

By Circulation
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

REVIEW APPLICATION NO. 34 OF 2018

In Re: O.A. No. 325 of 2015

Wednesday, the 12th day of September, 2018

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

No. 377027 W Subedar Rakesh Kumar Mishra,
S/O Late Janki Prasad Mishra,
R/o H.No. E/372, Sector F, L.D.A. Colony,
Lucknow (U.P.). Applicant

Learned Counsel for the Applicant: Col (Retd) RC Dixit, Advocate

Versus

1. Union of India, Through Secretary of Defence,
Ministry of Defence, D (Pension Grievances),
227- B Wing, Sena Bhawan,
New Delhi - 110011.

2. The Chief of Army Staff,
Integrated Headquarters of MoD (Army),
Sena Bhawan,
DHQ PO New Delhi – 110011.

3. Officer in Charge,
The Records Signals,
PIN 908770
C/O 56 APO.

4. Colonel Kapil Jaiswal,
Commanding Officer,
4 Field Sub Group
Pin 918004 C/o 99 A.P.O. ... Respondents

Ld. Counsel for the: Shri D.K. Pandey, Advocate,
Respondents.

ORDER

Col (Retd) RC Dixit, Advocate has filed power on behalf of the applicant, which is taken on record.

1. This Review Application was listed in Court, but when it was taken up in the Court, then it revealed that the order under review was passed by the same Bench, before which the Review Application has been listed. Therefore, we directed the Registry to send this Review Application by rotation, as per provisions of Rule 18 (3) of the Armed Forces Tribunal (Procedure) Rules, 2008.

2. By means of this Review Application, the applicant has made the following prayers :

“(a) Examine the matter in the light of real facts and the established position of law, Army order & policy letters etc on the issue,

(b) Review the judgment dated 03 April 2018 and grant the relief prayed in the original application No.325 of 2015 and adjudicate the grievances of the applicant by carrying out thorough check on the proceedings of Departmental Promotion Committee of 2012 and 2014. This way true justice may be granted to the applicant.”

3. We have gone through the application for review. By means of this Review application, the applicant has mentioned certain case laws and some facts, on the basis of the same, a prayer has been made to review the judgment.

4. By the order under review, the O.A. filed by the applicant was dismissed. The prayer in the O.A. was as under :

“(a) That Hon“ble Tribunal may direct respondents to hold DPC of the applicant for selection to the rank of Subedar Major and should he be graded as „found fit, be promoted to the rank of Subedar Major from the date of his due seniority. He may also be granted arrears of pay and allowances with all consequential benefits if found fit for promotion.

(b) The action of the (authorities) (respondent No Colonel Kapil Jaiswal, Commanding Officer, 4. Field Sub Group“s action vide (para 4 (p) & (q) refers), making comments in the same and

forwarding a letter based on the same to Head Quarters Eastern Command(Signals) (Annexure A-4 & Annexure A- 4 (i) in all probabilities was aimed to deprive the appellant due consideration for promotion to the rank of the Subedar Major. Such an act deserves appropriate action as the Hon"ble Court deems fit.

(c) In view of aforesaid Hon"ble Tribunal may Pass suitable order or direction which is deems fit and proper in the interests of justice.

5. After a detailed discussion of all the facts, policy and law on the point, the O.A. was dismissed. It is settled proposition of law that the scope of the review is limited and the applicant has to show that there is an error apparent on the face of the record.

6. 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 by this Code, 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 of the Court which passed the decree or made the order."

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. 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."

8. If the grounds raised in this Review Application are considered, then it would entail rehearing of the case and re-writing of the judgment after setting aside the order under review. There is no such error apparent on the face of record by correction of which the order under review may be corrected. But on the contrary, it will require a re-hearing of the case and re-writing of the judgment, which is beyond the scope of the review jurisdiction and therefore, we do not find any substance in the Review Application.

9. Accordingly, Review Application No. 34 of 2018 is hereby rejected.

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

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

Dated : 12th September, 2018
PKG