ARMED FORCES TRIBUNAL REGIONAL BENCH, LUCKNOW

R.A. No. 35 of 2023 Inre T.A. No. 13 of 2018

Friday, the 07th day of July, 2023

"Hon'ble Mr. Justice Ravindra Nath Kakkar, Member (J)
Hon'ble Vice Admiral Atul Kumar Jain, Member (A)"

Sanjay Kumar (Army No 13960904A Ex Havildar (reduced to the rank of Sepoy Pharmacist) Son of Late Sri Bindeshwari Prasad, Resident of House No 515, Arjun Lal Sethy Colony, Near Parwatpura Bypass, Ajmer (Rajasthan).

.....Review Applicant

Ld. Counsel for the Applicant : **Shri Yashpal Singh, Advocate**

Versus

Union of India through Secretary, Ministry of Defence, South Block, New Delhi – 110011.

……Respondents

ORDER

"Per Hon'ble Mr. Justice Ravindra Nath Kakkar, Member (J)"

1. The applicant has filed this Review Application under Rule 18 of the Armed Forces Tribunal (Procedure) Rules, 2008. By means of this Review Application, the applicant has prayed to review the judgment and order dated 15.05.2023 passed in T.A. No 13 of 2018

by means of which prayer of the petitioner to set aside punishment awarded by Summary Court Martial and grant him promotion to the rank of Naib Subedar was rejected.

2. We have gone through the grounds and reasons indicated in the affidavit filed in support of the application and have also gone through the judgment and order sought to be reviewed. The judgment and order sought to be reviewed was passed in proper prospective after considering all the facts and circumstances. No illegality or irregularity or error apparent on the face of record has been shown to us so as to review the aforesaid judgment of this Court.

3. It is settled proposition of law that the scope of the review is limited and the petitioner 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,*
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> *(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."*

4. 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 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."*

5. 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 15.05.2023 passed in T.A. No 13 of 2018, which may be corrected in exercise of review jurisdiction.

6. Accordingly, the Review Application No. 35 of 2023 is rejected. There shall be no order as to costs. The applicant may be informed accordingly.

(Vice Admiral Atun Kumar Jain)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

Dated : 07 July, 2023
ukt/-