

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

R.A. No.53 of 2021 Inre : O.A. No. 688 of 2020

Ex Nk (TS) Rajendra Singh

Applicant

Versus

Union of India and Others

Respondents

By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>08.10.2021</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p>The file has been placed before us by Circulation.</p> <p>As per office note, there is no delay in filing Review Application, however, an application for condonation of delay has been moved which being not required is dismissed.</p> <p>The Review Applicant has filed this application under Rule 18 of the Armed Forces Tribunal (Procedure) Rules, 2008 by which applicant has prayed for review and setting aside the order dated 14.07.2021 of this Tribunal passed in Original Application No. 688 of 2020 <i>inter alia</i> on the ground that this Tribunal has erroneously referred to Para 90 of Pension Regulations for the Army, 2008 which is applicable to the personnel who are in Army service on 1st July, 2008 whereas the applicant was discharged on 31.12.1998, Pension Regulation for the Army, 1961 was only applicable to the applicant; the same error has been repeated wherein para 53(a) of Pension Regulation for the Army, 2008 has been referred which is not applicable and in para 7 of final order to the Pension Regulations for the Air Force 1961 has been mentioned which is not applicable in the case of applicant.</p> <p>The operating portion of order under review reads as under:-</p> <p><i>“8. In view of the aforesaid discussions, we are of the view that applicant is not entitled to disability element of pension for the intervening period of 01.01.2004 to 06.05.2017 as it was below 20% neither attributable to nor aggravated by military service.</i></p> <p><i>9. The O.A. lacks merit and is accordingly dismissed.”</i></p> <p>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.</p> <p>For ready reference, Order 47, Rule 1 sub-rule (1) of the Code of Civil Procedure, 1908 is reproduced below :-</p> <p><i>“1. Application for review of judgment.- (1) any person considering himself aggrieved-</i></p>

(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.”

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."

We have gone through the Judgment and order sought to be reviewed and find that para 90 and para 53(a) of the Pension Regulations for the Army, 2008 have been mention. Similar provisions have been provided in para 61 and 62 and, Para 173 respectively of the Pension Regulations for the Army, 1961 (Part-I), hence, quoting of said provisions makes no difference in the fate of said judgment and order.

Further, with regard to para 7 of the of the order sought to be reviewed we find that in that para we have quoted the para 9 of the Judgment passed by the Ho'ble Supreme Court in Civil Appeal No. 10870 of 2018 Union of India & Ors. Vs. Wing Commander SP Rathore.

In view of above, 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.

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

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

rathore/-