

BY CIRCULATION

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Court No. 1

**Review Application No 115 of 2016
(In re : M.A. No. 1296 of 2016 with M.A No 1958 of 2016 and
M.A No 2428 of 2016)**

Tuesday, this the 22nd day of December, 2016

**“Hon’ble Mr. Justice Devi Prasad Singh, Judicial Member
Hon’ble AIR Marshal, Anil Chopra, Administrative Member”**

Vinay Kumar Mishra

.....Review Applicant

Versus

Union of India & Ors

..... Respondent

Ld. Counsel for the applicant - Shri V.P.Pandey, Advocate

ORDER

1. Present Review Application under Rule 18 of the Armed Forces Tribunal (Procedure) Rules, 2008 has been preferred by the Applicant against the order of the Armed Forces Tribunal, Regional Bench, Lucknow vide Order dated 15.11.2016 rendered in Misc Application 1296 of 2016 cited above. The matter came up before us by way of Circulation as per provisions of Rule 18 (3) of the AFT (Procedure) Rules, 2008. The relief sought in this Review Application is excerpted below.

- (a) *Review the impugned final order passed by the Hon'ble Tribunal in Misc. Application No 1296 of 2016.*
- (b) *Pass such other or further order (s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of this case.*

2. It may be noticed here that the aforesaid Application had been preferred against the order of discharge dated 20.06.2011. The Misc Application aforesaid was finally decided by this Tribunal on 15.11.2016 whereby the Misc Application was dismissed on the ground that the Applicant had failed to explain the delay between 2011 to 2016.

3. The ground for relief with legal provision is quoted below for ready reference.

"5.1 Because the final order dated 15.11.2016 is passed without due consideration of the circumstances in which the applicant failed to preserve all the correspondence between 2011 to 2015 and as such deserves to be considered sympathetically."

4. We have given our anxious consideration to the grounds urged in the Review Application. We have also perused the records as well as the Order at issue.

5. The law on Review is well enunciated that the scope of Review is limited. The Review Application can be heard if there is error apparent on the face of record. In connection with it, Order 47 Rule 1 Sub Rule (1) of the Code of Civil Procedure being relevant 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."

6. As stated supra, the Hon'ble Supreme Court in various decisions has clearly laid down that the scope of Review jurisdiction is very limited and re-hearing is not permissible. The Apex Court has drawn a clear distinction between an erroneous decision and an error apparent on the face of the record. It has been laid down by the

Apex Court that while the first can be corrected by the higher forum, the latter only can be corrected by exercise of the Review jurisdiction. In the case of **Parsion Devi and Others vs. Sumitri Devi and others** reported in (1997) 8 SCC 715; in Para 9 of the Judgment of the Hon'ble Apex Court 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 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."

10. While passing the impugned order, Sharma, J. found the order in Civil Revision as an erroneous decision, though without saying so in so many words. Mechanical use of statutorily sanctified phrases cannot detract from the real import of the order passed in exercise of the Review jurisdiction. Recourse to Review petition in the facts and circumstances of the case was not permissible. The aggrieved judgement-debtors could have approached the higher forum through appropriate proceedings to assail the order of Gupta, J. and get it set aside but it was not open to them to seek a Review of the order of Gupta, J, on the grounds detailed in the Review petition. Therefore, the impugned order of Sharma, J. cannot be sustained."

7. In the instant case, since the ground (5.1) as mentioned in the Review Application has already been taken into consideration and discussed at length and it was thereafter that the order was pronounced, in view of the principles of law laid down by the Apex Court in the case of **Parsion Devi and others** (Supra), we are of the firm view that we do not find any error apparent on the face of the record in the impugned judgment which may be corrected in exercise of Review jurisdiction.

8. As a result of foregoing discussion, the Review Application being devoid of merit is liable to be dismissed. It is accordingly dismissed in limine. There shall be no order as to costs. The Applicant may be informed accordingly.

(Air Marshal Anil Chopra)
Member (A)

MH

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