

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

Review Application No. 72 of 2023 with M.A. No. 1856 of 2023
Inre : O.A. No. 329 of 2023

Ex. L/Nk/DSC/GD Sambhu Prasad Yadav Applicant
By Legal Practitioner for the Applicant : Shri Vijay Kumar Pandey, Advocate

Versus

Union of India & Others Respondents
By Legal Practitioner for Respondents : None

Notes of the Registry	Orders of the Tribunal
	<p><u>31.10.2023</u> <u>Hon'ble Mr. Justice Ravindra Nath Kakkar, Member (J)</u> <u>Hon'ble Vice Admiral Atul Kumar Jain, Member (A)</u></p> <p>1. The file has been placed before us by Circulation.</p> <p><u>M.A. No. 1856 of 2023</u></p> <p>2. For the reasons stated in affidavit filed in support of delay condonation application, delay of 23 days in filing of Review Application is condoned. Delay condonation application stands disposed off accordingly.</p> <p><u>Review Application No. 72 of 2023</u></p> <p>3. The 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 judgement and order dated 02.08.2023 of this Tribunal passed in Original Application No. 329 of 2023 on the ground that this Tribunal has erroneously been partly allowed and granted only disability element in place of disability pension for the DSC service as the applicant was medically boarded out from DSC only after about nine years. The order dated 02.08.2023 reads as under:-</p> <p style="text-align: center;"><i>"In view of the above, the Original Application No. 329 of 2023 deserves to be partly allowed, hence partly allowed. The impugned order, rejecting the applicant's claim for grant of disability element of disability pension, is set aside. The disability of the applicant is held as aggravated by Army/DSC Service. The applicant is entitled to get disability element @30% for life which would be rounded off to 50% for life w.e.f. three years preceding the date of filing of Original Application. The respondents are directed to grant disability element to the applicant @30% for life which would stand rounded off to 50% for life w.e.f. three years preceding the date of filing of Original Application. The date of filing of Original Application is 16.03.2023. The respondents are further</i></p>

directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. Default will invite interest @ 8% per annum till the actual payment.”

4. On perusal of order-sheet dated 02.08.2023 it reveals that during the course of hearing Ld. Counsel for the applicant himself submitted that he is claiming only disability element instead of disability pension. As such the Original Application was partly allowed by granting disability element only.

5. 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.

6. For ready reference, Order 47, Rule 1 sub-rule (1) of the Code of Civil Procedure, 1908 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, 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.”

7. 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.”

8. 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”

9. In the light of the legal position crystalized above, we have gone through the judgment and order sought to be reviewed and 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.

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

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Ravindra Nath Kakkar)
Member (J)

AKD/-