

BY CIRCULATION

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

M.A. No. 1952 of 2018
(Application for Condonation of Delay)

Along with Review Application No 77 of 2018
Inre
M.A. No. 1521 of 2016

Ex Hav Nathun Singh	vs.	...Applicant
Union of India & ors		...Respondents

Thursday, this the 06th day of December, 2018

ORDER

1. Review Application under Rule 18 of the Armed Forces Tribunal (Procedure) Rules, 2008 has been preferred by the Applicant against judgment and order of the Armed Forces Tribunal, Regional Bench, Lucknow dated 05.10.2018 passed in M.A. No. 1521 of 2016 Inre: O.A. NIL of 2016 along with application for condonation of delay in preferring the Review Application. The matter came up before us by way of Circulation as per provisions of Rule 18 (3) of the AFT (Procedure) Rules, 2008.

2. Office has reported that the Review Application has been filed with delay of 23 days. Rule 18 (1) of aforesaid Rules provides thus:

“18. Application for review.—(1) No application for review shall be entertained unless it is filed within thirty days from the date of receipt of copy of the order sought to be reviewed.

(2)”

3. A plain reading of Rule 18 (1) (supra) shows that no application for review shall be entertained after expiry of thirty days from the date of receipt of copy of the order. Thus, the present application for review of order dated 23.10.2018 is barred by limitation and deserves rejection on this count alone.

4. It is also well settled law that that the scope of Review jurisdiction is very limited and re-hearing is not permissible. Hon’ble Supreme Court has drawn a clear distinction between an erroneous decision and an error apparent on the face of the record. It has been laid down by Hon’ble Supreme Court that while the first can be corrected by the higher forum, the latter only can be corrected by exercise of the Review jurisdiction. In the case of *Parsion Devi and Others vs. Sumitri Devi and others* reported in (1997) 8 SCC 715 (Para 9) of the Judgment of the Hon’ble Supreme Court has observed that 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. In view of the principles of law laid down by Hon’ble Supreme Court in the case of *Parsion Devi and others* (supra), we are of the considered view that to recall an order passed after hearing both the parties is beyond the scope of review jurisdiction. Such a jurisdiction vests only in appellate Court to set aside the order and decide it. Since the prayer made by the

applicant is beyond the scope of review jurisdiction, hence it deserves to be rejected.

5. Moreover, by order dated 05.10.2018 under Review, the Application for condonation of delay in preferring the O.A. was rejected on the ground that there is absolutely no explanation on record as to why the applicant did not initiate the appropriate proceedings after his discharge from service within the prescribed period of limitation. It was observed that discharge is not a recurring cause of action and in view of the settled proposition of law, the applicant was under an obligation to give cogent and valid reasons for the delay which the applicant has utterly failed. With the above observations, as a consequence thereto, the O.A. was also dismissed. In this perspective we do not find any error apparent on the face of the record.

6. As a result of foregoing discussion, the application for condonation of delay as well as Review Application, being devoid of merit, are liable to be dismissed, hence **dismissed** accordingly.

7. The Applicant may be informed accordingly.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore))
Member (J)

Dated : December 6, 2018
anb