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

59.

RA 65/2019 WITH MA 3107/2019 IN OA 1690/2017

Union of India and Others ..... Applicant
Versus
Ex Sigman Achal Singh Sirohi ..... Respondents

For Applicant : Mr. A.K. Gautam, Sr. CGSC
For Respondents : Mr. S S Pandey, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

O R D E R
07.12.2023

MA 3107/2019

Keeping in view the averments made in this application and finding the same to be bona fide, in the light of the decision in *Union of India and Others* Vs. *Tarsem Singh* [(2008) 8 SCC 648], the instant application is allowed condoning the delay in filing the RA.

2. The MA stands disposed of.

RA 65/2019

3. Invoking the jurisdiction under Rule 18 of the Armed Forces Tribunal (Procedure) Rules, 2008, seeking review/recall of the order passed by a Co-ordinate Bench of this Tribunal on 12.09.2019 this application has been filed by Union of India.

4. The grounds raised in the RA are to the effect that the policy of broad banding which has been granted by the Tribunal. i.e., broad banding of 30% disability to 50% came into force w.e.f. 01.01.1996 and, therefore, the same is not applicable to the respondent (applicant in OA).

5. At the very outset and very fairly, learned counsel for the respondent (applicant in OA) has admitted the aforesaid position and said that to that extent if a correction is made, the respondent (applicant in OA) would not have any objection as broad banding was not prior to 01.01.1996. The other grounds raised by the applicants (respondents in OA) in this RA are that the policy for grant of disability pension to pre-mature retirees came into effect w.e.f. Jan, 2006 and, therefore, in the case of the present respondent (applicant in OA), as he sought pre-mature retirement, he was not entitled to the disability pension. As far as this ground is concerned, on two counts we find that the same is not maintainable in the matter of fixing of cutoff date. A Co-ordinate Bench of this Tribunal in the case of ***Chhote Lal*** Vs. ***Union of India and Ors.*** (OA 368/2021 decided on 11.03.2022) has held that in the matter of granting pensionary benefits in such cases a cutoff date cannot be fixed. However, without going into the same, we find that the issue as to whether the policy could be

made applicable to the applicant or not is a legal issue which has been decided by this Tribunal and when a legal issue is decided by the Tribunal any error in deciding the legal issue is not an error apparent on the face of the record which can be corrected in a review application. At best it may be an error of law which can be corrected on an appeal to a higher forum. For this reference may be made to Paras 6, 7, 8 and 9 of the law laid down by the Hon'ble Supreme Court in the case of ***Sasi (DEAD) Through Legal Representatives*** Vs. ***Aravindakshan Nair and Others*** [(2017) 4 SCC 692] which read as under:

> *"6. The grounds enumerated therein are specific. The principles for interference in exercise of review jurisdiction are well settled. The Court passing the order is entitled to review the order, if any of the grounds specified in the aforesaid provision are satisfied.*
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> *7. In Thungabhadra Industries Ltd. v. State of A.P., the Court while dealing with the scope of review had opined: (AIR p. 1377, para 11)*
>
> > *"11. What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an "error apparent on the face of the record". The fact that on the earlier occasion the Court held on an identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an "error apparent on the face of the record", for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterized as vitiated by "error apparent". A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error."*
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> *8. In Parsion Devi v. Sumitri Devi, the Court after referring to Thungabhadra Industries Ltd., Meera Bhanja v.*

Nirmala Kumari Choudhury and Aribam Tuleshwar Sharma v. Aribam Pishak Sharma, held thus: (Parsion Devi case, SCC p. 719, para 9)

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

6. Even though, learned counsel for the respondent (applicant in OA) referred to a judgment of the Delhi High Court in the case of ***Mahavir Singh Narwal*** Vs. ***Union of India and Another*** [2004 (74) DRJ 661 (DB)] to canvas the second ground on merit as not maintainable and the same is rebutted by the learned counsel for the applicants (respondents in OA) by contending that in the case of ***Union of India and Others*** Vs. ***Ajay Wahi***, Civil Appeal No.1002/2006 decided on 06.07.2010 [(2010) 11 SCC 213] a different view has been taken and we find that this controversy need not be gone into as in our view this is not an error apparent on the face of the record. It may at best be an error of law in deciding the issue which cannot be corrected in the RA.

7. In view of the above, we dismiss the RA and finding no case made out to grant oral prayer for leave to appeal is also stands dismissed.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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