

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Court No.1

R.A. No. 16 of 2024 with M.A. No. 391 of 2024
Inre O.A. No. 111 of 2021

Ex Nk Gyanendra Bahadur Singh Applicant
By Legal Practitioner for the Applicants: Shri Pankaj Kumar Shukla, Advocate

Versus

Union of India & Others Respondents
By Legal Practitioner for Respondents: Ms Appoli Srivastava, Advocate

Notes of the Registry	Orders of the Tribunal
	<p><u>27.05.2024</u> <u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u> <u>Hon'ble Vice Admiral Atul Kumar Jain, Member (A)</u></p> <p><u>M.A. No. 391 of 2024</u></p> <p>1. Heard Shri Pankaj Kumar Shukla, learned counsel for the applicant and Ms Appoli Srivastava, learned counsel for the respondents.</p> <p>2. Objection on delay condonation application filed on behalf of the respondents is taken on record.</p> <p>3. The applicant has filed this review application under Rule 18 (2) of the Armed Forces Tribunal (Procedure) Rules, 2008 by which applicant has prayed for review of the order dated 09.09.2021 passed by this Tribunal in Original Application No. 111 of 2021. An application for condonation of delay has also been moved by the applicant for condonation of delay of 02 years, 05 months and 03 days in filing review application.</p> <p>4. Admittedly, the application is time barred and has been moved beyond statutory period. Applicant has moved application for condonation of delay in filing review application, but the delay has not been properly explained. Accordingly, application for condonation of delay in moving review application is not maintainable and is rejected.</p> <p>5. The review applicant has prayed for grant of 60% disability element of pension (rounding off to 75%) by modifying order of this Tribunal. We have gone through the grounds and reasons indicated in the review application and have also gone through the judgment and order sought to be reviewed. The judgment and order sought to be</p>

reviewed was passed for conduct of Re-survey Medical Board (RSMB) in view of Para 7 of policy letter dated 07.02.2001, and also in view of the fact that his request for conduct of fresh RSMB was pending before PCDA (P), Allahabad. The applicant is in receipt of 50% (rounded off) disability element of pension vide PPO No. DE/Corr/10089/2020 dated 10.11.2020.

6. In order dated 09.09.2021, direction was passed for conduct of RSMB and there is no mention for grant of disability element of pension as pleaded in review application. There is no error apparent at the face of record. It is made clear that the execution Court cannot go beyond the decree. For convenience sake, operative portion of order dated 09.09.2021 is reproduced as under:-

“9. In view of the above proviso and the fact that applicant has applied for conduct of his RSMB, we are of the view that applicant’s RSMB should be conducted afresh to decide his present medical condition with regard to his gravity of disability and its percentage.”

7. Further, 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.”

8. 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 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 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."

9. We have gone through the order sought to be reviewed and no mistake or error apparent on the face of record being found therein, we are of the view that there is no force in the grounds taken in the review application so that order may be reviewed.

10. In the result, Review Application is **rejected** on delay as well as on merit.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Anil Kumar)
Member (J)

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