

ARMED FORCES TRIBUNAL
REGIONAL BENCH: KOLKATA

REVIEW APPLICATION 02/2019
WITH M.A.No.07/2019
(Arising out of O.A.No.69/2015)

EX-AC Ashok Kumar Ghosh Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Subhash Chandra Basu, Advocate
For Respondents : Mr. Ajay Chaubey, Advocate

CORAM

HON'BLE MS. JUSTICE ANJANA MISHRA, MEMBER (J)
HON'BLE LT GEN SHASHANK SHEKHAR MISHRA, MEMBER (A)

ORDER
31.07.2023

RA 02/2019

This is an application filed under Section 18 of the Armed Forces Tribunal (Procedure) Rules, 2008 seeking review or modification of the order passed by this Tribunal on 17th May, 2016 in OA 69/2015.

2. Relevant paras 4 and 5 of the final order read as under:

"4. It is not in dispute that applicant's claim was rejected on the basis of the opinion of the IMB as well as AMB, according to which his disability was neither attributable to nor aggravated by military service with 30 per disability. It is also not in dispute that at the time of enrolment into the Air Force Service the applicant was medically examined and was found fit as per prescribed medical standard and was not suffering from any disease including the disease in question. The Hon'ble Supreme Court has settled the law in several cases including – Union of India Vs. Rajbir Singh [Civil Appeal No.2904 of 2011]; Dharamvir Singh Vs. Union of India & Ors. [2013] Vol.VII SCC 316], Veer Pal Singh vs. Union of India & Ors [(2013); Union of India Vs. Angad Singh Titaria [2015 SCC Online SC 181] – that in such situation the disability has to be held as attributable to and aggravated by military service. The respondents are also

not in disputing the the above aspect of the matter. However, the rejected the applicant's case only on the ground that Ministry of Defence has not issued any circular on the basis of the law laid down by the Hon'ble Supreme Court. On the face, the order impugned has been passed in utter violation of the law laid down by the Hon'ble Apex Court. Moreover, the Hon'ble Apex Court has laid down the law based on the interpretation of the Rules framed by the MOD, which is binding on the respondents. In such circumstances the order impugned rejecting applicant's claims not sustainable in the eye of law and deserves to be set aside.

5. For the reasons mentioned above, the application deserves to be and is hereby allowed. The applicant is entitled for grant of disability element of pension from the date of his discharge, i.e., 08.06.1977 on the basis of applicant's disability as 30 per cent which is to be rounded off as 50 per cent in accordance with the Government Circulator. The amount of arrears shall carry interest at the rate of 06 per cent per annum. The entire exercise has to be completed within two months from the date of receipt of the copy of this order. No order as to costs."

3. The relief claimed in the review application reads thus:

"Under the above facts and circumstances it is prayed that Your Lordships may be graciously pleased to review or modify the order in part passed dated 17th May, 2016 in OA 69 of 2015 and order dated 4th May, 2017 passed in RA No.06 of 2016 and grant service element of disability pension to the applicant and/or pass such other order/or further Order or Orders as Your Lordships may deem fit and proper."

4. Learned counsel for the applicant pointed out that before considering the prayer made in the review application, it is necessary to quote the relevant provision with regard to grant of disability pension as provided under the Pension Regulations for the Army 1961. Section III of the Pension Regulations for the Army 1961 deals with the grant of disability pensions awards. Regulation 48(a) of the said Regulations reads as under:

"48 (a) Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an officer who is invalided out of service on

account of a disability which is attributable to or aggravated by military service in non-battle casualty cases and is assessed at 20 percent or more.”

5. From the above it is thus evident that disability pension consists of both disability element and service element granted in invalidated out cases due to disability attributable to or aggravated by military service. However, no disability element shall be payable for disability assessed as less than 20 percent.

6. It was asserted by learned counsel for the applicant the relief claimed by the applicant in the OA was for grant of disability pension, which includes both disability element and service element and the disability had been assessed at 30 percent. Therefore, by granting only “disability element of pension” to the applicant, there was an error apparent on the face of the record and thus this review application has to be allowed.

7. Per contra the Respondents have asserted that the service element of disability pension was not granted and any review or modification in order dated 17th May, .2016 and or order dated 04th May, 2017 passed in RA 06/2016 would tantamount to alteration of the terms of the order which is impermissible under review jurisdiction and being barred in law. Learned counsel has also drawn our attention to para 4 of order dated 4th May, 2017 to which the applicant has merely contested for Disability Element which is apparent from plain reading of the same. Para 4 is quoted hereunder:

“Mr. Basu, learned counsel for the respondent submits that this Tribunal having regard to the facts involved in the OA has granted the arrears with effect from the date of discharge i.e. 08.06.1977 more so when the applicant has been invalidated out from service and as such he was entitled disability element of pension which was wrongly denied to him. It has also been submitted that it is evident from the direction contained in Paragraph 05 of the aforesaid order dated 17.05.2016 relating to the payment of rounding off benefit, that this Tribunal has directed payment of the said benefit in accordance with the Government circular.”

Thus the present claim is a stale claim seeking to supplement the earlier order.

8. The respondents further contended that if at all any genuine grievance or fresh cause of action arose, it was open to the applicant to file fresh application for assailing any new cause of action and the terms of the order were specific and had no ambiguity or error apparent on the face of record, thus the Review Application may be dismissed.

9. We have heard counsel for the parties at length. The application for Review has been filed after a considerable delay but, we must notice that the order under review was effectively opposed by the applicant herein in RA 06/2016 which was filed by the UoI and was disposed of vide order dated 4th May, 2017. Thereafter the applicant had again filed a representation dated 28th April, 2018 which was disallowed vide order dated 15th May, 2018. It is only thereafter that the applicant chose to prefer the present Review Application, challenging the order passed in OA no. 69/2015 instead of preferring a fresh Original Application.

10 Be that as it may, we have gone through the records and the prayer made in this Review Application, we are also conscious of the scope of Review Jurisdiction which are described in Order XLVII of the Code of Civil Procedure and are quoted here Under:

“(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 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.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.”

11. We may also note the judgment in the case of State of W.B Vs. Kamal Sengupta (Singhvi. J.) [(2008) 8 SCC 612] as settled in Para 22 which is quoted hereunder:-

“The term “mistake or error apparent” by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22 (3) (f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of

fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision."

12. There is also a delay of more than nine hundred days in filing the review application for which the applicant has failed to offer any satisfactory explanation.
13. For the reasons as stated above and after careful consideration of the final order passed, we do not feel that the same warrant any interference under the Review Jurisdiction as there is no error apparent on the face of the record. Moreover, by seeking to obtain a further relief, the applicant has, in fact made an Appeal in disguise which is impermissible in law.
14. We thus find no merit in the Review Application and the same is dismissed both on the grounds of delay and merit.
15. RA No.02/2019 and MA No.07/2019 thus stand disposed off.

Pronounced through Virtual Mode on this 31st day of July 2023

(ANJANA MISHRA)
MEMBER (J)

(SHASHANK SHEKHAR MISHRA)
MEMBER (A)

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