

COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

4.

RA 62/2023 with MA 5140/2023 in OA 1578/2020

Ex Sgt Onkar Mishra Applicant

VERSUS

Union of India and Ors. Respondents

For Applicant : Mr. Virender Singh Kadian , Advocate

For Respondents : Ms. Barkha Babbar, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)

HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

06.12.2023

Alongwith RA 62/2023 is MA 5140/2023 filed by the applicant which seeks condonation of 35 days delay in filing the said application RA 62/2023 which in terms of Rule 18 (1) of the Armed Forces Tribunal Procedure Rules, 2008 is dismissed being devoid of merit and barred by time.

2. Nevertheless, in the interest of justice, we also consider it appropriate to consider the contents of RA 62/2023.

3. In terms of Order XLVII of CPC 1908 as amended it is provided to the effect:-

“

ORDER XLVII

Review

1. Application for review of judgment. – (1) Any person considering –

(a) By a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) By a decree or order from which no appeal is allowed, or

(c) By a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after and exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

2. *A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.*

[Explanation – The fact that the decision on a question of law on which the judgment of the court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.]”

4. There is nothing on the record to indicate that there is any discovery of any new and important matter of evidence which after exercise of due diligence which was not within the knowledge of the applicant, could not have been produced by him at the time when the order sought to be reviewed dated 25.05.2023 in OA 1578/2020 was passed. Further the contention that is sought to be raised on behalf of the applicant that there is a mistake or

error apparent on the face of the record or that there is any other sufficient reason to seek review is also belied from the record.

5. It is essential to observe that the contents of the present application read inter alia to the effect :-

“4. That the applicant was ordered by the Air Officer Commanding for cleaning of compound and surrounding upto 10 meters and also issued show cause notice No 18W/C 3001/2/P1 dated 28.08.2018 and directed that in spite of various instructions issued, the applicant have not cleared the vegetation around SMQ No 25/8, which is clear violation of the instruction issued by the Air Officer Commanding vide SRO No 62/2018 entry No 18 dated 02.08.2018. Air Officer Commanding directed to explain as to why necessary disciplinary action should not be initiated against him for having failed cleaning the vegetation around the Govt married accommodation.

5. That as per para 13 of order dated 25.05.2023 in OA 1578/2020 Hon’ble Tribunal hold that the injury of the applicant has not causal connection with military duty as the relevant documents could not be placed on record inadvertently. Copy of Show Cause Notice dated 28.08.2020 is marked as Annexure A-2. The applicant was sustained injury while straightening iron pole in garden of his quarter which has also been mentioned on page No 23 and 38 of the OA but could not be taken into consideration. Due to this the applicant also applied for change of section vide application dated 05.09.2017 (Annexure A-3) due to his disability. The clearing of vegetation around Govt Quarter is part of duty as made clear from SCN.”

6. It is essential to observe that the records of OA 1578/2020 reflect through the RMB placed on record dated

22.03.2018 that the date of the Partial ACL Tear Left Knee (old) sustained by the applicant was on 28.08.2016 at Pathankot.

7. The applicant has sought to submit vide the present RA 62/2023 to the effect that the applicant's injury was whilst he was straightening an iron pole in the garden of his quarter as has been mentioned in the OA and that the same was not taken into consideration. Apparently, the aspect of the straightening of the iron pole in the garden of his quarter is dealt with vide observations detailed in para 4 of the order sought to be reviewed.

8. Another aspect which cannot be overlooked and is essential to be taken into consideration is that the averments in para 5 of the present RA place reliance on a Show Cause Notice dated 28.08.2018 submitted as Annexure A-2 to the application under consideration issued by the Air Officer Commanding AOC to the applicant calling upon the applicant to explain as to why necessary disciplinary action should not be initiated against him for having failed in following the instructions issued and that the said Show Cause Notice had called upon the applicant to submit the response by 29.08.2018. The said Show Cause Notice relates to the cleaning of the compound and surrounding upto 10 meters as stipulated in Chapter 11 Para 37 P II of IAP 2501. **It is essential to observe that the said Show Cause Notice is dated 28.08.2018**

and as already observed hereinabove, the date of the incident in the instant case is 28.08.2016.

9. Apparently, the application RA 62/2023 is devoid of all merit and is thus dismissed.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

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