

COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI
RA 27/2022 WITH MA 1749/2022

IN

OA 423/2018

Col Rajesh Kapoor (Retd) Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Aditya Singh Puar, Advocate
For Respondents : Ms. Barkha Babbar, Advocate

Date ~ 24th February, 2023

CORAM

HON'BLE MS. JUSTICE ANJANA MISHRA, MEMBER (J)
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER

MA 1749/2022

For the averments made in the application, which are duly supported by the affidavit of the applicant, the delay in filing the review application is condoned. MA stands disposed of.

RA 27/2022

2. The present review application has been filed for review of the order dated 16th September, 2019 by which this Tribunal has allowed the OA in the following terms:

"7. In the light of the preceding paragraphs and essential parameters given aforesaid, we hereby set aside the impugned order rejecting the claim of the applicant for

disability pension and hold that he is entitled to disability element of pension from the date of his retirement at the rate of 30% for life, which is to be broad banded to fifty per cent in the light of the judgment of the Hon'ble Supreme Court in Union of India and Ors. Vs. Ram Avtar decided on 10th December, 2014.

8. The respondents are directed to release the arrears within a period of four months from the date of receipt of a copy of this order, failing which the arrears shall carry interest at the rate of eight per cent per annum.

9. Since the applicant has come to this Tribunal after considerable delay, hence the arrears are restricted to three years prior to the date of filing of the application (i.e. 02.02.2018)."

3. Learned counsel for the applicant submits that there is an error apparent on the face of record at para 9 of the order under review as the delay in filing the OA has been occasioned on account of delay in disposal of the appeals filed by him before the respondents and, therefore, inadvertently the Court having recorded and saddled the "delay" on the shoulders of the applicant, has committed a patent error.

4. Without going into the merits of the contentions, we have reverted back to the OA the synopsis and list of dates to see and confirm the date of filing of the appeals and the respective dates of their disposal by the respondents. From a perusal of the same it is crystal clear that the delay of nearly three years has been caused on the part of the respondents in disposal of the appeals filed by the applicant. Thus the arrears granted to the applicant

having been restricted to three years prior to the date of filing of the OA should in fact have to be from the date of retirement of the applicant. It is evident that the applicant superannuated on 30th September, 2013 but his disability pension has been restricted to only from 2nd February, 2018 onwards which will cause substantial loss to him.

5. In our view, this is a sufficient cause for this Tribunal to note and modify para 9 of the order dated 16th September, 2019 to the extent that the applicant will be entitled to arrears from the date of his superannuation and not from 2nd February, 2018 as the delay has been caused by the respondents in almost taking three years in disposal of the appeals filed by the respondents. The first appeal filed by the applicant on 26th December, 2014 was disposed of on 5th November, 2015 and the second appeal preferred on 29th December, 2015 was disposed of on 7th December, 2017.

6. In this context we are persuaded by the rationale of the decision in Meera Bhanja (Smt) Vs. Nirmala Kumari Choudhury [(1995) 1 SCC 170] which reads as under :

“Held :

The 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, CPC. The review petition has to be

entertained only on the ground of error apparent on the face of record and not on any other ground. An error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on points where there may conceivably be two opinions. The limitation of powers of court under Order 47 Rule 1, CPC is similar to the jurisdiction available to the High Court while seeking review of the orders under Article 226."

7. In view of the above the Review Application is allowed and para 9 of the order dated 16th September, 2019 is modified to the extent that the applicant shall now be entitled to arrears of disability element of pension from the date of his superannuation.

Pronounced in open Court on this 24 day of February, 2023.

(ANJANA MISHRA)
MEMBER (J)

(C.P. MOHANTY)
MEMBER (A)

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