

**BY CIRCULATION**

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW  
**Court No. 1**

**Review Application No 46 of 2017**

**On behalf of**

**(Bhaju Ram Prasad.....Applicant)**

**IN**

**O.A. No. 336 of 2017**

No. 14536503-P, Ex Hav (Hony. Nb Sub) Bhaju Ram Prasad, S/o late Ram Ugraha, R/o Vill – Barasari, PO – Budhun, Teh – Rasra, Distt – Ballia (U.P), PIN – 221712. .... **Applicant**

**Ld. Counsel for the : Shri V.P. Pandey, Advocate  
Applicant**

Versus

1. Union of India through the Secretary, Ministry of Defence, 101 South Block, New Delhi – 110011.
2. Chief of the Army Staff, Integrated headquarter of the Ministry of Defence (Army), South Block, New Delhi 110001.
3. Office In-Charge Records, EME Records, Secunderabad.
4. The Principal Controller Defence Account (P), Draupadi Ghat, Allahabad.

**...Respondents**

**Ld. Counsel for the : Shri V.P.S. Vats, Advocate,  
Respondents. Central Govt  
Standing Counsel.**

**Assisted by : Maj Salen Xaxa, OIC Legal Cell**

**"Hon'ble Mr. Justice D.P.Singh, Member (J)**  
**Hon'ble Air Marshal Anil Chopra, Member (A)"**

**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 Tribunal, dated 28.08.2017 rendered in Original Application No 336 of 2017. The matter came up before us by way of Circulation as per provisions of Rule 18 (3) of the AFT (Procedure) Rules, 2008. The relief sought in this Review Application is excerpted below.

- (i) To issue/pass an order or direction to the respondent to implement recommendations made by VI<sup>th</sup> Central Pay Commission and grant service pension to applicant to the rank of Nb/Sub w.e.f. 01.01.2006.
- (ii) To issue/pass an order or direction to the respondents to pay regular pension to the applicant to the rank of Nb/Sub and pay arrears from the due date with interest.
- (iii) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.

2. It may be noticed here that the aforesaid O.A. had been preferred for grant of pension of the rank of Naib Sub. The O.A. was finally decided but at the same time, it is submitted, a clerical mistake has occurred in the operative portion which is to the effect that instead of granting the relief of the post of Naib Subedar, the order was passed mentioning Hony Naib Subedar. The operative portion of the order is reproduced as under:-

"We dispose of the present petition in terms of the above judgments with a direction to the respondents to release the service pension to the applicant in the rank of Hony Naib Subedar based on MoD letter dated 12.06.2009 w.e.f 01.01.2006 within a period of four months from the date of receipt of a certified copy of this order, further making it clear that no interest shall be admissible and payable to the applicant in this regard. In case, this order is not complied with within the stipulated period, the amount of arrears

shall carry interest @ 10% per annum from the due date, till actual payment thereof."

Thus the main brunt of contention is that expression "in the rank of Hony Naib Subedar" in the operative portion of the judgment rendered in the aforesaid O.A being contrary to the relief claimed in the O.A, the same deserves to be substituted by the expression "in the rank of Naib Subedar" as the same is an error apparent on the face of record.

3. We have given our anxious consideration to the grounds urged in the Review Application. We have also perused the records as well as the Order at issue.

4. The law on Review is well enunciated that the scope of Review is limited. The Review Application can be heard if there is error apparent on the face of record. In this connection Order 47 Rule 1 Sub Rule (1) of the Code of Civil Procedure being relevant 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 by this Code, 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 of the Court which passed the decree or made the order."

5. As stated above, the Hon'ble Supreme Court in various decisions has clearly laid down that the scope of Review jurisdiction is very limited and re-hearing is not permissible. The Apex Court has drawn a clear distinction between an erroneous decision and an error apparent on the face of the record. It has been laid down by the Apex Court that while the first can be corrected by the higher forum, the latter only can be corrected by exercise of the Review jurisdiction. In the case **of Parsion Devi and Others vs. Sumitri Devi and others** reported in

(1997) 8 SCC 715; in Para 9 of the Judgment of the Hon'ble Apex Court 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 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."

10. While passing the impugned order, Sharma, J. found the order in Civil Revision as an erroneous decision, though without saying so in so many words. Mechanical use of statutorily sanctified phrases cannot detract from the real import of the order passed in exercise of the Review jurisdiction. Recourse to Review petition in the facts and circumstances of the case was not permissible. The aggrieved judgement-debtors could have approached the higher forum through appropriate proceedings to assail the order of Gupta, J. and get it set aside but it was not open to them to seek a Review of the order of Gupta, J, on the grounds detailed in the Review petition. Therefore, the impugned order of Sharma, J. cannot be sustained."

6. In the instant case, having regard to the facts on record, we are of the considered opinion that *there is a mistake/error apparent on the face of the record justifying the court to exercise its power Review under Order 47 Rule 1 CPC*. Thus, we find that the review application is liable to be allowed and the impugned order is to be corrected in exercise of Review jurisdiction.

7. As a result of foregoing discussion, the Review Application is allowed and the following order shall be substituted in place of the existing order in the judgment dated 28.08.2017 rendered in O.A aforesaid.

"We dispose of the present petition in terms of the above judgments with a direction to the respondents to release

the service pension to the applicant in the rank of Naib Subedar based on MoD letter dated 12.06.2009 w.e.f 01.01.2006 within a period of four months from the date of receipt of a certified copy of this order, further making it clear that no interest shall be admissible and payable to the applicant in this regard. In case, this order is not complied with within the stipulated period, the amount of arrears shall carry interest @ 10% per annum from the due date, till actual payment thereof.”

8. The Applicant may be informed accordingly.

**(Air Marshal Anil Chopra)**  
**Member (A)**

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

Dated: October, ,2017

MH/-