ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA
M.A. No. 38 of 2018
With
R.A. No. 8/2016
(Arising out of O.A. No. 122/2016)

THURSDAY, THE 31st AUGUST, 2018.

CORAM :**HON'BLE DR.(MRS.) JUSTICE INDIRA SHAH,MEMBER (J)**
HON'BLE LT GEN GAUTAM MOORTHY, MEMBER (A)

IC-21507P, Maj Amalendu Chakraborty
Lake Window Coop Society
66A, Gobindapur Road
Flat B/4/5, Lake Garden
Kolkata - 700045

..... Applicant

By Adv. Mr. S. K. Choudhury

Versus

1. The Union of India
   Through Secretary
   Ministry of Defence
   South Block, D.H.Q P.O.
   New Delhi-110011.
2. The Chief of the Army Staff
   Integrated HQ of MOD (Army)
   South Block, D.H.Q. P.O. New Delhi-110011.
3. The Secretary
   Department of Ex-Servicemen Welfare & Pension
   Ministry of Defence, South Block
   New Delhi - 110011
4. Addl Dte Gen of Personnel Services
   Adjutant General's Branch/PS-4(Imp-1)
   IHQ of MOD (Army)
   Plot No. 108(West), Church Road
   Brassey Avenue, New Delhi-110001
5. Principal Controller of Defence Accounts (Pensions)
   Draupadi Ghat
   Allahabad - 211014

Respondents.

By Adv. Mr. Arunava Ganguly

ORDER

Justice Indira Shah,Member (J)

1. Heard the learned counsel appearing for the parties and the OIC, Legal Cell.
2. By filing this application under section 14(4) (f) of the Armed Forces Tribunal Act, 2007 read with Rule 18(1) of the Armed Forces Tribunal (Procedure) Rules, 2008, the applicant has prayed for review of the order dated 28 Sep 2016 passed in OA No. 122/2016, and has prayed for further adjudication of the original application.
3. The applicant was commissioned in the Regiment of Artillery on 9.2.1964 and was retired prematurely from service on 16.1.1984 on account of Injury of Derangement Left Knee and Ischemic Heart disease. His claim for disability was rejected by the respondent authority. He thereafter filed the OA No. 122 of 2016. This Tribunal dismissed the application holding that since the applicant was retired in 1984, was not entitled to disability element of pension. The policy letter, Govt. of India issued on 29.9.2009 indicates that the defence personnel who retired prematurely on or after 1.1.2006 shall only be entitled to disability element of pension.
4. It is submitted that in the case of Maj (Retd) Rajesh Kumar Bhardwaj vs. Union of India and others, OA No. 336/2011, the Principal Bench vide order dated 7 Feb 2012 has stuck down the clause 3 of the notification dated 29 Sept 2009. The petitioner in the said OA was given liberty to make representation to the authority to seek the disability pension in terms of the said circular.
5. Several other judgments have been cited by the counsel for the applicant to substantiate his claim. It is submitted by the counsel that those judgments were not placed before the Tribunal.
6. By filing this review application the applicant has prayed to admit the Original Application and to further adjudicate the matter meaning thereby to set aside the final order passed in the Original Application and to start de novo hearing whereas the applicant can very well file a fresh application or submit a

representation before appropriate authority, it is our considered opinion that we cannot allow a review application where entire matter is to be heard afresh.

The judgments referred were already there and the applicant cannot claim it as discovery of new matter or evidence.

7. In view of above, both the RA and MA are dismissed and hereby disposed of.

8. Let a plain copy of this order, duly countersigned by the Tribunal Officer, be supplied to the parties upon compliance of requisite formalities.

(LT GEN GAUTAM MOORTHY)
MEMBER(ADMINISTRATIVE)

(JUSTICE INDIRA SHAH)
MEMBER (JUDICIAL)

ss.