

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Review Application No. 93 of 2022
Alongwith O.A. No. 164 of 2013****Friday, this the 28th day of April, 2023****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**Ex Warrant Officer Shashi Kant Chaturvedi (639973-N)
S/o Late Kailash Narayan Chaturvedi
R/o CS 1/1405 Supertech Capetown Sec-74,
Noida, UP-201301

..... Applicant

Ld. Counsel for the Applicant: **Applicant in Person**

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. The Chief of the Air Staff, Integrated HQ of Ministry of Defence (Air), Vayu Bhawan, New Delhi – 110011.
3. Air officer Commanding-in-Chief, Central Air Command, Manauri, Allahabad.
4. Air Officer Commanding, 40 Wing, Air Force Station, Maharajpura, Gwalior (MP)-474020.
5. Commanding Officer, 491 Mobile Observation Flight, C/o 40 Wing, Air Force Station, Maharajpura, Gwalior (MP).
6. Station Commander, 507 Signal Unit, Air Force, C/o 99 APO.
7. President, Mess Committee, Maharajpura, Gwalior, C/o 40 Officers Station, Maharajpura, Gwalior (MP) – 474020.
8. Air Commodore Neeraj Yadav, VSM, Personal No. Wing Air 16399 Flying Pilot, IDS, Kashmir House, Rajaji Marg, New Delhi – 110011.
9. Group Captain VVN Srikanth, Personal No. 19195-H, Flying Pilot, Commandant EW Range, C/o 40 Wing, Air Force Station, Maharajpura, Gwalior (MP).
10. Wing Commander AS Nathan, Personal No. 20642-R Accounts, Senior Accounts Officer, C/o 40 Wing, Air Force Station, Maharajpura, Gwalior (MP).

..... Respondents

Ld. Counsel for the Respondents : **Dr. Shailendra Sharma Atal,**
Central Govt Counsel

ORDER

1. Heard Ex Warrant Officer Shashi Kant Chaturvedi, the applicant in person and Dr. Shailendra Sharma Atal, learned counsel for the respondents.

2. This application has been filed under Rule 18 of the Armed Forces Tribunal (Procedure) Rules, 2008 seeking review/recall of order dated 15.11.2022 in OA No. 164 of 2013.

3. Facts relevant for disposal of the application are that applicant has filed the Original Application under section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

“(a) Issue/pass an order or direction of appropriate nature to the respondents to return Rs. 9,90,000/- (Nine Lac Ninety Thousand) deposited under compulsion on the directions of Air Commodore Neeraj Yadav, Group Captain VVN Srikanth and Wing Commander AS Nathan respondent Nos. 8, 9 and 10 respectively in the Account No. 53005321618 of President, Mess Committee, Officers’ Mess, Maharajpura, Gwalior in the State Bank of India Maharajpura, Gwalior Branch.

(b) Issue/pass an order or direction of appropriate nature to the respondents to finalize the disciplinary action not only against the applicant but also other defaulting official involved in the alleged illegalities and irregularities in the Air Force Officers’ Mess, Maharajpura, Gwalior from June 2010 to April 2011.

(c) Issue/pass an order or direction of appropriate nature to the respondents to issue directions to the above mentioned officers who had usurped the above-mentioned huge amount

from the applicant without any authority under the law causing huge financial loss to the applicant causing not only monetary loss to the applicant but loss to his reputation.

(d) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.

(e) Allow this application with costs.”

4. In the Original Application an amendment application being MA No. 1406 of 2014 was moved seeking amendment in the relief clause to the effect that entry regarding recording of 'Severe Displeasure' against the applicant in his service book be expunged. That amendment being based on different cause of action and sought at belated stage after exchange of pleadings between the parties was rejected vide order dated 08.08.2017. After this, applicant moved another amendment application being MA No. 790 of 2021 seeking amendment in the relief clause of the OA to the effect that respondents be directed to return the amount Rs 9,90,000/ recovered from the applicant along with interest. This application was allowed vide order dated 17.02.2022 and amendments were incorporated in the relief clause. Thereafter, on pointing of learned counsel for the respondents that second amendment application which was allowed was barred by res judicata being based on the same facts and prayer between the same parties in the same suit on which the earlier application had been rejected the order dated 17.02.2022 was recalled and amendments incorporated in the relief clause were withdrawn vide order dated 15.11.2022. It is against the said order this review application has been filed and prayed that order

being obtained by misrepresenting the facts, which is apparent on the face of record, be reviewed/recalled and OA be heard and decided on merit.

5. It is submitted that contents and prayers made in both amendment applications are not same but they are quite different with each other, therefore, second amendment application is not barred by res judicata nor this could be rejected. The order dated 15.11.2022 has been obtained by misrepresenting the facts that contents and prayers in both amendment applications are same and first application being rejected after hearing both the parties and the order of rejection being intact, the second amendment application being based on the same facts and for the same prayer is barred by res Judicata. The Tribunal has passed the impugned order after being influenced with misrepresentation which is an error apparent on the face of the record, therefore, the order be reviewed/recalled.

6. A perusal of both amendment applications shows that they are not based on the same facts nor the prayers made therein are the same but they are altogether different. In the first amendment application the prayer made was to the effect that entry regarding recording of 'Severe Displeasure' in service records of the applicant be expunged whereas in the second application an altogether different prayer is made to the effect that amount Rs 9,90,000/- already sought to be returned to the applicant by the respondents be returned with cost. Thus facts and prayer made in the second amendment application being entirely different from the first

application, the second application could not be rejected being barred by res judicata. The impugned order recalling the order dated 17.02.2022 is an error on the face of record committed by this Tribunal which needs to be recalled as the impugned order has been passed assuming second amendment application was made for the same prayer for which the earlier application was made and rejected. The impugned order being nothing but an error on the part of the Tribunal based on misrepresentation of facts by the respondents needs immediate recalling.

7. Accordingly, review application is allowed. The impugned order dated 15.11.2022 is recalled with immediate effects and amendments incorporated in the relief clause of the OA under order dated 17.02.2022 of this Tribunal are allowed to stand.

8. Review Application stands disposed of.

O.A. No. 164 of 2013

List on **25.05.2023** for final hearing.

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

Dated : 28th April, 2023

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