

Court No. 2 (S No 23)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

**Review Application No. 05 of 2024
Inre O.A. No. 785 of 2023**

Monday, this the 15th day of April, 2024

**Hon'ble Mr. Justice Anil Kumar, Member (J)
Hon'ble Lt Gen Anil Puri, Member (A)**

Smt Babita Chand, widow of late No 4193836-P, Rank-Nk, Vinod Chand, R/o Block No 61/3, Nirbhay Vihar, Near Race Course, Lucknow Cantt-02.

.... Applicant

Ld. Counsel for the Applicant: **Shri Parijaat Belaura**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, Army Headquarters, Ministry of Defence, Government of India, South Block, New Delhi-110011.
3. Officer-in-Charge, Records Kumaon Regt, C/o 56 APO.
4. The Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (UP).

... Respondents

Ld. Counsel for the Respondents :**Mrs Anju Singh**, Advocate
Central Govt. Standing Counsel

ORDER (ORAL)

1. The applicant has filed this Review Application under Rule 18 (1) of the Armed Forces Tribunal (Procedure) Rules, 2008. By means of this Review Application, the applicant has prayed for review of order dated 15.01.2024 passed by this Tribunal in O.A. No. 785 of 2023 on the ground that there is error apparent at the face of record

which may be corrected by reviewing aforesaid order and allow grant of Special Family Pension to the applicant.

2. Applicant is in receipt of Ordinary Family Pension. O.A. No. 785 of 2023 was filed by the applicant for grant of Special Family Pension. This O.A. was dismissed vide order dated 15.01.2024 on the ground that death of applicant's husband does not fall under category 'B' and 'C' of Para 82 of Pension Regulations for the Army-2008 (Part-I).

3. We have gone through the grounds and reasons indicated in the review application and have also gone through the judgment and order sought to be reviewed. The judgment and order sought to be reviewed was passed in proper perspective after considering all the facts and circumstances. No error apparent on the face of record has been shown to us so as to review the aforesaid judgment of this Court.

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 in spite 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. The Hon'ble 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. Further, the Hon'ble Supreme Court in Para 26 of its judgment in the case of ***S. Madhusudhan Reddy Vs V. Narayana Reddy and Others***, Civil Appeal Nos. 5503-04 of 2022, decided on 18.08.2022, has observed as under :-

"26. As can be seen from the above exposition of law, it has been consistently held by this Court in several judicial pronouncements that the Court's jurisdiction of review, is not the same as that of an appeal. A judgment can be open to review if there is a mistake or an error apparent on the face of the record, but an error that has to be detected by a process of reasoning, cannot be described as an error apparent on the face of the record for the Court to exercise its powers of review under Order XLVII Rule 1 CPC. In the guise of exercising powers of review, the Court can correct a mistake but not substitute the view taken earlier merely because there is a possibility of taking two views in a matter. A judgment may also be open to

review when any new or important matter of evidence has emerged after passing of the judgment, subject to the condition that such evidence was not within the knowledge of the party seeking review or could not be produced by it when the order was made despite undertaking an exercise of due diligence. There is a clear distinction between an erroneous decision as against an error apparent on the face of the record. An erroneous decision can be corrected by the Superior Court, however an error apparent on the face of the record can only be corrected by exercising review jurisdiction. Yet another circumstance referred to in Order XLVII Rule 1 for reviewing a judgment has been described as “for any other sufficient reason”. The said phrase has been explained to mean “a reason sufficient on grounds, at least analogous to those specified in the rule”

8. It is pertinent to mention that the case laws relied upon by the applicant regarding special family pension have already been discussed in detail in the body of the judgment dated 15.01.2024 (Para 10 and 12) and these case laws are not helpful to the applicant.

9. In the instant case, grounds/details mentioned in the Review Application have already been taken into consideration and discussed in detail (paras 10 and 12 of judgment dated 15.01.2024) and thereafter, the order was passed. Thus, in the light of above legal position, we are of the considered view that there being no error apparent on the face of record in the impugned order dated 15.01.2024, passed in O.A No. 785 of 2023, which may be corrected in exercise of review jurisdiction.

10. Accordingly, Review Application No. 05 of 2024 is hereby **rejected.**

(Lt Gen Anil Puri)
Member (A)

Dated : 15.04.2024

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(Justice Anil Kumar)
Member (J)