By Circulation

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

R.A. No.65 of 2023 with M.A. No 1716 of 2023 Inre
O.A. (A) No.399 of 2021 (Army)

Tuesday, this the 10th day of October, 2023

"Hon'ble Mr. Justice Ravindra Nath Kakkar, Member (J)
Hon'ble Vice Admiral Atul Kumar Jain, Member (A)"

Union of India & Others

….. Applicant

Counsel for the Applicant/: **Shri Ramesh Chandra Shukla,**
Respondents **Central Govt Counsel**

Versus

No. 1580573N Ex Nk Radhey Shyam Yadav, Son of Jagdish Yadav, resident of Village & Post Office- Pirounta, District- Ballia, PIN- 277403.

.....Respondents

ORDER

"Per Hon'ble Mr. Justice Ravindra Nath Kakkar, Member (J)"

1. The applicant has filed this Review Application under Rule 18 of the Armed Forces Tribunal (Procedure) Rules, 2008. By means of this Review Application, the applicant has made prayer to review the judgment and order dated 11.07.2023passed in O.A.(A) No 399 of 2021and pass a fresh and final judgment.

2. There is delay of 01 month and 23 days in filing of Review Application regarding which an application for condonation of delay has been filed.

3. As per judgment of Larger Bench AFT, Principal Bench, New Delhi, dated 16.11.2021 passed inM.A. No 321 of 2018 in R.A. (Diary No 10920 of 2018 in O.A. No 64 of 2016,in the case of***Union of India &Ors Versus Ex Sep M Anthony Victor*****,** the delay in filing Review Application is condonable. In the said judgment, Hon'ble Principal Bench has held that:-

> ***"The tribunal is conferred with power under the Act and the Rules framed thereunder to condone delay under Section 5 of the Limitation Act in filing the Review Application despite rule 18 of the Rules".***

4. In view of decision of larger Bench of AFT, New Delhi,application for condonation of delay in movingReview application is allowed and delay in filing the Review Application is condoned.

5. The matter came up before us by way of Circulation as per provisions of Rule 18 (3) of the Armed Forces Tribunal (Procedure) Rules, 2008, whereby the applicant has prayed for review of the order dated11.07.2023 passed in O.A No.399 of 2021 and pass a fresh order. The aforesaid O.A. was allowed and finding of sentence

dated 20.01.2003 passed by SCM was quashed. Appellant was treated in service notionally from the date of discharge till the date of attainment of required qualifying pensionable service, for which he was not granted back wages on the principle of “No work No Pay’. From the date of attainment of such qualifying service for pension, the appellant was granted pension in accordance with law and rules. Due to law of limitation, arrears of pension was restricted from three years prior to filing of Original Application. The O.A. was filed on 13.06.2019. The respondents were further directed to comply the order within a period of four months from the date of communication of order.

6. We have gone through the grounds and reasons indicated in the affidavit filed in support of the application and have also gone through the judgment and order sought to be reviewed. The judgment and order sought to be reviewed was passed in proper prospective after considering all the facts and circumstances. No illegality or irregularity or error apparent on the face of record has been shown to us so as to review the aforesaid judgment of this Court.

7. It is settled proposition of law that the scope of the review is limited and the applicant has to show that there is error apparent on the face of the record. For ready reference the Order 47 Rule 1

Sub Rule (1) of the Code of Civil Procedure 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."*

8. 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. Hon'ble the 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 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."*

9. In the instant case, the details mentioned in the review application had already been taken into consideration and discussed in detail and thereafter the order was passed. In view of the principle of law laid down by Hon'ble the Apex Court in the case of **Parsion Devi and Others** (supra), we are of the considered view that there is no error apparent on the face of record in the impugned order dated 11.07.2023, which may be corrected in exercise of review jurisdiction.

10. Accordingly, R.A. No 65 of 2023 is **rejected.** There shall be no order as to costs. The applicant may be informed accordingly.

(Vice Admiral Atul Kumar Jain) (Justice Ravindra Nath Kakkar)
Member (A) **Member** (J)

Dated: 10 Oct, 2023
Ukt/-