

COURT No.1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

45.

RA 43/2017 WITH MA 3500/2023
AND MA 974/2023 IN OA 700/2015

Maj Nishant Gupta	Applicant
VERSUS		
Union of India and Ors.	Respondents

For Applicant : Mr. Gautam Jha, 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)

ORDER
05.12.2023

MA 974/2023

This is an application filed under Rule 25 of the Armed Forces Tribunal (Procedure) Rules, 2008, by the applicant seeking permission to bring on record certain additional documents. For the averments made in the application which are duly supported by an affidavit of the applicant, the application is allowed and the additional documents filed are taken on record. MA stands disposed of.

MA 3500/2023

2. This is an application filed by the respondents under Rule 12(5) of the Armed Forces Tribunal (Procedure Rules, 2008 seeking condonation of delay in filing the reply affidavit. For the reasons stated

in the application the delay in filing the reply affidavit is condoned. The reply is taken on record. MA stands disposed of.

RA 43/2017

3. Invoking the jurisdiction of this Tribunal under Rule 18 of the Armed Forces Tribunal (Procedure) Rules, 2008, the applicant seeks review and recall of an order passed by this Tribunal on 17th September, 2015 in OA 700/2015.

4. On 11th September, 2015 vide **Annexure A-1**, the applicant claimed disability benefits on account of the fact that he was suffering from Tubercular Spondylitis of LV2 and LV3 of the Spinal code. After considering the submissions made by the applicant and taking note of the rule position, the application was dismissed. It was the case of the applicant that he was entitled to war injury pension as he was working and posted in an area which was duly declared as an operational area and, therefore, he is entitled to war injury pension whereas the respondents have processed his claim in the general manner for general disability and not a war injury.

5. Finding the ailment of the applicant to be Tubercular Spondylitis, which is not an accidental injury or death which occurred while in action in an operational area, the application had been dismissed. While considering the matter, this Tribunal relied upon the provisions of Army Order 1/2013 (Appendix- A) Sub-para (d) of Para- 1 wherein classification of war injury and battle casualties have been

indicated and it was found that only accidental injuries and death, which occurred in action in an operational area, are covered for the purpose of grant of war injury benefit or battle casualty and the applicant's disease being Tubercular Spondylitis, which has nothing to do with an injury sustained accidentally or otherwise while in operation, the application has been dismissed.

3. Now, the applicant wants us to review or recall the said order and in support thereof places reliance on Annexure A-2, a policy letter issued on 31st January, 2001 in the matter of implementation of Government Orders and Recommendations of the 5th Central Pay Commission and by referring to the injuries classified in Category -E of the said document, pertaining to death and disability arising out as a result of enemy action, wants us to classify the applicant's ailment as a war injury under Clause (i) of Category E. It is argued that the applicant was posted in a notified operational area and, therefore, the injury sustained by the applicant will fall in the said category. In our considered view, the recommendation and implementation of the policy has to be read along with the main policy referred to in Para 6 of the order passed by this Tribunal, i.e., Sub-para (d) of Para-1 of the Army Order 1/2013 wherein only such disabilities which occurred on account of accidental injuries and death and which are sustained while in action in an operation area. Admittedly, the injury sustained by the applicant or the ailment of the applicant being Tubercular Spondylitis

does not fall in that category and the learned Bench has rightly rejected the claim of the applicant.

5. Taking note of the aforesaid, we find no error apparent on the face of the record warranting review or recall of the order. The scope of review is laid down by the Hon'ble Supreme Court in the case of Sasi (Dead) through Legal Representatives Vs. Aravindakshan Nair and Ors. [(2017) 4 SCC 692] and in para 8, the law has been crystalised in the following manner:

“8 In Parison Devi Vs. Samitri Devi, the Court after referring to Thungabhadra Industries Ltd., Meera Bhanja Vs. Nirmala Kumar Chaudhary and Aribam Tuleshwar Sharma Vs. Aribum Pishak Sharma held thus:

“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.”

7. Keeping in view the aforesaid legal position and the facts of this case, we are of the considered view that there is no error apparent on the face of the record warranting review or recall of the order dated

17th September, 2015 passed by this Tribunal, hence this Review
Application is dismissed.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

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

/vks/