

By Circulation
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Review Application No. 49 of 2018

(Inre O.A. No. 606 of 2017)

Wednesday, the 29th day of August, 2018

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

Pankaj Kumar Sahu
Son of Manjulal Sahu
Residence of Village - Badgo
Post – Tiwaripur
Police Station – Manikpur
Tehsil – Kunda
District – Pratapgarh

..... Applicant

By Legal Practitioner – Shri Ravindra Sharma,
Learned counsel for the Applicant

Versus

1. Union of India through its Secretary,
Ministry of Defence,
New Delhi.
2. The secretary Ministry of law, North Block, New Delhi
3. Chief of Army Headquarters, New Delhi.
4. E.M.E. Records, Secunderabad.
5. Commandant Military Training Centre Battalion – 3 E.M.E. Centre,
Bairagarh, Bhopal

.....Respondents

By Legal Practitioner – Shri Virendra 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. The matter came up before us by way of Circulation as per provisions of Rule 18 (3) of the Armed Forces Tribunal (Procedure) Rules, 2008, whereby the applicant has

prayed for review the order dated 27.07.2018 passed in O.A No. 606 of 2017, by means of which this Court had dismissed the Original Application as the applicant has absented himself during training for more than 30 days. His case was dismissed in view of the pronouncement of Hon'ble Apex Court in the case of *Union of India & Others vs. Manoj Deswal and others* (2016 (15) SCC 511).

2. The applicant has prayed "*that this Hon'ble Court further may graciously be pleased to allow the original application direct to the respondents/opposite party to reinstate/take the applicant in military training battalion 3 EME Centre Bairagarh Bhopal for completing his training with salary with full consequential service benefit provided under Army procedure to the applicant.*"

3. We have gone through the grounds and reasons indicated in the Review Application. In our considered opinion, the grounds urged in support of the application do not appear to be germane.

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. Law is settled on the point that the scope of review is very limited. It is only when there is an error apparent on the face of record or any fresh fact/ material brought to notice which was not available with the applicant

inspite of his due diligence during hearing. Review is not an appeal in disguise. It is nowhere within the scope of review to recall any order passed earlier and to decide the case afresh.

6. 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."

7. 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 27.07.2018, which may be corrected/reviewed in exercise of review jurisdiction.

8. Accordingly, Review Application No. 49 of 2018 is hereby **rejected**.

(Air Marshal BBP Sinha)
Member (A)

Dated : 29th August, 2018

SB

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