

BY CIRCULATION**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Review Application No. 31 of 2022****Inre:****O.A. No. 299 of 2021****Ex Rect Surendra Kumar**

...Review Applicant

vs.

Union of India & Ors

...Respondents

Wednesday, this the 23rd 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 11.02.2022 passed in O.A. No. 299 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 made following prayers:-

(i) *Issue/pass an order or direction of appropriate nature to review its order in terms of civil appeal No 11485 of 2018 Madan Prasad Sinha @ Santan Baba vs Union of India and others and direct the respondents to grant the disability pension for the intervening period giving the parity of ibid Apex Court order in the interest of justice.*

(ii) *Issue/pass any other order or direction to the respondents as this Hon'ble Tribunal may deem fit in the circumstances of the case.*

3. We have gone through the order dated 11.02.2022 and we find that the O.A. was dismissed on merits denying disability pension for intervening period i.e. 13.02.1980 to 04.06.2018. We have observed that the applicant was invalided out of service w.e.f. 09.10.1977 with disability percentage @ 11-14% for 02 years. His medical disability was opined as constitutional in nature and not related to military service. Disability pension claim was rejected vide order dated 13.02.1978 being the disability below 20% and NANA. The applicant had filed O.A. No. 82 of 2017 in AFT, Regional Bench, Jabalpur in the year 2016 after

lapse of 39 years which was allowed vide order dated 21.11.2017 directing the respondents to grant disability pension duly rounded off @ 50% for two years with further direction to hold applicant's RSMB. Accordingly his RSMB was conducted at Military Hospital, Jabalpur on 05.06.2018 which granted him disability pension @ 40% for life and the applicant is in receipt of 50% disability pension w.e.f. 05.06.2018 for life.

4. In regard to payment of disability pension for the intervening period (13.02.1980 to 04.06.2018), the review applicant has relied upon the Hon'ble Apex Court order dated 08.04.2019 passed in Civil Appeal No 11485 of 2018, ***Madan Prasad Sinha @ Sanatan Baba vs Union of India & Ors.*** We have perused the aforesaid order and we find that in the above case the appellant was enrolled in the Army on 18.02.1971 and he was discharged from service w.e.f. 18.08.1981 in low medical category. The appellant in that case had undergone various RSMBs at different intervals and disability pension was granted but in the instant case the applicant was invalided out of service on 09.10.1977 with disability percentage @ below 20% and disability pension was not allowed. He had filed O.A. in AFT Jabalpur after lapse of 39 years which was allowed vide order dated 21.11.2017 and then he was granted disability pension. Since his RSMB was conducted on 05.06.2018, he was granted disability pension w.e.f. 05.06.2018 as such the applicant is not entitled to disability pension for the intervening period.

5. 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.”*

6. 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.”

7. 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.

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

9. The review applicant be informed accordingly.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 23.03.2022
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