

BY CIRCULATION

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

**Review Application No. 21 of 2024 with
M.A. No. 520 of 2024**

Inre:

O.A. No. 444 of 2023

Union of India & Ors

.....Review Applicants

VS.

Ex HFO (MWO) Yogendra Singh

.....Respondent-Applicant

Tuesday, this the 30th day of April, 2024

ORDER

1. This application has been filed with delay of 08 months and 03 days for review of order dated 13.07.2023 under Rule 18 of the Armed Forces Tribunal (Procedure) Rules, 2008. Relevant portion of aforementioned Rule is reproduced as under:

"18. Application for review. – (1) No application for review shall be entertained unless it is filed within thirty days from the date of receipt of copy of the order sought to be reviewed.

(2) -----"

Applicant has moved application for condoning the delay in filing Original Application.

2. This Tribunal vide order dated 13.07.2023 had allowed the O.A. No. 444 of 2023 with the directions to the respondents to

grant one notional increment to the applicant w.e.f. 01.07.2017 on the ground that he served for one year w.e.f. 01.07.2016 to 30.06.2017, but he could not be granted notional increment on 01.07.2017 as he retired from service on 30.06.2017. Additionally, Civil Appeal No. 4339 of 2023 arising out of Diary No. 16764 of 2023, the Hon'ble Apex Court vide order dated 10.07.2023 passed in **Union of India & Ors vs Anand Kumar Singh** has dismissed the appeal, therefore, grant of notional increment has attained finality.

3. The above judgment has been passed on the basis of pleadings of parties and established legal position.

4. It is stated in review application that respondent has not rendered minimum six months of qualifying service from the date of grant of last increment/pay fixation given to him on promotion to HFO/HFL on 26 Jan/15 Aug thus he is not eligible for the increment on 01 Jul/01 Jan even if he would have continued in service.

5. Above mentioned fact has not been pleaded by the respondents in their counter affidavit.

6. Also, it is 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 judgment and order sought to be reviewed, the same cannot be reviewed vide Order 47, Rule 1 Sub rule (1) of the Code of Civil Procedure. Review is not an appeal in disguise. It is nowhere within the scope of review to recall any order passed earlier and to decide the case afresh. For ready reference, Order 47, Rule 1 sub-rule (1) of the Code of Civil Procedure, 1908 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."

7. In garb of review application, applicants want this Tribunal to sit on appeal over its own order which is not permissible.

8. The new fact was already known to the respondents but this fact was not brought on record in counter affidavit when the order was passed. In review a new judgment cannot be passed on the basis of new fact which were in knowledge of the applicants and not included in the pleading.

9. Order 47 Rule 4 (2) (b) CPC provides 'No such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge or could not be adduced by him when the decree or order was passed, without strict proof of such allegation'.

10. 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. The Hon'ble 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 SCC 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."

11. Accordingly, the application for condonation of delay as well as application for review are **rejected**.

12. The applicants may be informed accordingly.

(Maj Sanjay Singh)
Member (A)

Dated: 30.04.2024

rathore

(Justice Anil Kumar)
Member (J)