

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

3.

RA 6/2019 with MA 823/2019 in OA 85/2013

Brig L I Singh

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant

: Mr. S S Pandey , Advocate

For Respondents

: Mr. K S Bhati, Sr. CGSC

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA, MEMBER (J)

HON'BLE LT. GEN. SANJIV CHACHRA, MEMBER (A)

O R D E R

15.03.2019

Vide separate order. Review Application filed by the applicant stands dismissed.

2. Counsel for the applicant requests for grant of leave to appeal against the Tribunal order dated 06.02.2019 passed in OA 85/2013 as well as the order passed in Review Application.

3. Under Section 31 of Armed Forces Tribunal Act, 2007, leave to appeal to Hon'ble Supreme Court can be granted only in case, any question of law of public importance is involved. Counsel for the applicant has been asked as to what is the point of law which warrants grant of leave to appeal. However, he has failed to point out any point of law, much less any point of law of public importance involved in the instant case, which warrants grant of leave to appeal.

4. Accordingly, the prayer for leave to appeal is declined.

(JUSTICE SUNITA GUPTA)
MEMBER (J)

(LT. GEN. SANJIV CHACHRA)
MEMBER (A)

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For Applicant : Mr. SS Pandey, Advocate

For Respondents : Mr. Karan Singh Bhati, Sr. CGSC

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HON'BLE MS. JUSTICE SUNITA GUPTA, MEMBER (J)

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ORDER

RA 6/2019 in OA 85/2013

This review application has been filed by the applicant
Brig L I Singh seeking review of the order dated 06 Feb 2019
passed in OA 85/2013 seeking following reliefs:

(a) To review the order dated 06.02.2019 and reconsider
the matter by adjudicating all issues including the
issue as decided by this Hon'ble Tribunal and
thereafter grant all reliefs as prayed for in the OA.

(b) To stay the operation of order dated 06.02.2019
passed by this Hon'ble Tribunal till the pendency of
instant Review Application filed by the Applicant, on
merits.

(c) Pass such orders/further orders as in the instant
matter as deemed appropriate by this Hon'ble
Tribunal.

2. This application for review has been filed under Rule 18
of the Armed Forces Tribunal (Procedure) Rules, 2008 which
reads as under:

"18. Application for review-(1) No application for review shall be entertained unless it is filed within thirty days from the date of receipt of copy of the order sought to be reviewed.

(2) An application for review shall ordinarily be heard by the same Bench which has passed the order, unless the Chairperson may, for reasons to be recorded in writing, direct it to be heard by any other Bench.

(3) Unless otherwise ordered by the Bench concerned, an application for review shall be disposed of by circulation where the Bench may either dismiss the application or direct notice to be issued to the opposite party.

(4) Where an application for review of any judgment or order has been disposed of, thereafter no application for further review shall lie.

(5) No application for review shall be entertained unless it is supported by a duly sworn affidavit indicating therein the source of knowledge, personal or otherwise. The counter-affidavit in review application will also be duly sworn affidavit wherever any averment of fact is disputed.

3. Since this rule does not specify the grounds on which an order can be reviewed, we will have to take recourse to Order XLVII Rule 1 (1) of the Code of Civil Procedure, 1908 which provides for an application for review and reads as under:

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.*

4. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

- i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the applicant or could not be produced by him;*
- ii) Mistake or error apparent on the face of the record;*
- iii) Any other sufficient reason*

5. The words "any other sufficient reason" has been interpreted in **Chhajju Ram V. Neki** MANU/PR/0006/1922: AIR 1922 pc 112 and approved by Hon'ble Supreme Court in **Moran Mar Bassellios Catholicos V. Most Rev. Mar Poulouse Athanasius and Ors.** MANU/SC/0003/1954: (1955) 1 SCR 520, to mean „a reason sufficient on grounds at least analogous to those specified in the rule“.

6. It has been time and again held that the power of review jurisdiction can be exercised for the correction of a mistake and not to substitute a view. In **Parsion Devi and Ors. V. Sumitri Devi and**

Ors. MANU/SC/1360/1997: (1997) 8 SCC 715, Hon'ble Supreme Court held as under:

"9. Under Order 47 Rule 1 Code of Civil Procedure 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 Code of Civil Procedure. In exercise of the jurisdiction under Order 47 Rule 1 Code of Civil Procedure it is not permissible for an erroneous decision to be „reheard and corrected“. A review petition, it must be remembered has a limited purpose and cannot be allowed to be an appeal in disguise".

7. In view of this legal position, let us revert to the application in hand.

8. The applicant seeks review of the order dated 06 Feb 2019, primarily on the following grounds as detailed in para 6 of the application:

(a) Whether it would be legally correct for the Respondents to provide a copy of OMI now after an elapse of about five years and after the conclusion of the C of I thereby initiating to proceed with the disciplinary proceedings against the Applicant and the non consideration of the fact that the Applicant in all fairness would logically has to be given the opportunity to avail his statutory right denied earlier which has not been given thereby making the impugned order totally erroneous on the face of it.

(b) Is not providing the OMI, the sole basis for ordering the C of I, more so when there is a major error in statement by Witness No.7 and two other witnesses between OMI and C of I, legally sustainable?

(c) Is this act by Respondents not a denial of natural justice and violations of rule 180? More so, when such actions has been upheld by the Hon'ble Supreme Court as violations of Rule 180 and denial of natural justice? Does non-providing of OMI before or during the course of C of I vitiate proceedings of the C of I? In this connection, Hon'ble Supreme Court judgements on Lt. Col Prithi Pal Singh Bedi Etc. vs. Union of India & Others (AIR 1413, 1983 SCR (1) 393 of 25 August, 1982) and Union of India Vs. Sanjay Jethi and another (Civil Appeal No. 8914 of 2012, decided on 18 Oct 2013) refers.

9. We have heard Mr. SS Pandey, learned counsel for the applicant and Mr. K.S. Bhati, Sr. SGSC, Ld counsel for the Respondents.

10. During the course of the arguments, learned counsel for the applicant has reiterated the submissions made in the application seeking review of the order dated 06.02.2019. Learned Sr. Counsel for the respondents, however, submits that there is no error apparrent on the face of the record which warrants review of the order. In any case, if the applicant feels aggrieved by the order, appropriate remedy available to him is to file an appeal. Moreover, One Man Inquiry was conducted

only in order to find out whether there is any substance in the oral complaint received against the applicant and thereafter, Court of Inquiry was conducted which was only fact finding inquiry. During the course of disciplinary proceedings the applicant will have ample opportunity to cross examine the witnesses and provisions of Indian Evidence Act will be available to him to safeguard his rights. That being so, there is no ground for review of the order.

11 We have carefully gone through the averments made in the application. As regards the plea that One Man Inquiry was not provided to the applicant, vide order dated 06 Feb 2019, respondents have been directed to provide One Man Inquiry to the applicant. As regards the other submissions made by the applicant, each and every aspect of the matter was considered while passing the detailed order dated 06 Feb 2019 whereby the OA filed by the applicant was disposed off. It is the consistent view taken by Hon'ble Supreme Court that review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 of Code of Civil Procedure.

12. In the present case, the error contemplated in the impugned order is not one which is apparent on the face of record. The Tribunal should interfere only when there is a glaring omission or patent mistake or when a gross error has crept in the order, which we fail to notice in this case. Since the points urged in the application were already dealt with and

answered, the applicant is not entitled to challenge the order under the guise of review application.

13. In view of the above, applicant has not invoked any valid ground for exercising the powers to review the order.

14. That being so, there are no ground for staying the operation of the order dated 06 Feb. 2019 as prayed by the applicant.

15. The application lacks merit and is accordingly dismissed.

MA 823/2019

In this MA, it is alleged by the applicant that during the pendency of the Review Application, the respondents have issued orders dated 22 Feb 2019 thereby attaching him to HQ 20 Mtn Div with immediate effect for initiating disciplinary proceedings against him and coercing him to report to the attachment location forthwith. The applicant was on leave from 11 Feb 2019 to 12 March 2019 but vide order dated 22 Feb 2019, he has been intimated that his leave has been cancelled and he has to proceed on attachment forthwith after rejoining. The applicant is not in a position to report to his attachment location. As such, it is prayed through the medium of this MA that the respondents be directed to maintain status quo by putting on hold the operation of orders dated 22.02.2019.

2. The application is opposed by Ld. Sr. Counsel for the respondents. Reliance has been placed on the recent judgement passed by Hon'ble Supreme Court on 15 Feb 2019 in Civil Appeal No. 1714/2019 **UOI & Ors Vs. Lt Col Dharam**

Vir Singh. In that case also the applicant challenged the attachment order and the same was stayed by the Single Judge of High Court of Manipur. Hon'ble Supreme Court observed that the learned Single Judge should have exercised caution and ought to have been circumspect before he proceeded to stay an order of attachment. Such, pre-emptive judicial strikes are unwarranted. The course of action followed by the Single Judge has serious repercussions for the maintenance of discipline in the Army. Discipline is the essence of the organisation and structure of an Armed Force.

3. In the light of the observation of Hon'ble Supreme Court order dated 15.02.2019 (Supra), we have considered the rival submissions of both the learned counsels on the issues raised in this MA. We do not deem it appropriate to put on hold the attachment order dated 22 Feb 2019, more particularly when we are dismissing the Review Application filed by the applicant. MA is accordingly dismissed.

Pronounced in the open court on this 15th day of March 2019.

(JUSTICE SUNITA GUPTA)
MEMBER (J)

(LT. GEN. SANJIV CHACHRA)
MEMBER (A)

/rkj/