

**BY CIRCULATION****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Review Application No. 26 of 2022****Inre:****O.A. No. 620 of 2021**

**Ex Sub Umesh Chandra** ...Review Applicant  
 vs.  
**Union of India & Ors** ...Respondents

**Wednesday, this the 09<sup>th</sup> day of March, 2022****ORDER**

1. This Review Application under Rule 18 of the Armed Forces Tribunal (Procedure) Rules, 2008 has been preferred by the applicant against judgment and order of the Armed Forces Tribunal, Regional Bench, Lucknow dated 31.01.2022 passed in O.A. No. 620 of 2021. The matter has come up before us by way of Circulation as per provisions of Rule 18 (3) of the AFT (Procedure) Rules, 2008.

2. In the Review Application, the review applicant has prayed that he had been serving in low medical category since 1993 when he was holding the rank of Hav, but he was forcibly discharged from service only on recommendation of Commanding Officer which is arbitrary. We have gone through the order dated 31.01.2022 and we find that since the applicant had himself desired to proceed on retirement, his statement that he wanted to serve further is not trustworthy. For convenience sake, para 8 of order dated 31.01.2022 is reproduced as under:-

8. *In the year 2004, when the applicant was about to complete 26 years of service, he submitted a willingness certificate for further service which was not recommended by the Commanding Officer. This might be on the ground that at that time no sheltered appointment was available. A Show Cause Notice dated 31.12.2004 was issued to which applicant submitted his reply dated 06.01.2005 as under:-*

*"1. Please refer to your letter No 1074/04/Sigs/Med/119 dt 31 Dec 2004.*

*2. I have placed in low med cat S1H1A3P2E1 wef 09 Mar 2004 due to fracture patella (lt) (Optd) A3 (Permt) and primary hyperthyroidism P2 (permt) vide Part II Order No 0/282/0002/2004 dt 24 Oct 2004. I am unwilling for sheltered appointment to continue retain in service due to not capable to*

*perform the duties efficiently being physical problem.*

*3. In view of the above, you are requested to discharge me from service on med grounds as ordered by Signal Records vide their letter No 2872/CA-3/T-1/102 dt 19 Nov 2004."*

3. The law on Review is well enunciated that the scope of Review is limited. The Review Application can be heard if there is an error apparent on the face of record and only to that extent order can be corrected. 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*

*(b) 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. 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 Hon'ble Supreme 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 Hon'ble Supreme 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 (Para 9) of the Judgment of the Hon'ble Supreme 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 judgment-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."*

5. In view of the principles of law laid down by Hon'ble Supreme Court in the case of *Parsion Devi and others* (supra), we are of the considered view that to recall/review an order passed after hearing both the parties on merits is beyond the scope of review jurisdiction. Such a jurisdiction vests only in Appellate Court to set aside the order and decide it. Since the prayer made by the review applicants is beyond the scope of review jurisdiction, hence it deserves to be rejected.

6. As a result of foregoing discussion, the Review Application is liable to be dismissed, hence **dismissed**.

7. The review applicant be informed accordingly.

(Vice Admiral Abhay Raghunath Karve)  
Member (A)

(Justice Umesh Chandra Srivastava)  
Member (J)

Dated : 09.03.2022  
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