

**Court No.1**

ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW

**Review Application No.39 of 2013**  
**Inre : T.A. No.71 of 2010**

Friday this the 16<sup>th</sup> day of January, 2015

**Hon'ble Mr. Justice S.C. Chaurasia, Member (J)**  
**Hon'ble Air Marshal Anil Chopra, Member (A)**

Rajendra Bahadur Singh, S/o Ram Bahadur Singh,  
R/o Village & Post Sarai Gonai, Via Madhoganj,  
District Pratapgarh (U.P.)

..... Applicant

By Legal Practitioner Shri R. Chandra, Advocate

**Versus**

1. Union of India, Through the Secretary,  
Ministry of Defence, Government of India,  
NEW DELHI.
2. General Officer Commanding in Chief,  
Northern Command, Indian Army,  
C/o 56 A.P.O.
3. Lt. Col., Ghasi Ram,  
GOC 26 Infantry Division,  
9 Rajput, C/o 56 A.P.O.

..... Respondents

By Legal Practitioner Shri Mukund Tewari, Standing Counsel  
for the Central Government,

**ORDER**

**“Hon’ble Mr. Justice S.C. Chaurasia, Member (J)”**

1. This application for review of impugned judgment dated 20.09.2012, passed by the Bench consisting of Hon’ble Mr. Justice Janardan Sahai, Member (J) (since retired) and Hon’ble Lt. Gen. P.R. Gangadharan, Member (A) (since retired) in Transferred Application No.71 of 2010, Rajendra Bahadur Singh vs. Union of India and others, supported with an affidavit, has been moved under Rule 18 of the Armed Forces Tribunal (Procedure) Rules, 2008, with the prayer that in paragraph 7 of the judgment, the date ‘01.07.1998’ be substituted in place of ‘01.05.1993’.

2. We have heard Shri R. Chandra, learned counsel for the applicant, Shri Mukund Tewari, learned counsel for the respondents and perused the record, including the impugned judgment.

3. Learned counsel for the applicant has drawn our attention towards paragraph 164 of the Defence Services Regulations (Regulations for the Army) Revised Edition, 1987, which relates to retirement of NCOs. and has submitted that the applicant should have continued in active service up to 30.06.1996 and his discharge was not due on 01.05.1993; that in paragraph 7 of the impugned judgment due to

oversight, it has been mentioned that the applicant's discharge became due on 01.05.1993 and hence, the said date deserves to be corrected; that the order of dismissal and reduction to the ranks, awarded to the applicant, were quashed and hence, he is entitled to all consequential benefits.

4. On the other hand, learned counsel for the respondents has submitted that the applicant had not challenged the findings of the Summary Court Martial at the time of hearing and had confined his argument to the effect that the sentence awarded to him was disproportionate to the gravity of offence; that the findings and the conviction under the charges levelled against the applicant by the Summary Court Martial were not quashed and in fact, the order of dismissal was converted into order of discharge and he has been granted pensionary benefits as such for the rank of Naik, held by him before conviction by the Summary Court Martial; that the scope of review jurisdiction is very limited and there is no error apparent on the face of record in the impugned judgment and hence, no modification can be made in the impugned judgment as prayed for by the applicant.

5. From the perusal of record, it transpires that the applicant was holding the rank of Naik before being tried by the Summary Court Martial. The Summary Court Martial had

convicted the applicant under the charges levelled against him and had sentenced to undergo three months' rigorous imprisonment in civil prison, reduction to the ranks and dismissal from service. At the time of hearing, the learned counsel for the applicant had not challenged the findings recorded by the Summary Court Martial and had raised only one contention that the sentence awarded to the applicant was disproportionate to the gravity of offence. Since the conviction of the applicant was not challenged at the time of hearing, there was no occasion for this Tribunal to enter into the merits of the said proceedings. Having considered the record and the contention raised by the applicant's counsel, this Tribunal was of the view that the punishment awarded to the applicant was shockingly disproportionate to the gravity of offence. Consequently, the order of dismissal and reduction to the ranks awarded to the applicant were quashed and it was directed that the applicant would be treated as having continued in service till the date his discharge became due, i.e. on 01.05.1993 and would be deemed to have been discharged in the rank he was holding but for the punishment awarded by the SCM.

6. The findings of conviction recorded by the Summary Court Martial have attained finality as the said conviction was

not challenged by the applicant at the time of hearing of the instant Transferred Application and hence, there was no occasion for this Tribunal to consider the said findings of conviction on merits. The impugned order of dismissal was made effective from 01.05.1993. The Paragraph 7 of the impugned judgment or its part cannot be read in isolation; rather the impugned judgment has to be read as a whole. From the perusal of the impugned judgment as a whole, it is clear that the order of dismissal was converted into order of discharge and the discharge was made effective from 01.05.1993 and the order of reduction to the ranks was also quashed. Consequently, the applicant has been provided all consequential benefits, including pension etc. in the rank of Naik, held by him prior to initiation of SCM proceedings. The conviction of the applicant under the charges levelled against him was neither challenged nor quashed by the impugned judgment and the relief was provided to him only in respect of sentence awarded to him by the summary Court Martial.

7. In view of the principles of law laid down by the Hon'ble Supreme Court in various decisions, it is clear that the scope of review jurisdiction is very limited and re-hearing is not permissible. There is distinction between an erroneous decision and an error apparent on the face of record. In

exercise of review jurisdiction, an error apparent on the face of record may be corrected, but, the erroneous decision cannot be corrected. The erroneous decision can be corrected by superior court only. A Review Application is, by no means, an appeal in disguise whereby an erroneous decision is re-heard and corrected. An error which is not self evident and has to be detected by process of reasoning, cannot be said to be an error apparent on the face of record justifying the Court to exercise the review jurisdiction.

8. We do not find any error apparent on the face of record in the impugned judgment dated 20.09.2012, which may be corrected in exercise of review jurisdiction. The Review Application lacks merit and it is dismissed, accordingly.

(Air Marshal Anil Chopra)  
Member (A)

(Justice S.C. Chaurasia)  
Member (J)

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