

By Circulation
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Review Application No. 51 of 2018

(Inre O.A. No. 273 of 2017)

Thursday, this the 6th day of September, 2018

Hon'ble Mr. Justice S.V.S.Rathore, Member (J)

Hon'ble Air Marshal BBP Sinha, Member (A)

Smt. Leela Devi Karki
W/o Late Hari Singh Karki
Ex-Signal Man (Army No. 6281492)
Resident of Sunar Mohalla
Almora
Post Office & Thana – Almora
District – Almora

..... Applicant

By Legal Practitioner – Shri Krishna Kumar Verma,
Learned counsel for the Applicant

Versus

1. Union of India through the Secretary,
Ministry of Defence, South Block,
New Delhi-110011.
2. Deputy Commandant, HQ 1 STC, Pin 901124, C/o 56 APO
3. Officer-in-charge, The Records Signals, Pin 908770, C/o 56 APO.
4. Chief Defence, Assistant Commandant (Pension) G-3/11 Section
Allahabad (U.P.).

.....Respondents

By Legal Practitioner – Shri Bhanu Pratap 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. This application has been

filed for review of order dated 03.08.2018 passed in O.A. No. 273 of 2017 whereby the O.A. of the applicant was dismissed.

2. The claim of the applicant in the O.A. was for grant of disability pension of the deceased husband of the applicant who was invalided out from service on 16.07.1968 and died on 02.08.1986. This O.A. was filed after about 50 years from the date of discharge of applicant's husband.

3. It transpires from perusal of the record that the applicant had filed O.A. No. 125 of 2016 with the same prayer. The said O.A. was dismissed and the applicant was directed to approach appropriate forum in accordance with law for payment of disability pension. Thereafter the competent authority rejected the claim of the applicant. Feeling aggrieved, thereby fresh O.A. was filed which was dismissed by order under review.

4. A perusal of the order under review shows that the O.A. was dismissed on the ground that the relevant documents pertaining to the case have been weeded out after expiry of the prescribed period of retention and therefore for want of the required documents, the Tribunal was not in position to decide the issue involved in this case.

5. The ground of the review application is that in some of the cases where the documents were not available, the cases have been decided by the Tribunal. The details of such cases have not been furnished in the Review Application. It is true that cases can be decided by the Tribunal even without record where the facts are admitted on the basis of which issue involved can be adjudicated. Since the applicant has approached the Tribunal after 50 years after her husband's discharge from service, therefore, for want of documents, the Tribunal was of the view that in absence of the documents, no decision can be given in vacuum and dismissed the O.A.

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. 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.”

7. We do not find any mistake or error apparent on the face of record in the order to review the order passed in the O.A. Review Application is devoid of merits and is hereby **rejected**.

(Air Marshal BBP Sinha)
Member (A)

Dated : September, 2018
SB

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