

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

40.

RA 15/2024 WITH MA 1383/2024

IN OA 829/2022

Union of India and others	...	Applicant
Versus		
Sgt Ranjit Bahadur(Retd)	...	Respondents
For Applicant	:	Dr. V.S. Mahndiyan, Advocate
For Respondents	:	Mr. Manoj Kumar Gupta, Advocate

CORAM:

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

O R D E R
03.04.2024

MA 1383/2024

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

RA 15/2024

2. This review application has been filed by the Union of India and others (Respondents in original O.A) under Rule 18 of the Armed Forces Tribunal (Procedure) Rules 2008 for reviewing the order dated 25.04.2023 passed by this Tribunal in O.A No. 829 of 2022.

3. The applicant filed the original OA seeking direction to grant him disability element of pension @30% broad banded to 50% for life in terms of the judgement of the Hon'ble Supreme Court

dated 10.12.2024 in *Union of India and others v. Ram Avtar* (C.A No. 418 of 2022) by treating his disabilities as attributable and aggravated by military service in terms of the decision in *Rajbir Singh v Union of India and others* (2015) 12 SCC 264; to set aside the impugned order to the extent it denies disability pension and to direct the respondents to pay due arrears with interest @10% per annum with all consequential benefits.

4. This Tribunal, vide order dated 25.04.2023, after condoning the delay of 3760 days in filing the O.A, allowed the O.A holding that the applicant is entitled to disability element of pension @ 30% rounded off to 50% with effect from the date of his discharge i.e. 30.06.2011 and rejecting all other claims made by the applicant.

5. The respondents in the O.A place reliance on the decision in *Union of India and others v. Tarsem Singh* (2008) 8 SCC 648 to contend that the arrears of disability pension granted to the applicant ought to have been restricted for a period of three years prior to the date of filing of the O.A. It was also contended that the decision of this Tribunal in *Ex Sgt Girish Kumar v. Union of India and others*, O.A No.1439 of 2016 decided on 01.12.2017 granting arrears of disability element of the disability pension from the date of retirement of the applicant therein had been challenged before the ^{“1”} Supreme Court in C.A No. 21811 of 2018 and the Hon’ble Cou ^{“2”} *Madam* order dated 13.07.2018, had stayed the order passed by this Tr

It was observed by the Hon'ble Court therein that "however, Ld. Additional Solicitor General says that he will advise the Union of India to release the disability pension for a period of three years prior to the date of filing the original application before the Tribunal or the date of retirement as may be applicable". In support of their case, the respondents have also stated that as per the Government of India, Ministry of Defence letter dated 13.09.2018, arrears of broad banding of disability element of disability pension in all court cases are to be granted for a maximum period of three years prior to the date of filing of application or from the date of discharge, whichever is less as per the Hon'ble Supreme Court order dated 13.07.2018 in *Ex Sgt Girish Kumar* (supra).

6. On the other hand, it is submitted on behalf of the original applicant that there is no illegality or irregularity in the order passed by this Tribunal and the order granting arrears of disability pension to the applicant from the date of his discharge is perfectly legal and justifiable. Making the above submission, the original applicant submitted that the review application may be dismissed.

7. We have heard the learned counsel appearing on behalf of the respective parties.

8. At the outset, it is required to be noted that the applicant is discharged from service on 30.06.2011 and he has filed the present O.A after a delay of more than 3760 days. Therefore, the question that

arises for the consideration of this Tribunal is, whether, in the given facts and circumstances of the case, this Tribunal will be justified in allowing the review application and setting aside the reasoned order passed by this Tribunal?

9. It is a settled legal position that while exercising the review jurisdiction, the review court does not sit in appeal over its own order and that a re-hearing of the matter is impermissible in law. Further, the power of review can be exercised for correction of a mistake but not to substitute a view and such powers can be exercised within the limits of the statute dealing with the exercise of power. The power of review can also be exercised for any sufficient reason which is wide enough to include a misconception of fact or law by a court or even an advocate.

10. In the present case, the only grievance of the respondents is with regard to grant of arrears of disability element of pension from the date of discharge of the applicant. Normally, this Tribunal restricts arrears of disability element of pension to three years prior to the date of filing of the O.A taking into account the inordinate delay on the part of the applicants in approaching the Tribunal and in light of the decision in *Tarsem Singh* (supra). Therefore, it appears to us that we have omitted to restrict the arrears to three years prior to the date of filing of the O.A. In the light of the decision in *Tarsem Singh* (supra), the arrears ought to have been restricted to three years prior to the

filings of the O.A instead of granting it from the date of discharge of the applicant. We are of the clear view that our order dated 25.04.2023 granting arrears from the date of discharge of the applicant is an error apparent on the face of the record and it is to be reviewed.

11. In view of the above and for the reasons stated above and applying the law laid down by the Hon'ble Supreme Court in the case of *Tarsem Singh* (supra), exercising the jurisdiction vested in this Tribunal under Rule 18 of the Armed Forces Tribunal (Procedure) Rules 2008, the review application is allowed and the order passed by this Tribunal on 25.04.2023 is reviewed as under:

4. Accordingly, we allow this application holding that the applicant is entitled to disability element of pension @ 30% rounded off to 50% with effect from the date of his discharge. However, the applicant is entitled to the arrears effective from three years prior to the date of filing of the present O.A i.e. 19.04.2022. All other claims stand rejected.

12. Thus, the RA 15/2024 stands disposed of.

13. This order shall form part and parcel of the order passed by this Tribunal in OA 829/2022 on 25.04.2023.


(JUSTICE RAJENDRA MENON)
CHAIRPERSON


(LT GEN C.P. MOHANTY)
MEMBER (A)