COURT NO. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

10.

RA 44/2017 in MA 988/2017 in OA 02/2013

Capt Sudip Biswas (Retd) ..... Applicant
Versus
Union of India & Ors. ..... Respondents

For Applicant : Mr. SS Pandey, Advocate
For Respondents : Mr. Anil Gautam, Sr. CGSC

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT. GEN. P.M. HARIZ, MEMBER (A)

O R D E R
19.12.2023

Invoking the jurisdiction of this Tribunal under Section 14(f) of the Armed Forces Tribunal Act 2007 read along with Rule 18 of the Armed Forces Tribunal (Procedure) Rules, 2008, this review application has been filed seeking review/recall of the order passed by this Tribunal on 22.05.2013 in O.A No. 2 of 2013. There being a delay of about 862 days, M.A No. 988/2017 has been filed seeking condonation of delay.

2. The applicant was commissioned in the Army on 13.06.1981 in the Air Defence Artillery. In the year 1984, the applicant contracted his first marriage and his first wife committed suicide three months after the marriage on 20.10.1984. He was charged with abetment for suicide but the Criminal Court acquitted him on 23.08.1986. After two years, he entered into a second marriage on 03.09.1988 and within one

year of this marriage, on 26.08.1989 his wife was taken away by her father while the applicant was undergoing Instructors' course. On 19.10.1989, complaints and FIR were lodged against the applicant by his father-in-law and his second wife at Police Station, Bareilly alleging harassment and demand for dowry. The applicant filed an application for restitution of conjugal rights and also a petition for quashing of the FIR before the High Court of Allahabad. Ultimately, the applicant's wife obtained an *ex parte* decree for divorce on 06.04.1993. After the decree for divorce was granted, the applicant contracted a third marriage on 03.01.1994. In the meanwhile, on account of certain acts of commission and omission on the part of the applicant, on 10.09.1990, he was served with a show cause notice under Section 19 of the Army Act 1950 read with Rule 14(2) of the Army Rules 1954. The applicant submitted his reply to the show cause notice on 05.10.1990. After considering the show cause notice, the applicant was given an option either to seek voluntary retirement or to be compulsorily retired. The applicant initially agreed to proceed on voluntary retirement but subsequently withdrew his consent on 26.08.1992. Consequently, he was compulsorily retired on 01.09.1992.

3. Against the order of compulsory retirement from service, the applicant filed a writ petition (CWP 4193 of 1993) before the Punjab and Haryana High Court. A learned Single Judge of the High Court dismissed the writ petition on 05.08.2003. Thereafter

the applicant filed an appeal before a Division Bench of the High Court i.e., Letter Patent Appeal (LPA) No. 439 of 2003. The Division Bench remanded the matter back to the Government for consideration and while doing so, made the following remarks in the order:

> *"The ground on which we have held the dispensation of the Court Martial to be not justified would require us to leave it open to the respondents to invoke the first part of Rule 14(2) after complying with the inbuilt requirements that would be legally mandatory. Our finding that the respondents could not have proceeded with the civil/departmental action by holding that the Petitioner had not submitted any reply would be contingent on what would be the outcome of the de no process that will have now to be initiated under the first part of Rule 14(2). It is, therefore, premature, at this stage, to hold the appellant-writ petitioner to be fee from all liabilities. In a situation where the liability of the appellant, if any, is yet to be finally decided, we are of the view that the relief of reinstatement cannot be granted. We, therefore, decline the same and close this appeal by leaving it open to the respondents to proceed in the matter in accordance with the present directions and as they may be advised. If, however, the respondents do not consider it expedient to reopen the matter within two months of the date of receipt of a copy of this order, they will be obliged to order for the reinstatement of the petitioner on such post for which the appellant-writ petitioner may be found fit with consequential benefits subject to condition that the Appellant is medically fit for service in the Army".*

Thereafter a fresh show cause notice was issued to the applicant on 06.05.2011. The applicant submitted his reply to the same on 14.06.2011. The matter was considered by the Government and finally on 01.04.2002 the applicant was compulsorily retired. This order has been challenged by the applicant before this

Tribunal, after the initial challenge to the same before the Delhi High Court and was withdrawn on account of jurisdictional issue. After the applicant was compulsorily retired on 01.04.2002 and the OA filed by the applicant having been dismissed, this Review Application has been filed after a delay of 862 days.

4. Shri Pandey, learned counsel for the applicant primarily raised three grounds before us in support of his contentions. He referred to the Division Bench judgment of the Punjab & Haryana High Court in LPA No. 439 of 2003 and argued that the Division Bench having held that dispensation of Court Martial was not justified and while invoking the provisions of Rule 14(2) of the Army Rules, the mandatory requirements under Rule 14(2) had not been followed, therefore, the applicant should have been reinstated in service and then fresh action should have been taken after such reinstatement. This having not been done, it is argued that the mandatory requirements of Rule 14(2) of the Army Rules had been violated vitiating the entire action taken against the applicant and this aspect has not been considered by the Tribunal. Further referring to Rule 18(3) of the Army Rules, it was argued that by giving retrospective effect to the compulsory retirement from a date prior to issuance of the second show cause notice after remand by the Division Bench of the Punjab & Haryana High Court in LPA 439 of 2003 an error apparent on the face of the record has been committed which vitiates the entire proceedings. It was also argued by referring to Para 5 of the impugned

judgment that in Para 5 of the judgment, it has been stated by the Tribunal that earlier also a review petition filed by the applicant was dismissed, which is factually not correct. In fact the review application was filed by the Government and not by the applicant. It was also argued that as a contempt petition filed by the applicant was pending the decision to dismiss the application on merit was unsustainable. Even though Shri Pandey candidly admitted that he is not going into the merits of the matter, but he in fact tried to explain that on merits also, this review application has to be allowed. Learned counsel for the applicant relied upon various judgments to say that any action taken in violation to the provisions of the Army Rules particularly Rule 14(2) vitiated the entire proceedings and in this case, the Division Bench of the Punjab & Haryana High Court having found violation of the mandatory requirements of Rule 14(2) the order is liable to be reviewed/recalled and the matter decided afresh.

5. On the other hand, Shri Anil Gautam, learned Central Government Standing Counsel appearing for the respondents argued that after the applicant was issued with the show cause notice based on the order passed by the Punjab & Haryana High Court in the LPA, and that the applicant filed a writ petition before the Delhi High Court after eight months and the writ petition was disposed of on 20.03.2015 granting liberty to the applicant to challenge the order in accordance with law and it is only after two years and four months i.e. 862 days that the review

application has been filed. Referring to the reasons given for condoning the delay in filing the review application, it was argued by Shri Anil Gautam that the applicant simply states in Para 4 that he was not available in Delhi for a long period of time and on account of financial crisis and shifting of family to Calcutta he could not file the Review Application. It is argued that no reasonable justification for the inordinate delay of 862 days is shown and therefore on this ground itself, the Review Application is liable to be dismissed.

6. It was further submitted by Shri Gautam, learned CGSC that the error pointed out in Para 5 can be rectified. The Review Application was filed by the Government and even if this aspect is taken note of no case for review is made out as this Tribunal has given reasonable justification which is legally tenable for rejecting the application. He further argued that even though in the first part of its order passed by the Division Bench of the Punjab & Haryana High Court in LPA 439 of 2023 observations are made with regard to the non-compliance of the requirements under the first part of Rule 14(2), a bare reading of the subsequent part would show that it was the High Court itself which granted liberty to the respondents to proceed with the issuance of show cause notice under Rule 14(2) without reinstating the applicant and without granting him any benefit. It is therefore submitted that the grievance of the applicant now canvassed in this application is nothing but a grievance in the

manner in which the Division Bench of the Punjab & Haryana High Court took a decision and as this Tribunal has only followed the mandate of the Division Bench of the High Court it is not an error apparent on the face of the record. Shri Anil Gautam took us through various aspects of the merits also to say that the order has been passed by giving reasons and there is no error apparent on the face of the record and therefore no case for review is made out.

7. We have heard the learned counsel for the parties at length and perused the records.

8. The principles applicable for review has been crystallised by the Hon'ble Supreme Court in various cases and in the case of *Sasi (D) through LRs v. Aravindakshan Nair and others* (2017) 4 SCC 692, in which by referring to Order 47 Rule 1 of the Code of Civil Procedure, the Hon'ble Supreme Court has observed that the principles for interference in exercise of review jurisdiction are well settled and that the Court passing the order is entitled to review the order, if any of the grounds specified in the relevant provisions are satisfied. It further reads as under:

xx xx xx xx xx xx

> *7. In Thungabhadra Industries Ltd. v. Govt. of A.P. (…….), the Court while dealing with the scope of review had opined:*
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> *xx xx xx xx xx xx*

A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error."

8. In Parsion Devi v. Sumitri Devi (……), the Court after referring to Thungabhadra Industries Ltd. (supra), Meera Bhanja v. Nirmala Kumari Choudhury (……) and Aribam Tuleshwar Sharma v. Aribam Pishak Sharma (……) held thus:

"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". A review petition, it must be remembered has a limited purpose and cannot be allowed to be "an appeal in disguise".

9. The aforesaid authorities clearly spell out the nature, scope and ambit of power to be exercised. The error has to be self-evident and is not to be found out by a process of reasoning. We have adverted to the aforesaid aspects only to highlight the nature of review proceedings.

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If we analyze the case in the backdrop of the aforesaid judgment, we are of the considered view that the grounds raised by the applicant in this application do not indicate any error apparent on the face of the record. It may at best indicate an error which has to be corrected by an appellate forum and not in a review application, as held by the Hon'ble Supreme Court in the case of *Aravindakshan Nair* (supra).

9. The applicant has not explained the inordinate delay of 862 days in filing this review application which should have been filed within 30 days of the order passed on 22.05.2013. In fact the review application has been filed on 31.07.2017 i.e. after a period

of more than two years after the writ petition filed by the applicant was disposed of on 20.03.2015 as not maintainable. As far as the first ground with regard to error in Para 5 canvassed before us is concerned, even though it is a fact that no review application was filed by the applicant, it was the Government which filed the Review Application, in our considered view, this would not make any difference on the merits of the matter. The said correction may be read into the order.

10. As far as the question of non-compliance with the requirements of Rule 14(2) and taking action retrospectively in violation of Rule 18(3) is concerned, in our considered view, the Division Bench of the Punjab & Haryana High Court in its order passed in LPA 439/2013 had clearly stated that the relief of reinstatement cannot be granted and while disposing of the appeal an option was given to the respondents Government of India to proceed with the matter as directed within two months and it was only in case a decision was taken to grant benefit to the applicant reinstatement was necessary. From Para 5 onwards this aspect has been dealt with in detail by the Division Bench which considered the matter and found that the power exercised under Section 19 read with Rule 14(2) in the matter of compulsory retirement of the applicant has been followed correctly. In fact, detailed consideration had been made and the satisfaction with sufficient compliance of Rule 14(2) of the Army Rules had been finally recorded in Para 14 of the order passed under review. That being so, on the grounds of

violation of Rules 14 and 18 as detailed justifiable reasons had been given by the Bench, we find no error apparent on the face of the record warranting review/recall of the order passed by the Tribunal. On the contrary, it may best be an error in application of the rule and its interpretation which cannot be corrected in an application for review. In our considered view, the grounds canvassed in the Review Application are not sufficient to review the order, in exercise of the limited jurisdiction available to us under Rule 18. We, therefore, dismiss the Review Application as we do not find any error apparent on the face of the record.

11. The judgments relied upon by Shri Pandey will not apply in the facts and circumstances of the present case as in this case the second show cause notice was issued without reinstatement on the basis of the liberty granted by the Division Bench of the Punjab & Haryana High Court. The said judgment was never challenged by the applicant and accordingly it attained finality. That being so, in the facts and circumstances of the case, finding no error apparent on the ace of the record warranting review or recall of the order passed by this Tribunal, the Review Application stands dismissed.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT. GEN. P.M. HARIZ]
MEMBER (A)

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