

By Circulation
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Review Application No. 29 of 2018

(O.A. No. 285 of 2016)

Monday, the 16th day of April, 2018

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

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

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|-----------------------------|---|--|
| 1. Pushpa Pandey W/O | } | JC- 256351L Ex Naib Subedar |
| 2. Santosh Kumar Pandey S/o | | Vijay Shankar Pandey |
| 3. Tarun Kumar Pandey S/o | | R/o Village – Nasrathpur, PO-Amharpatti |
| 4. Sunita Pandey D/o | | Uttar, Tehsil – Rasra,
Distt – Balia,(U.P.) |

.....Applicants

Ld. Counsel for the : **Shri K.M. Srivastava, Advocate.**
Applicants

Verses

1. Union of India Through its Ministry of Defence Secretary New Delhi.
2. Senior Record Officer for OIC Records, Sena Vayu Raksh Abhilekh Army Air Defence Records, PIN – 908803, c/o 56 APO
3. Records 39 GR PIN – 900445, c/o 56 APO.
4. Artillery Records PIN – 908802, c/o 56 APO
5. Principal C.D.A. (Pensions) Office of the Chief C.D.A. (Pensions) Allahabad.

.....Respondents

Ld. Counsel for the : **Shri Amit Jaiswal, Advocate**
Respondents

ORDER

1. The applicant has filed this Review Application under Rule 18 of the Armed Forces Tribunal (Procedure) Rules, 2008, whereby the applicant has prayed for review the Judgement and Order dated 05.03.2018 passed in O.A. No. 285 of 2016, by means of which this Court had directed the respondents to grant disability pension to the deceased husband at the rate of 100% after his discharge i.e. 16.03.1995 till 27.01.2000 in terms of the recommendations of the Invalidating Medical Board and further, it is directed that the deceased husband shall be entitled to disability pension at the rate of 40% for life which on being rounded off would come to 50% for life with effect from 28.01.2000 till his death within a period of four months from the date of receipt of a certified copy of the order.

2. By means of this review application, the applicant has prayed that the body of the husband of the applicant was paralysed and virtually he was 100% disabled. Therefore, the Tribunal ought to have been granted the disability pension @100%. In support of this submission, Annexures-1 and 2 have been filed but that is neither the report of the Invaliding Medical Board nor Re-survey Medical Board. Annexure-1 is a discharge slip and Annexure-2 is a referral form and there is no report of any competent medical board that the applicant disability was 100%.

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 13.09.2017, which may be corrected/reviewed in exercise of review jurisdiction.

8. Accordingly, Review Application No. 29 of 2018 is hereby rejected.

(Air Marshal BBP Sinha)
Member (A)

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

Dated : 16th April 2018
RPM/-