

BY CIRCULATION
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

**Review Application No 76 of 2018 Alongwith M.A. No. 1941 of
2018 (Inre : O.A. No. 109 of 2016)**

Tuesday, this the 4th day of December, 2018

“Hon’ble Mr. Justice S.V.S. Rathore, Judicial Member
Hon’ble Air Marshal BBP Sinha, Administrative Member”

1. Union of India, Ministry of Defence, through Defence Secretary, South Block, New Delhi – 110011.
2. Chief of the Army Staff, Indian Army, Room No B-30 ADG PI South Block Integrated Headquarters of MoD (Army), New Delhi – 110011.
3. Director General of Artillery (Arty-10) through its Director, IHQ of Ministry of Defence (Army), DHQ, New Delhi – 110011.
4. Topkhana Abhilekh, Artillery Records, Nasik Road Camp through its Record Officer, C/o 56 APO PIN – 908802.
5. Battery Commander, H Q Battery, 40 Medium Regiment (SP) C/O 56 APO, PIN 925740.
6. Punjab National Bank through its Branch Manager, Branch, Nehru Nagar, Bisheshwar Ganj, Gazipur.
7. The Principal Controller of Defence Accounts (Pension) Draupadi Ghat, Allahabad U.P. - 211014

- **Review Applicants**

Versus

Amar Nath Singh Kharwar, Ser No. 14497819-H
Rank (Ex) Havildar, Trade – Clerk (GD)
40 Medicum Regiment (SP) Army Artillery C/o 56 APO
R/o Vill & Post – Pakari, Via – Ravtipur
Tehsil – Jamaniya, Dist – Gazipur (UP)

- **Respondent**

Ld. Counsel for the applicants	- Shri Yogesh Kesarwani Central Government Counsel
Ld. Counsel for the respondent	- Shri Diwakar Singh Advocate

ORDER

1. The applicants have filed this Review Application under Rule 18 of the Armed Forces Tribunal (Procedure) Rules, 2008 and the matter came up before us by way of Circulation as per provisions of Rule 18 (3) of the AFT (Procedure) Rules, 2008.

2. By means of this Review Application, the applicants have prayed the following relief :-

“This Hon’ble Tribunal may be pleased to allow the present Review Application with cost setting-aside /quash the judgment and order dated 11/10/2018 passed in OA no. 109/2016 (Amar Nath Singh Kharwar v/s Union of India and Others).”

3. The main grounds taken by the Review Applicants are as under that there is an error apparent on the face of record in order under review as this Hon’ble Tribunal has taken cognizance of the OA just for the reason that since execution application was rejected due to wrong statement the OA is maintainable to grant the same relief alongwith cost as Rs. 50,000/-. Thus the Tribunal has committed an error apparent on the face of record while passing the aforesaid judgment and order. It is pleaded that in case the respondent (Applicant in O.A.) had any grievance regarding the non compliance of the order passed by this Hon’ble Tribunal then another execution application for execution of the order ought to have been filed and the Tribunal has also failed to appreciate that it has no power including a power in its own to take the cognizance of O.A. for execution of its own order as is excluded by the statutory procedure.

4. The operative portion of the order reads as under :-

*11. In view of this, we are of the considered view that this O.A. deserves to be allowed and is hereby **allowed**. The respondents are*

directed to pay all the consequential benefits including salary and allowances from the date of discharge to the date of completion of service upto the rank of Havildar in the Army, in accordance with the Regulations for the Army 1987. We also direct respondents to pay an interest of 7% on the arrears of pay and allowances accrued since three months after receipt of certified copy of judgment dated 31.05.2013 i.e. w.e.f. 01.11.2015. Compliance of the order to be ensured by the respondents within a period of three months from the date of service of a certified copy of this order.

12. Since the applicant had to approach this Tribunal more than once because the specific order passed by the Tribunal had not yet been complied with and the respondents despite filing of Ex. Application, had tried to justify the same on wrong facts, therefore, we hereby impose a cost of Rs.50,000/- on the respondents as compensation towards additional cost of litigation thrust on the applicant. The respondents shall be at liberty to realise this amount of cost from the officer/officers, who, after holding an enquiry, is/are found to be responsible for causing such a huge delay and non compliance of the order.

5. Keeping in view the submission of the Review Applicants, we are of the view that the grounds pleaded have no substance so as to make any effect on the order under review. Apart from it, from perusal of record, it transpires that there is delay of 17 days in filing the Review Application. An application for condonation of delay (M.A. No. 1941 of 2018) has been moved by the applicants. We have gone through the delay condonation application and find that the grounds and reasons shown in the accompanying affidavit does not seem to be genuine and the application is liable to be rejected.

6. The judgment and order dated 11.10.2018 sought to be reviewed was passed in proper perspective after considering all the facts and circumstances. No illegality or irregularity or error apparent on the face of record has been shown to us so as to review the aforesaid judgment of this Court. Prayers in the O.A. were as under :-

“(I) To issue an order or direction directing the opposite parties to quash the impugned order contained as Annexure No. 1 to this petition.

(II) To issue an order or direction directing the opposite parties to release the petitioner’s salary for the period w.e.f. 31.07.2003 to 31.08.2008 while the petitioner was notionally reinstated into service & notionally

discharged from service in compliance of the order dated 31.5.2013 passed in the T.A. No. 638 of 2009.

(III) To issue an order or direction directing the opposite parties to release the petitioner's allowances such as LRA, CILQ, NRA, TPTL, CEA and STRINC etc for the period w.e.f. 31.07.2003 to 31.08.2008 & all other pending arrears while the petitioner was notionally reinstated into service & notionally discharged from service in compliance of the order dated 31.5.2013 passed in the T.A. No. 638 of 2009.

(IV) To issue an order or direction directing the opposite parties to grant new scale of pension w.e.f. 01.9.2008 to till date after the petitioner was notionally discharged from service in compliance of the order dated 31.5.2013 passed in the T.A. No. 638 of 2009.

(V) To issue an order or direction directing the respondents to pay an interest @18% on the entire amount of the petitioner's salary, allowances, retiral dues of the period from 31.7.2003 to 31.8.2008 due w.e.f. 31.5.2013 plus and on entire amount of pension of the period from 01.09.2008 to till date as the payment of which have been arbitrarily delayed and continuing till date.

(VI) This Hon'ble Tribunal may graciously be pleased to issue any other orders or directions as this Hon'ble Court may deem fit, just and proper in the circumstances of the case, in favour of petitioner and also award the cost of the petition to the petitioner against the opposite parties."

7. The prayers of the O.A. were allowed, now the review applicant wants to take advantage of their own fault in not extending the relief to which the applicant was entitled. He had to move the Tribunal again and to the authorities also. Thus to compensate the applicant cost was imposed by the Tribunal.

8. It is settled proposition of law that the scope of the review is limited and the applicant has to show that there is error apparent on the face of the record. 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.”

9. 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 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."

10. In the instant case, the Tribunal has taken care of all the aspect of the case. It is pertinent to mention here that the review applicant ought to have raised this objection at the time of the admission of the case challenging the maintainability of the case but the same was not done. The O.A. remained pending for two years but at no point of time such stand was taken by the review applicant. Now such stand after decision of the case is wholly misconceived. Hence, at such a belated stage, it can not be taken as an error apparent on the face of the record. In view of the principle of law laid down by Hon'ble the Apex Court in the case of **Parsion Devi and Others** (supra), we are of the considered view that there is no error apparent on the face of record in the impugned order dated 11.10.2018, passed in O.A. No. 109 of 2016, which may be corrected in exercise of review jurisdiction.

11. Accordingly, the Review Application No. 76 of 2018 is **rejected**. The Review Applicants may be informed accordingly.

(Air Marshal BBP Sinha)
Administrative Member

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

Dated : December, 2018
PKG/SB