

**Chambers
(By circulation)**

Review Application No. 72 of 2018

In re:

O.A. No. 272 of 2017

**Ex Rect Pramod Kumar Ram vs. Union of India
& Ors**

**Hon'ble Mr. Justice SVS Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A).**

1. This is an application for review of order dated 22.10.2018, passed in O. A. No. 272 of 2017. While approaching the Tribunal under jurisdiction of review, the applicant has prayed for reviewing the order on the following grounds :-

(a) The applicant was enrolled in sound physical and mental condition and there was no note of any kind of disease entered by Medical Officer as such the disability detected later is deemed to be attributable to service.

(b) The Psychiatrist in his opinion has opined that the behavioral change is due to Mania Episode is a finding not based on any clinical/pathological evaluation.

(c) The Hon'ble Principal Bench, New Delhi has passed a judgment and order on the subject that if no note was entered by medical authority at the time of recruitment as such no inference can be drawn that disability is not attributable to service.

(d) The assessment of disability to the tune of 15-19% for life is only to deny the payment of disability pension.

(e) The disability of mental disorder cases cannot be assessed less than 20% vide Guide to Medical Officers, 2008.

(f) The Hon'ble Apex Court in case of Sep Sukhvinder Singh vs Union of India & Ors has held that if disability is

assessed less than 20% then it is presumed that the individual is fit and liable of payment of disability pension.

(g) The applicant's behavior as regards to singing song on his own and having happy mood is no ground for assessing as a case of Manic Disorder is not only illegal but also shown flimsy assessment and the Medical Board proceeding deserves to be quashed.

(h) The finding and opinion of Graded Specialist Psychiatry that the applicant does not have any past family history of mental illness as such the Graded Specialist Psychiatry is without any reason.

2. While dismissing the O.A. this Tribunal on the opinion of Maj J Gambhir, Graded Specialist Psychiatry, Command Hospital, Lucknow and Col D Saldanha, Senior Advisor (Psychiatry), Military Hospital, Meerut reached to a conclusion that the applicant was suffering from disease '**MANIC EPISODE (ICD F 30)**' before enrolment and it could not be detected during medical examination at the time of enrolment.

3. it is settled law that any attempt of Court except an attempt to correct an apparent error or an attempt not based on any ground mentioned in Order 47 Rule 1 and 2 CPC, would amount to an abuse of power to review its judgment, vide, (1999) 9 SCC 596 ***Ajit Kumar Rath, Vs. State of Orissa.***

4. Power of review conferred on the Court may be exercised when error is apparent at the face of record under Order 47 Rule 1 and 2 of CPC. It is the statutory power conferred on Court. It is neither inherent power

nor a power to re-appreciate the evidence, vide (2000) 6 SCC 224: **Lily Thomas Vs. Union of India.**

5. It is needless to mention that review is perfectly distinguished from an appeal i.e.; quite clear from statutory provision (Order 47 Rule 1 of CPC) that the primary intention of granting a review is the reconsideration of the same subject by the same Judge as contra-distinguished to an appeal which is a hearing before another Tribunal, vide (2005) 2 SCC 334 **Ishwar Singh, Vs. State of Rajasthan & Ors.**

6. In sum and substance, review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face and a clear case of error apparent on the face of the record would be made out vide, (2006) 4 SCC 78 **Haridas Das. Vs. Usha Rani Banik.**

7. In (1995) 1 SCC 170: **Meera Bhanja (Smt.). Vs. Nirmala Kumari Chaudhary (Smt.)** followed by (1997) 8 SCC 715: **Parsion Devi Vs Sumitri Deviu,** their Lordships of Hon'ble Supreme Court held that power of review does not mean to exercise de novo

hearing except the error apparent at the face of record in view of Order 47 Rule 1 of CPC.

8. In view of the above, the present application for review appears to be not sustainable. As observed above, the jurisdiction conferred under review is not an appellate jurisdiction under the guise of review. No de novo hearing or re-appreciation of evidence is permissible, except where there is error apparent on the face of record, following the principles laid down for reviewing the order under Order-47, Rule-1 of the Code of Civil Procedure, 1908.

9. In view of observations made hereinabove the review application deserves to be rejected and is accordingly **rejected**.

No order as to costs.

(Air Marshal BBP Sinha)
Member 'A'

(Justice SVS Rathore)
Member 'J'

Dated : November 2018
gsr