

**By Circulation
Court No. 1**

ARMED FORCES TRIBUNAL REGIONAL BENCH, LUCKNOW

Review Application No. 11 of 2018

In Re: O.A. No. 149 of 2013

Friday, the 6th day of February, 2018

**“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal B.B.P Sinha, Member (A)”**

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi -110011.
2. Director General of Infantry-6 (Personnel), General Staff Branch, Army Headquarters, DHQ, PO, New Delhi-110011.
3. Officer Incharge, Records, Rajputana Rifles Regt, Delhi Cantt, PIN-110010.
4. Principal Controller Defence of Accounts (Pension), Drapadi Ghat, Allahabad (U.P.).

..... Applicants

Versus

Smt Munni Devi, W/o Sri Than Singh (No. 2876876 Ex. Nk/TS) R/o Village – Ram Nagar, Post – Kaila, District Etah PIN – 207247.

.....Respondent

ORDER

1. Union of India has filed this Review Application under Rule 18 of the Armed Forces Tribunal (Procedure) Rules, 2008 alongwith an application for condonation of delay. The matter came up before us by way of Circulation as per provisions of Rule 18 (3) of the Armed Forces Tribunal (Procedure) Rules, 2008.

2. By means of this application, the applicants have prayed that this Hon'ble Tribunal may kindly be pleased to admit and allow this review petition by modifying the judgment and order dated 29.06.2017 passed by this Hon'ble Tribunal in Original Application No. 149 of 2013 (Union of India & Others Vs Smt Munni Devi W/o Than Singh). However in Para 6 of the application for condonation of delay filed alongwith the review application the applicants have stated that the O.A. was decided on 29.06.2015 instead of 29.06.2017, thus review application is delayed by six months and one day and not by two years, six months and 20 days.

3. As per stamp reporter's report, the application is delayed by 06 months and 01 day. Rule 18 of the Armed Forces Tribunal (Procedure) Rules, 2008 postulates that no application shall be entertained beyond the period of thirty days from the date of receipt of copy of the order sought to be reviewed. Review Application No. 11 of 2018 seeks review of the order dated 29.06.2017 passed in O.A. No. 149 of 2013. Admittedly, the Review Application has been filed beyond the period of 30 days; as such it is not entertainable.

4. 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.”

5. We have carefully examined the grounds raised by the applicants in the review application. The order under review is very detailed order wherein relevant case laws touching the merits of the case have also been considered. We do not find any error apparent on the face of record in the order under review. A review application is not an appeal in disguise. Main ground for review of this order is that the husband of the respondent was not getting any pension, hence family pension can not be granted.

6. We are not impressed with this ground keeping in view the peculiar facts of this case. The husband of the respondent was missing and by the order under review, keeping in view the legal provision on the point, it was presumed that he is dead. Therefore, family pension was granted. Since the whereabouts of the husband of the respondent were not known for the past several years, therefore there was no question of release of pension in his favour. It was also held in the order under review that there can be no order of desertion against a dead person. Earlier the applicant had filed an application for grant of leave to appeal bearing M.A. No. 1256 of 2017 for the same cause, but it has also been dismissed.

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. 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 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. In the instant case, the grounds mentioned in the review application have already been taken into consideration and discussed in detail and thereafter the order was passed. 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 29.06.2017, which may be corrected in exercise of review jurisdiction.

9. Accordingly, the application for condonation of delay (M.A. No. 245 of 2018) as well as Review Application No. 11 of 2018 are hereby rejected.

(Air Marshal B.B.P Sinha)
Member (A)

Dated : February, 2018
RS/-

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