BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL

BENCH AT NAINITAL

Present: Hon'ble Mr. Justice U.C.Dhyani

------ Chairman

Hon'ble Mr. Rajeev Gupta

-------Vice Chairman (A)

REVIEW APPLICATION NO. 02/NB/DB/2021

[IN CLAIM PETITION NO. 32/NB/DB/2018]

Smt. Tulsi Arya, w/o Sri Himmat Ram Arya, presently serving as Supervisor/ Mukhya Sevika, o/o Child Development Project Officer, Rudrapur City, District Udham Singh Nagar and others.

……Review applicants

vs.

State of Uttarakhand through its Secretary, Department Women Empowerment and Child Development, Government of Uttarakhand, Dehradun and others.

…….Respondents.

Present : Sri Bhagwat Mehra & Sri Amar Murti Shukla, Advocates,
for the review applicants.
Sri Kishore Kumar, A.P.O., for Respondents No. 1 & 2.
Sri Ashish Joshi, Advocate, for Respondent No. 3.
Ms. Menka Tripathi, Advocate,
for Respondents No.24, 26,28,29,30,31,33,35,37
39,40,43,45,48,49, 50 & 52.

JUDGMENT

DATED: DECEMBER 01, 2022

Justice U.C.Dhyani (Oral)

Present review application has been filed by the petitioners/ review applicants to review the order dated 29.10.2021, passed by this Tribunal in Claim petition No. 32/NB/DB/2018, Smt. Tulsi Arya and others vs. State and others.

2. The Tribunal, while discussing the merits of the case, observed in Para 23 of the judgment that the claim petition lacks merits and there is no reason to grant the reliefs as prayed for by the petitioners. The Tribunal also discussed the relevant provisions of law to hold that the claim petition is barred by limitation. Thus, the claim petition was found to be not maintainable. It was found lacking in merits also.

3. Now the petitioners/ review applicants have assailed Tribunal's order before the Tribunal itself, on the grounds *inter alia* that if the claim petition was found to be barred by limitation, it should not have been decided on merits. Why did the Tribunal do so? The reply is that the Tribunal wanted to do justice to the parties and also wanted to make it doubly sure that even if the claim petition is barred by limitation, whether there are merits in the claim petition or not. When the Tribunal found that it lacks merits and is also barred by limitation, the claim petition was dismissed.

4. Although the provisions of the Code of Civil Procedure, 1908 (for short, C.P.C.) are not applicable to the Tribunal, yet on many occasions, as has happened in this claim petition too, the guidance is to be taken from the provisions of C.P.C. Rule 17 of the Uttar Pradesh Public Services (Tribunal) (Procedure) Rules, 1992 (for short, Rules of 1992), provides for review before this Tribunal. How the review application has to be dealt with, what are the parameters for deciding the review application, have not been specified in the Rules of 1992. In such cases the Tribunal has to seek guidance from the provisions of C.P.C.

5. Order 14 Rule 2 C.P.C. reads as under:

> (1) Notwithstanding that a case may be disposed of on preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

> (2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to-
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> (a) the jurisdiction of the Court, or
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> (b) a bar to the suit created by any law for the time being in-force. and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.

The claim petition has been decided after final hearing and that is why the Tribunal has precisely given findings on the preliminary issue (limitation) and on merits.

6. A detailed review application has been filed by the review applicants. Objections have been filed on the same by Ld. A.P.O., on behalf of Respondent No.2, by Sri Ashish Joshi, Advocate, on behalf of Respondent No. 3 and by Ms. Menka Tripathi, Advocate, on behalf of Respondents No.24, 26, 28, 29 ,30, 31, 33, 35, 37, 39,40,43,45,48,49, 50 & 52. The replies of the review application have precisely been given in the objections filed on behalf of such respondents. **The grounds taken by the review applicants have appropriately been dealt with in those objections**. The Tribunal does not think it necessary to elaborate the grounds and objections filed thereon, for , it is of the view that the review application itself is not maintainable.

7. Regarding maintainability of the review petition, it is now well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XLVII, Rule 1 CPC. A perusal of the said provisions of Order XLVII, Rule 1 CPC show that review of a judgment or an order could be sought : (a) from the discovery of new and important matters or evidence which after the exercise of due diligence was not within the knowledge of the applicant; (b) such important matter or evidence could not be produced by the applicant at the time when the decree was passed or order made; and (c) on account of some mistake or error apparent on the face of record or any other sufficient reason.

8. The scope of review came up for consideration before the Apex Court in the case of *M/s. Thungabhadra Industries Ltd. vs The Government of Andhra Pradesh, 1964 SCR (5) 174,* wherein the Supreme Court held as below :

> **"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".**
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> **A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. Where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face and there could reasonably be no two opinions entertained about it, a clear case or error apparent on the face of the record would be made out**."

9. In *Aribam Tuleshwar Sharma vs Aribam Pishak Sharma, AIR 1979 SC 1047,* Hon'ble Supreme Court has observed as under:

> "…….. … there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter of evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made, it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. **That would be the province of a Court of appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all manner of errors committed by the Subordinate Court**."
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> *[Emphasis supplied]*

10. In the decision of *Northern India Caterers (India) Ltdvs. Lt. Governor of Delhi, AIR 1980 SC 674*, it has been held that **a party is not entitled to seek a review of a judgment delivered by the Court merely for the purpose of a rehearing and a fresh decision of the case**. The normal principle is that a judgment pronounced by the Court is final and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so. **Whatever may be the nature of the proceeding, it is beyond dispute that a review proceeding cannot be equated with the original hearing of the case and the finality of the judgment delivered**

by the Court will not be reconsidered except where a glaring omission or a patent mistake or a grave error has crept in earlier by judicial fallibility.

[Emphasis supplied]

11. The decision in *Aribam's case (supra)* has been followed by Hon'ble Supreme Court in the case of *Smt. Meera Bhanja vs Smt. Nirmala Kumari Choudary, AIR 1995 SC 455*, wherein the Hon'ble Court has reiterated that **an error apparent on the face of the record for acquiring jurisdiction to review must be such an error which may strike one on a mere looking at the record and would not require any long drawn process of reasoning**.

[Emphasis supplied]

12. The ambit and scope of a review has been observed by the Hon'ble Apex Court in the case of *Haridas Das vs Smt. Usha Rani Barik & Others, AIR 2006 SC 1634*, as under :

> "In order to appreciate the scope of a review, Section 114 of the CPC has to be read, but this section does not even adumbrate the ambit of interference expected of the Court since it merely states that it 'may make such order thereon as it thinks fit.' The parameters are prescribed in Order XLVII of the CPC and for the purposes of this lies, permit the defendant to press for a rehearing 'on account of some mistake or error apparent on the face of the records or for any other sufficient reason.' The former part of the rule deals with a situation attributable to the applicant, and the latter to a **jural action which is manifestly incorrect or on which two conclusions are not possible. Neither of them postulate a rehearing of the dispute because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/ or cited binding precedents to the Court and thereby enjoyed a favourable verdict**. This is amply evident from the explanation in Rule 1 of the Order XLVII which states that 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. **Where the order in question is appealable the aggrieved party has adequate and efficacious remedy and the Court should exercise the power to review its order with the greatest circumspection**."
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> *[Emphasis supplied]*

13. On an analysis of the aforesaid decisions, it is seen that the law is well settled that the **power of review is available only when there is a mistake or an error apparent on the face of the record and not for correcting an**

erroneous decision. Hence the plea that the decision is erroneous on merit due to wrong interpretation of law or because of illegal and erroneous finding, whether on fact or in law, cannot be a ground for review. The said power of review cannot be exercised for rehearing and correcting an erroneous decision. The only remedy available to the aggrieved party, is to assail such erroneous decision in appeal. The power to review is a restricted power which authorizes the Court, which passed the judgment sought to be reviewed, to look over through the judgment not in order to substitute a fresh or a second judgment but in order to correct it or improve it, because some material which it ought to have considered had escaped its consideration or failed to be placed before it for any other reason.

14. In view of the above discussion, the law of review can be summarized that it lies only on the grounds mentioned in Order XLVII, Rule 1 CPC. The party must satisfy the Court that the matter or evidence discovered by it at a subsequent stage could not be discovered or produced at the initial stage though it had acted with due diligence. A party filing a review application on the ground of any other "sufficient reason" must satisfy that the said reason is analogous to the conditions mentioned in Order XLVII, Rule 1 CPC. **Under the garb of review, a party cannot be permitted to re-open the case and to gain a full-fledged inning for making submissions, nor review lies merely on the ground that it may be possible for the Court to take a view contrary to what had been taken earlier. Review lies only when there is error apparent on the face of the record and that fallibility is by the over-sight of the Court**. If a case has been decided after full consideration of arguments made by a counsel, he cannot be permitted, even under the garb of doing justice or substantial justice, to engage the Court again to decide the controversy already decided. **If a party is aggrieved of a judgment or order, it must approach the higher Court by way of appeal or revision, as the case may be, but entertaining a review to reconsider the case would amount to exceeding its jurisdiction, conferred for the very limited purpose of review**. Justice connotes different meaning to different persons in different contexts and therefore, Courts cannot be persuaded to entertain a review application to do justice unless it lies only on the grounds permitted in law.

15. In the present case, the petitioner has not specified as to what is the glaring omission or error apparent on the face of the record which requires reconsideration by way of review.

16. **A student of Law is well aware of the difference between writ jurisdiction, appellate jurisdiction, revisional jurisdiction and review jurisdiction. They operate in different situations and are governed by different statutory provisions. At present, the review applicants pray that order dated 29.10.2021 should be reviewed by this Tribunal in review jurisdiction. The scope of review jurisdiction is very limited. Review is permissible only when (i) there is an error apparent on the face of record, (ii) there is clerical or arithmetical mistake or (iii) for any other sufficient reason. None of these three is attracted in this case. There is no manifest error on the face of record. There is no clerical mistake. There is no other sufficient reason to indicate that the order sought to be reviewed should be reviewed in the interest of justice**.

17. Granting the relief, as prayed for in the review application, is beyond the jurisdiction of a Review Court.

18. Even if all the factual grounds taken up in the review application are taken to be true, the same would not attract review jurisdiction to enable the Tribunal to grant relief to the review applicants.

19. By filing present review application, the review applicants seek to reargue the claim petition, which is not permissible in law.

20. Applying the principles of law, as discussed above, to the facts of the present case, irresistible conclusion would be that the review application lacks merits and should be dismissed. The review application, therefore, fails and is dismissed.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: DECEMBER 01 , 2022

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