

By Circulation
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

**Review Application No. 80 of 2022 with M.A. No. 934 of 2022
Inre O.A. No. 749 of 2021**

Friday, this the 16th day of September, 2022

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

No. 2643941, Ex. Nk Shyamal Singh
R/o Vill : Bahadurpur Nagla, PO : Nadaura,
Tehsil & Distt : Farrukhabad (UP)

.... Applicant

Ld. Counsel for the Applicant: **Shri Vijay Kumar Pandey**, Advocate

Versus

1. Union of India, through Secretary to the Government of India, Ministry of Defence, South Block, RK Puram, New Delhi – 110011.
2. Officer-in-Charge, Records Brigade of The Guards, Kamptee – 441001.
3. Principal Controller of Defence Account (Pension) Draupadi Ghat, Allahabad (UP).

... Respondents

Ld. Counsel for the Respondents : **Shri Arun Kumar Sahu**,
Central Govt Counsel

ORDER

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 prayed "*that this Hon'ble Tribunal may kindly be requested to allow this review application considering the facts and circumstances of the case in the interest of justice.*"

2. As per office report, there is delay of 06 months & 12 days in filing the Review Application. An application for condonation of delay (M.A. No. 934 of 2022) has been moved by the applicant. We have gone through the affidavit filed in support of delay condonation application and find that the grounds and reasons shown in the accompanying affidavit for condonation of delay seem sufficient and therefore, delay in filing Review Application is condoned.

3. Submission of learned counsel for the applicant is that applicant is entitled 20% of additional quantum of pension from the first day of 80th year of the age and not after completion of 80 years of age as granted by the AFT (PB), New Delhi in O.A. No. 1102 of 2022, **Sqn Ldr Yogesh Kumar Choudhary vs. Union of India & Ors**, decided on 14.07.2022.

4. The matter came up before us by way of Circulation as per provisions of Rule 18 of the Armed Forces Tribunal (Procedure) Rules, 2008, whereby the applicant has prayed for review of the order dated 13.01.2022 passed in O.A No. 749 of 2021, by means of which this Court had allowed the Original Application by granting 20% additional quantum of pension to the applicant from the date on which he attained the age of 80 years.

5. We have gone through the grounds and reasons indicated in the review 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 and also in view of the several pronouncement of the Hon'ble Apex Court. 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.

6. That apart, 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 order sought to be reviewed, the same

cannot be reviewed vide Order 47, Rule 1 sub-rule (1) of the Code of Civil Procedure.

7. Law is settled on the point that the scope of review is very limited. It is only when there is an error apparent on the face of record or any fresh fact/ material brought to notice which was not available with the applicant inspite of his due diligence during hearing. Review is not an appeal in disguise. It is nowhere within the scope of review to recall any order passed earlier and to decide the case afresh.

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 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."

9. 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"

10. In the instant case, grounds/details mentioned in the Review Application had already been taken into consideration and discussed in detail and thereafter, the order was passed. By amendment to the High Court Judges (Salaries and Conditions of Service) Act, 1954 vide The Gazette of India, No. 611 dated 20th December 2021, the following explanation has been inserted in Section 17B of the Act :-

"Explanation – For the removal of doubts, it is hereby clarified that any entitlement for additional quantum of pension or family pension shall be, and shall be deemed always to have been, from the first day of the month in which the pensioner or family pensioner completes the age specified in the first column of the scale."

11. As far as reliance of AFT (PB), New Delhi judgment in **Sqn Ldr Yogesh Kumar Choudhary** (supra) is concerned, this judgment is based on the Guwahati High Court order dated 15.03.2018 in respect of a judge for grant of additional/enhanced pension against which a SLP was filed which was dismissed by the Hon'ble Supreme Court. Thereafter, an 'Explanation', as quoted in para 10 above, was made in the High Court Judges (Salaries and Conditions of Service) Act, 1954 by The Gazette of India and it holds good.

12. Recently, a letter No. 29018/10/2022-AIS-II(Pension) dated 23.08.2022 has been issued by the Govt. of India, Department of Personnel and Training, New Delhi in which it is clearly stated that 20% additional quantum of pension shall be payable after completion of 80 years of age (from 80 years to less than 85 years), hence, applicability of granting 20% additional quantum of pension will be

from the first day of the month in which pensioner completes the age of 80 years. So, in the present case, applicant's date of birth being 01.06.1941, he will be entitled to 20% additional quantum of pension from the first day of the month of June, 2021, i.e. w.e.f. 1st June 2021 and not from June 2020 (from the beginning of 80th year) as prayed by the applicant.

13. In the light of the legal position crystalized above, we are of the considered view that there is no illegality or irregularity or error apparent on the face of record being found in the impugned order dated 13.01.2022, passed in O.A No. 749 of 2021, which may be corrected in exercise of review jurisdiction.

14. Accordingly, Review Application No. 80 of 2022 is hereby **rejected**.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 16th September, 2022

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