and others, in the interest of justice</i>".</p> <p>As per report of registry, there is no delay in terms of the Hon'ble Supreme Court order dated 27.04.2021 (on limitation due to COVID-19) in filing of Review Application. However, delay condonation application (M.A. No. 475 of 2021) has been filed which is rejected.</p>

After considering the facts and circumstances mentioned in the affidavit filed in support of Interim Relief to stay operation and implementation of judgment and order dated 23.02.2021 under review, Interim Relief application (M.A. No. 476 of 2021) is rejected.

Ld. Counsel for the applicants-respondents submitted that in the judgement and order, it has been wrongly recorded that all the applicants from serial 2 to 16 did not exercise their option due to unawareness of the policy. However, applicants mentioned in serial 2 to 16 are not entitled to exercise the option as they were granted MACP from 03.05.2017 onwards. The option was to be exercised as per Govt of India, Ministry of Defence Office Memorandum (O.M.) No. 1(20)/2017/D(Pay/Services) dated 26.02.2019 within six months from issuance of this O.M. However, the applicants from serial 2 to 16 have never exercised their option for OPTFIX after issuance of ibid policy. He submitted that applicants from serial 2 to 16 had been regulated as per SRO 9 (E) Army Pay Rules 2017 dated 3<sup>rd</sup> May 2017 which provides no option to select revised pay rules from the date of MACP as it falls after 03.05.2017. He further submitted that the date of grant of MACP to applicants from serial 2 to 16 did not fall under the required time frame ie, 01.01.2016 to 03.05.2017 provided by the SRO 9(E) Army Pay Rules 2017 dated 03.05.2017; hence the judgement and order dated 23.02.2012 be reviewed accordingly.

Per contra, Learned Counsel for the respondents-applicants submitted that basic pay of the applicants from serial 2 to 16 had not been fixed correctly due to misinterpretation of the 7<sup>th</sup> C.P.C Report accepted by the Govt. of India, Ministry Of Defence (Department of Pay/Services) vide their letter No 1(20)/2017/D (Pay/Services) dated 26.02.2019, circulated vide Additional Directorate General Personnel Services, IHQ of MOD (Army) letter No C/7099/Policy/SACPS/2019 dated 08.03.2019 for exercising 'Option Certificate' for implementation of the MACP Scheme. Due to this misinterpretation their Basic Pay has been fixed to Rs 42,300 instead of Rs 46,200

which resulted in loss of Rs 3900/- per month. He further submitted that two similarly placed service personnel No. 1398556P Hav (AA) Shank Reppa Hariwal who was enrolled on 27.12.1992 and discharged on 31.12.2018 and No. 13985782M Hav (AA) Govind Singh who was enrolled on 24.02.1993 and discharged on 28.02.2019 are having same rank and same length of service, their Basic Pay has been fixed @ Rs 46,200 and the present applicants from serial 2 to 16 discharged on 30.06.2019 have been fixed @ Rs 42,300/- which is apparently unjust and improper which is violative of the principles of natural justice. Ld. Counsel for the respondents-applicants cited the judgement of Hon'ble Apex Court in the case of P Jagdish which envisages "equal pay for equal work". He further submitted that Govt. of India, Ministry Of Defence (Department of Pay/Services) vide their letter No 1(20)/2017/D (Pay/Services) dated 26.02.2019, circulated vide Additional Directorate General Personnel Services, IHQ of MOD (Army) letter No C/7099/Policy/SACPS/2019 dated 08.03.2019 for exercising 'Option Certificate' for implementation of the MACP Scheme allow the said anomaly to exist which are violative of the principles of natural justice and equity.

Ld. Counsel for the respondents-applicants submitted that in view of the above present review application lacks substance and deserves to be rejected.

We have heard arguments of both the parties and perused the records.

The Applicants-respondents have accepted that similar situated service personnel have been given Basic Pay @ Rs 46,200/- whereas the applicant have been given Basic Pay @ Rs 42,300/-. The difference of which comes to Rs 3900/- per month excluding dearness and other allowances. Hon'ble the Apex Court in catena of judgements have ruled that to overcome from this problem stepping up should be done to avoid violation of the principles of natural justice and equity.

It is also 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 judgment and 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.”*

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. The Hon'ble 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."*

We have also gone through the judgment and order sought to be reviewed and 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 judgment of this Court.

We are of the considered view that there is no error apparent on the face of record in the impugned judgment and order dated 23.02.2021, which may be corrected/reviewed in exercise of review jurisdiction.

Accordingly, Review Application No. 38 of 2021 is hereby **rejected.**

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)  
Member (A) Member (J)