

BY CIRCULATION

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Court No. 1**Review Application No 47 of 2017****In****O.A. No. 297 of 2017**Thursday this the 5th day of October, 2017Bijai Bahadur Singh**Review Applicant**

Versus

Union of India & Ors
..... **Respondent**

Ld. Counsel for the applicant - Shri Yash Pal Singh, Advocate

**“Hon’ble Mr. Justice Devi Prasad Singh, Judicial Member
Hon’ble AIR Marshal, Anil Chopra, Administrative Member”****ORDER**

1. Present Review Application under Rule 18 of the Armed Forces Tribunal (Procedure) Rules, 2008 has been preferred by the Applicant against the order of the Armed Forces Tribunal, Regional Bench, Lucknow vide Order dated 29.08.2017 rendered in O.A. No 297 of 2017 cited above. The matter came up before us by way of Circulation as per provisions of Rule 18 (3) of the AFT (Procedure) Rules, 2008.

2. The applicant has approached this Tribunal for the relief of rounding off of disability pension. It is pleaded in the Review Application that the applicant retired on completion of his tenure of engagement on 31.05.2005. He has prayed that orders be passed in this Review Application making entitlement of the applicant for rounding off of the disability pension from the date of his discharge. Admittedly, the applicant was discharged on 31.05.2005 and the O.A. was filed in the year 2017 with delay of about 12 years.

3. In the case of ***Shiv Dass Vs Union of India & Others***, reported in 2007 (3) SLR page 445 their Lordships of the Hon'ble Supreme Court has held as under:

“In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.

In the peculiar circumstances, we remit the matter to the High Court to hear the writ petition on merits. If it is found that the claim for disability pension is sustainable in law, then it would mould the relief but in no event grant any relief for a period exceeding three years from the date of presentation of the writ petition. We make it clear that we have not expressed any opinion on the merits as to whether appellant's claim for disability pension is maintainable or not. If it is sans merit, the High Court naturally would dismiss the writ petition.”

(Emphasis supplied)

4. In view of the decision of Hon'ble Supreme Court in the case of **Shiv Dass** (supra), the relief claimed for cannot be granted.

5. In the instant case, we are of the considered opinion that the order impugned was passed in view of the principles of law laid down by the Apex Court in the case of **Shiv Das** (supra), we do not find any error apparent on the face of the record in the impugned order which may be corrected in exercise of Review jurisdiction.

6. As a result of foregoing discussion, the Review Application being devoid of merit is liable to be dismissed. It is accordingly **dismissed** in limine. There shall be no order as to costs. The Applicant may be informed accordingly.

(Air Marshal Anil Chopra)
Member (A)
anb

(Justice D.P. Singh)
Member (J)