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

47.

RA 41/2023 WITH MA 4082/2023 IN OA 1688/2017

Ex MWO Shiboo Yadav ..... Applicant
Versus
Union of India & Ors. ..... Respondents

For Applicant : Mr. Virender Singh Kadian, Advocate
For Respondents : Mr. Avdhesh Kumar Singh, Advocate

CORAM

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

ORDER
05.12.2023

MA 4082/2023

Keeping in view the averments made in the application and in the light of the decision in ***Union of India and others*** *Vs.* ***Tarsem Singh*** (2009(1) AISLJ 371), the delay in filing the OA is condoned.

2. MA stands disposed of.

RA 41/2023

3. This application has been filed under Section 18 of the Armed Forces Tribunal (Procedure) Rules, 2008 seeking review/recall of an order passed by a Cordinate Bench of this Tribunal in OA 1688/2017 on 5th December, 2019. As the Bench which heard the matter is no more avaialble, this Bench has been constituted for hearing the review application.

4. In OA 1688/2017, the applicant claimed disability pension on account of three ailemnts, namely, Primary HYRERTENSION assessed @30%, CAD-DVD POST PCILAD RI (OLD) assessed @ 40% for life and INTERMITTENT ARTERIAL FIBRILLATION (OLD) @ 20% for life. All the disabilities were compositely assessed @70% for life long. As far as, Primary Hyrertension is concerned, it was held neither attributable nor aggravated by military service.

5. In view of the requirement contemplated in Para 43 of GMO, 2002, whereas for other two ailments benefit of disablity was granted to the extant of 40% for life broad-banded to 50%, *interalia,* contending that in view of the findings recorded in para 8, disability pension should have been granted for Primary Hypertension also, this application has been filed.

6. In Para 8 of the impugned order the learned Bench has dealt with the issue in the following manner:-

> *"We find that, whereas the medical authorities, during the RMB conducted in December 2010, granted aggravation to the composite rate of 40% for two medical conditions viz. CAD-DVD and intermittent Arterial Fibrillation, they held the third medical condition viz. Primary Hypertension as NANA, quoting the contents of para 43 of the GMO, 2022, which describes the grant of attributability to this disease as 'never appropriate'. Even for granting aggravation, it needs to be established that the service conditions or compulsions of the applicant*

caused excessive stress, which is not apparent in this case. Moreover, we find that Primiary Hypertension has causative/symptomatice links to occurrence of heart/arterial disease, as apparent from the onset of the applicant's othe two medical conditons. In our opinion, the respondents have very fairly already granted 50% disability element of pension (after broad banding from 40% for two medical conditions viz. CAD-DVD and Intermittent Arterial Fibrillation based on recommendaions of the RMB and thus the prayer for interference by this Tribunal to modify the RMB recommendations and increase the disability element of penson to cover the related condition of Primary Hypertension is not justified.

7. Having bestowed our anxious considertion to the submissions made before us and considering the scope of review in such matters, as laid down by the Hon'ble Supreme Court in the case of ***Sasi (DEAD) Through Legal Representatives v. Aravindakshan Nair and Others (2017) 4 SCC 692*** and in Para 6, 7, 8 and 9 the principle of review has been laid down 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 provisions are satisfied.

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".

8. *In Parsion Devi v. Sumitri Devi, the Court after referring to Thungabhadra Industries Ltd. Meera Bhanja v. Nirmala Kumari Choudhary 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 apartment 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 purposed 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 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.*

8. We find no error apparent on the face of the record warranting review of the order. At best, the applicant may have a case to agitate his grievance before the higher forum but certainly this is not a case for review.

9. Thus, this review application is dismissed.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

/ps/