

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
Court No. 1 (By Circulation)

R.A. No. 77 of 2023 with M.A. No. 2054 of 2023

Union of India & Others **Review Applicants**
By Legal Practitioner for the Applicant : **Ms. Prerna Singh**, Advocate

Versus

Ex. Sgt. Amit Kumar **Respondent**
By Legal Practitioner for Respondent : None

Notes of the Registry	Orders of the Tribunal
	<p><u>06.12.2023</u> <u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u> <u>Hon'ble Vice Admiral Atul Kumar Jain, Member (A)</u></p> <p>1. The file has been placed before us by Circulation.</p> <p><u>M.A. No. 2054 of 2023</u></p> <p>2. For the reasons stated in affidavit filed in support of delay condonation application, delay of 24 days in filing of Review Application is condoned. Delay condonation application stands disposed off accordingly.</p> <p><u>Review Application No. 77 of 2023</u></p> <p>3. The Review Application filed by the applicants under Rule 18 of the Armed Forces Tribunal (Procedure) Rules, 2008 by which applicants have prayed for review and setting aside the judgement and order dated 28.07.2023 of this Tribunal passed in Original Application No.382 of 2023. The order reads as under:-</p> <p style="text-align: center;"><i>“In view of the above, the Original Application No. 382 of 2023 deserves to be partly allowed, hence partly allowed. The impugned order, rejecting the applicant’s claim for grant of disability element of disability pension, is set aside. The first disability of the applicant is held as aggravated by Air Force Service. The third disability of the applicant is held @20% for life. Be it mentioned that the third disability of the applicant has already been regarded as attributable to service by the RMB. The applicant is entitled to get disability element @50% for life which would be rounded off to 75% for life from the next date of his discharge. The respondents are directed to grant disability element to the applicant @50% for life which would stand rounded off to 75% for life from the next date of his discharge. The respondents are further directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. Default will invite interest @ 8% per annum till the actual payment ”</i></p>

4. The order of which review has been sought was passed by the Bench comprising of (Hon'ble Mr. Justice Ravindra Nath Kakkar, Member (J) (since retired) and Hon'ble Vide Admiral Atul Kumar Jain, Member (A).

5. 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 judgment and order sought to be reviewed, the same cannot be reviewed.

6. For ready reference, Order 47, Rule 1 sub-rule (1) of the Code of Civil Procedure, 1908 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."

7. 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."

8. Further, the Hon'ble Supreme Court in Para 26 of its judgment in the case of ***S. Madhusudhan Reddy Versus 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"

9. In the light of the legal position crystalized above, we have gone through the judgment and order sought to be reviewed and no illegality or irregularity or error apparent on the face of record being found therein, we are of the view that there is no force in the grounds taken in the review application so that order may be reviewed.

10. In the result, Review Application is **rejected**.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Anil Kumar)
Member (J)

AKD/-