

BY CIRCULATION

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

**Review Application No. 04 of 2024 with
M.A. No. 137 of 2024**

Inre:

O.A. No. 637 of 2022

Union of India & Ors

.....Review Applicants

VS.

MWO (HFO) Lal Chand Yadav (Retd)

.....Respondent-Applicant

Friday, this the 02nd day of February, 2024

ORDER

1. This application has been filed with delay of 11 months and 11 days for review of order dated 18.03.2023 under Rule 18 of the Armed Forces Tribunal (Procedure) Rules, 2008. Relevant portion of aforementioned Rule is reproduced as under:

"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) -----"

2. This Tribunal vide order dated 18.03.2023 had allowed the O.A. with the directions to the respondents to grant notional increment to the applicant w.e.f. 01.07.2020 on the ground that he served for one year w.e.f. 01.07.2019 to 30.06.2020 but he

could not be granted notional increment on 01.07.2020 as he retired from service on 30.06.2020. Additionally, Civil Appeal No. 4339 of 2023 arising out of Diary No. 16764 of 2023, the Hon'ble Apex Court vide order dated 10.07.2023 passed in ***Union of India & Ors vs Anand Kumar Singh*** has dismissed the appeal, therefore, grant of notional increment has attained finality.

4. Further, learned counsel for the applicant-Union of India & Ors has not invited attention of this Tribunal to any provision of the aforesaid Rules under which the Tribunal is empowered to condone the delay in preferring review application. Since the present application for review of the order dated 18.03.2023 has been filed after expiry of thirty days, it is barred by time.

5. It is submitted that in garb of review applicant wants this Tribunal to sit this court on appeal over its own order which is not permissible in law.

6. Also, it is 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 vide Order 47, Rule 1 Sub rule (1) of the Code of Civil Procedure. Review is not an appeal in disguise. It is nowhere within the scope of review to recall any order passed earlier and to decide the case afresh. 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 SCC 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. Accordingly, the application for condonation of delay as well as application for review are **rejected**.

9. The applicant may be informed accordingly.

(Maj Sanjay Singh)
Member (A)

Dated: 02.02.2024

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(Justice Anil Kumar)
Member (J)