

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

R.A. No. 40 of 2024 Inre : O.A. No. 1461 of 2023

Ex. Signalman Ram Saran **Applicant**
By Legal Practitioner for the Applicant : **Shri Ravi Kumar Yadav**, Advocate
Shri Saurav Yadav, Advocate

Versus

Union of India & Others **Respondents**
By Legal Practitioner for Respondents : None

Notes of the Registry	Orders of the Tribunal
	<p><u>22.11.2023</u> <u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u> <u>Hon'ble Lt. Gen. Anil Puri, Member (A)</u></p> <p>1. The file has been placed before us by Circulation.</p> <p>2. The Review Application filed by the applicant under Rule 18 of the Armed Forces Tribunal (Procedure) Rules, 2008 by which applicant has prayed for review and setting aside the judgement and order dated 03.10.2024 of this Tribunal passed in Original Application No. 1461 of 2023. The operative portion of order reads as under:-</p> <p style="text-align: center;"><i>“In the result, we hold that the claim of applicant’s disability element of disability pension has rightly been rejected by the respondents which needs no interference. Resultantly, Original Application is dismissed”.</i></p> <p>3. The Review Application has been filed on the ground that despite having knowledge of applicant’s low medical category for disabilities mentioned in the Medical Board he was posted to CI OPs Area in Tezpur (Assam) in 2020 whereas the nature of duties at CI Ops was difficult and hence applicant was not able to perform the duties upto fullest extent as unable to stand due to his medical condition. This has worsened his medical condition and hence aggravated the said disabilities in terms of Para 11 of Entitlement Rules for Casualty Pensionary Award to Armed force Personnel, 2008. The applicant relied upon Para 423 (C) of the of Regulations of Medical Service for Armed forces, 2010 in support of aggravation of said disabilities which has not been considered by the Tribunal. The applicant had attached relevant documents as annexure No. A-4 at page 19 & 20 of the said Original Application establishing rediagnosis of disability from ACL AND PLC TEAR (RT) KNEE to ACL AND PLCD TEAR 9RT) KNEE (OPTD) GRAFT FAILURE which was not negated/rebutted by respondents. This transpires that respondents have not</p>

denied admissibility of documentary evidence attached at Annexure No. 4 of the Original Application with respect of change of diagnosis of first disability after three years which stoutly support that first disability was worsened after failure of surgery which include adverse/unforeseen effect of treatment. It is evident that faulty or otherwise unsatisfactory treatment includes adverse/unforeseen effect of treatment which should be conceded as attributable but respondent's Release Medical Board wrongly and gravely erred in not terming at least first disability as attributable to service. Further, though this Tribunal referred para 21 of Entitlement Rules, 1982 in para 15 of its judgment dated 03.10.2024, yet did not appreciate facts of rediagnosis of first disability with mandates of Para 21 of the said Rules.

4. It is a 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.

5. 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."

6. 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."

7. Further, the Hon'ble Supreme Court in Para 26 of its judgment in the case of **S. Madhusudhan Reddy Versus V. Narayana Reddy and Others**, Civil Appeal Nos. 5503-04 of 2022, decided on 18.08.2022, has observed as under:-

“26. As can be seen from the above exposition of law, it has been consistently held by this Court in several judicial pronouncements that the Court’s jurisdiction of review, is not the same as that of an appeal. A judgment can be open to review if there is a mistake or an error apparent on the face of the record, but an error that has to be detected by a process of reasoning, cannot be described as an error apparent on the face of the record for the Court to exercise its powers of review under Order XLVII Rule 1 CPC. In the guise of exercising powers of review, the Court can correct a mistake but not substitute the view taken earlier merely because there is a possibility of taking two views in a matter. A judgment may also be open to review when any new or important matter of evidence has emerged after passing of the judgment, subject to the condition that such evidence was not within the knowledge of the party seeking review or could not be produced by it when the order was made

despite undertaking an exercise of due diligence. There is a clear distinction between an erroneous decision as against an error apparent on the face of the record. An erroneous decision can be corrected by the Superior Court, however an error apparent on the face of the record can only be corrected by exercising review jurisdiction. Yet another circumstance referred to in Order XLVII Rule 1 for reviewing a judgment has been described as “for any other sufficient reason”. The said phrase has been explained to mean “a reason sufficient on grounds, at least analogous to those specified in the rule”

8. In the light of the legal position crystalized above, we have gone through the judgment and order sought to be reviewed and no illegality or irregularity 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.

9. In the result, Review Application is **rejected**.

(Lt. Gen. Anil Puri)
Member (A)

(Justice Anil Kumar)
Member (J)

AKD/-