

By Circulation
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH,

LUCKNOW

Review Application No. 12 of 2018

In Re: O.A. No. 157 of 2016

Tuesday, the 08th day of February, 2018

Hon'ble Mr. Justice S.V.S. Rathore, Member (J)

Hon'ble Air Marshal B.B.P.Sinha, Member (A)

No.9512045H Ex Havildar Jog Dhyan Sharma, Son of Late Som Dutt Sharma, Resident of Flat No.C-307 Ansal Town, Modipuram Bye Pass, Meerut 250110 (U.P.).

..... Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi-110011..
 2. Chief of the Army Staff, Army Headquarters, DHQ, Post Office, New Delhi-110011.
 3. The Officer-in-Charge, Army Education Corps Records, Pachmarhi, District Hoshangabad (M.P.).
 4. Pay Accounts Office (Other Ranks), Panchmarhi Cantt, District Hoshangabad (M.P.).
-Respondents

ORDER

1. The applicant has filed this Review Application under Rule 18 of the Armed Forces Tribunal (Procedure) Rules, 2008. 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 applicant has prayed that this Hon,ble Tribunal may kindly be please to admit and allow this review petition by modify the judgment and order dated 04.01.2018 passed by this Hon'ble Tribunal in Original Application No. 157 of 2016 (Ex Havildar Jog Dhyan Sharma vs. Union of India and Others).

3. Review Application No. 12 of 2018 seeks review of the order dated 04.01.2018 passed in O.A. No. 157 of 2016.

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. 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."

6. By means of this order under review, this Tribunal had given the following directions :

“ As a result of foregoing discussion the O.A. is allowed and the respondents are directed to give due consideration to the claim of the applicant for the benefit of second MACP with effect from 01.09.2008 by ignoring the unwillingness certificate given by him for promotion provided he is found fit after due screening in accordance with law. The appropriate decision shall be intimated to the applicant within a period of four months from the date of receipt of a certified copy of this order. If the arrears of revised pay/pension based on MACP, shall be restricted to a period of three years prior to filing of the O.A.”

7. The main ground of this review application is that the Hon'ble Tribunal had directed the respondents to give due consideration to the claim of the applicant for the benefit of Second MACP with effect from 01.09.2008 but in the order it has also mentioned that the arrears of revised pay/pension based on MACP shall be restricted to a period of three years prior to filing of the O.A. which are contradictory to each other.

8. We have examined the ground taken by the learned counsel for the applicant in the review application. There is no legal flaw in restricting the period of three years prior to filing of the O.A. in view of the pronouncement of the Hon'ble Apex Court in the case of **Shiv Dass Vs Union of India reported in 2007 (3) SLR 445** wherein in Para 9 of the judgment, Hon'ble The Apex Court has observed:-

“9. In the case of the pension the cause of action actually continues from month to month. That however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits, it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.”

9. In the instant case, the details mentioned in the review application had 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 04.01.2018, which may be corrected in exercise of review jurisdiction.

10. Accordingly, Review Application No. 12 of 2018 is hereby rejected.

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

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

Dated : February, 2018
PKG