

**By Circulation
Court No. 1 (List B)**

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

**M.A. No 2706 of 2016
with
Review Application No. 113 of 2016
(O.A. No.264 of 2012)**

Thursday, the 05th day of January, 2017

**Hon'ble Mr. Justice D.P.Singh, Member (J)
Hon'ble Lt Gen Gyan Bhushan, Member (A)**

1. The Union of India through the Defence Secretary, Ministry of Defence (Army), West Block 2, R.K.Puram, New Delhi.
2. The Office In-charge, Record Artillery, Nasik Road Camp, Nasik.
3. The Office In-charge. AMC Records, Lucknow.
4. Office In Charge ,Records, The Bombay Engineering Group, Kirkee, Pune.
5. The Principal Controller of Defence Accounts (Pensions), Draupadighat, Allahabad 211014 (U.P.).

..... Applicants

By Legal Practitioner – Shri Amit Jaiswal, Learned Counsel for
the Applicants.

Versus

1. Ex Havaldar (Hony Nb Subedar) Shiv Gopal son of Late Babu Ram Resident of Village Sirounj, P.O. Jahanganj, District Farrukhabad, Uttar Pradesh
2. Ex Havaldar (Hony Nb Subedar) Ramesh Chandra, son of Sri Babu Ram Dixit, Resident of C/O Dr. B.S.Mishra J.M.V. Road, near S.V. Roji School, Post Office Fatehgarh, District Fatehgarh.

3. Ex Havaldar (Hony Nb Subedar) Om Prakash, son of late Babu Ram Sharma, Resident of Kakrahi Bazar, Dibiyapur District Auraiya, Uttar Pradesh
4. Ex Havaldar (Hony Nb Subedar) Munim Chand Tripathi, son of Sri Rup Singh Resident of Basiyahar, Post Office Ekari (Lakhana) District Etawah, Uttar Pradesh.

.....Respondents

ORDER

1. The applicants have filed this Review Application under Rule 18 of the Armed Forces Tribunal (Procedure) Rules, 2008 along with 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, whereby the applicants have prayed for review and setting aside of the order dated 14.12.2015 passed in O.A No. 264 of 2012, by means of which this Court had directed that Applicant shall be entitled to the pension of honorary rank of Naib Subedar with effect from 01.01.2006. The applicant shall also be entitled to arrears w.e.f. 01.01.2006.

2. As per stamp reporter's report, the application is delayed by 10 months and 29 days. 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. 113 of 2016 seeks review of the order dated 14.12.2015 passed in O.A. No. 264 of 2012 by the Bench comprising of (Justice Virendra Kumar Dixit Member (J) (since retired) and one of us Lt Gen Gyan Bhushan Member (A). Admittedly, the Review Application has been filed beyond the period of 30 days; as such it is not entertainable.

3. We have gone through the grounds and reasons indicated in the affidavit filed in support of the application for condonation of delay. In our considered opinion, the grounds urged in support of the application do not appear to be germane; rather they are casual in nature and each

day's delay has not been explained. The application for condonation of delay (M.A. No. 2706 of 2016), therefore, has no force.

4. That apart, 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 order sought to be reviewed, the same cannot be reviewed. For ready reference, 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, 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.”

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. We have also gone through the order sought to be reviewed and the Review Application, which is time-barred. Even from the grounds taken therein, no illegality or irregularity or error apparent on the face of record has been shown to us so as to review the aforesaid order of this Court. We are of the considered view that there is no error apparent on the face of record in the impugned order dated 14.12.2015, which may be corrected/reviewed in exercise of review jurisdiction.

7. Accordingly, the application for condonation of delay (M.A. No. 2706 of 2016) as well as Review Application No. 113 of 2016 are hereby rejected.

(Lt Gen Gyan Bhushan)
Member (A)

Jan. 5th, 2017
PKG

(Justice D.P.Singh)
Member (J)

Jan. 5th, 2017