

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN**

Present: Hon'ble Mr. Justice U.C.Dhyani
----- Chairman
Hon'ble Mr. Rajeev Gupta
-----Vice Chairman (A)

**REVIEW APPLICATION NO. 06/DB/2022
[IN CLAIM PETITION NO. 62/ DB/2020]**

1. State of Uttarakhand through Secretary, Finance, Govt. of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Director, Directorate, Treasury, Pension and Entitlement, Uttarakhand, 23 Laxmi Road, Dehradun, Uttarakhand.

.....Review applicants

VERSUS

1. Surya Prakash Singh aged about 26 years s/o Sh. Jai Prakash Singh.
2. Gopal Binwal aged about 38 years, s/o Sh. L.D.Binwal.
3. Komal Prasad Upreti, aged about 38 years s/o Late Kripal Dutt Upreti.
4. Sanjay Kumar, aged about 37 years, s/o Late Dharamveer Singh.
5. Mohd. Naiam, aged about 34 years, s/o Mohd. Saeed.
6. Yogendra Kumar, aged about 27 years, s/o Sh. Ashok Kumar.
7. Khushbu Verman, aged about 27 years, d/o Baleshwar Singh.
8. Babita, aged about 34 years, w/o Devashish Chatterjee.
9. Rashmi, aged about 27 years d/o Ramesh Kumar Bharti.
10. Kiran, aged about 28 years, d/o Hukum Singh.

.....Respondents

Present: Sri V.P.Devrani, A.P.O, for the review applicants
Sri L.K.Maithani, Advocate, for the petitioners (respondents herein).

JUDGMENT

DATED: JANUARY 05, 2023

Justice U.C.Dhyani (Oral)

The genesis of present review application is the judgment dated 25.07.2022, rendered by Hon'ble High Court of Uttarakhand in WPSB No. 425 of 2022, State of Uttarakhand and another vs. Surya Prakash Singh and others. It will be appropriate to reproduce the judgment of Hon'ble Court herein below for reference:

“After some arguments, learned counsel for the petitioners states that the petitioners would seek review of the impugned order before the Tribunal on the ground that post the impugned judgment dated 01.10.2021, being rendered, the Anomalies Committee has examined the aspect of difference in pay of Assistant Accountants and Accountants in the Treasury, on the one hand, and other Government departments, on the other hand, and found no anomaly.

2) Mr. Saharia, who appears for the respondents, on advance notice, states that reliance placed on the Anomalies Committee's report is misplaced.

3) We are not inclined to examine the said aspect since the petitioners state that they shall seek review of the impugned order on the aforesaid ground. It should be open to the parties to present their respective cases on the said aspect before the Tribunal.

4) Accordingly, the writ petition is dismissed as withdrawn with liberty as prayed for. We make it clear that we have not expressed any view on the merit one way or another, including on the aspect of delay and laches in preferring the present petition.

Stay Application (IA No. 01 of 2022) also stands disposed of.”

2. Sri L.K.Maithani, Ld. Counsel for petitioners No. 1 to 10 (respondents herein) submitted that the review application is not fit for admission. *Vide* order dated 04.08.2022, respondents were granted time to file objection to the review application. Accordingly, objections were filed on behalf of the respondents, to which reply has also been filed by Sri V.P.Devrani, Ld. A.P.O., representing review applicants. Supplementary C.A. thereto has also been filed on behalf of petitioners (respondents herein).

3. There is delay in filing the review application, which is not seriously opposed by Ld. Counsel for the respondents. The delay in filing the review application is, therefore, condoned, in the interest of justice.

4. Heard Ld. Counsel for the parties on merits of the review application.

5. Sri V.P.Devrani, Ld. A.P.O., who is representing review applicants, submitted that in order to resolve the pay anomaly, the Secretary, Finance, Govt. of Uttarakhand referred the matter to the Pay Anomaly Committee *vide* letter dated 07.04.2022 (Copy: Annexure-3). The question was, whether the Assistant Accountants working in the Directorate, are entitled to the same pay scale as is being given to the Assistant Accountants working in State/ District Treasuries as per Govt. Orders dated 15.02.2019 and 22.02.2019 or not? The issue was referred to the Pay Anomaly Committee.

5.1 Ld. A.P.O. further submitted, on behalf of review applicants, that the matter was thoroughly considered by the Pay Anomaly Committee. In its meeting held on 05.05.2022, the Pay Anomaly Committee duly considered the circumstances, the work done and the responsibilities of the Assistant Accountants, working in the State/ District Treasuries and of the Assistant Accountants working in the Directorate. Opinion of Assistant Accountants, their representatives, HOD of the Directorates and State Govt. was taken. After considering all the facts and evidences on record and opinions expressed by different authorities and after thoroughly weighing the sensitivity of the work, nature of duties and work of the concerned employees, the Pay Anomaly Committee submitted its opinion on 09.05.2022 to the Govt. (Copy: Annexure-4).

5.2 Ld. A.P.O. further submitted that the Pay Anomaly Committee has categorically held that the Assistant Accountants working in Directorates of different State Departments are not entitled to up-gradation of pay scale as per Govt. Orders dated 15.02.2019 and 22.02.2019. Ld. A.P.O. reiterated that the opinion expressed by the Pay Anomaly Committee disentitles the Assistant Accountants working in the Directorates of different State Departments, which includes the respondents, for up-gradation of pay scale, as per G.Os. dated 15.02.2019 and 22.02.2019, as they were working as Assistant Accountants in the Directorate, whereas as per the judgment sought to be reviewed, directions have been given to the petitioners to grant them up-graded pay scale, therefore, it has become imperative to seek

review of judgment dated 01.10.2021. In reply, Sri L.K. Maithani, Ld. Counsel for respondents submitted that, even if it be conceded for the sake of arguments that whatever Ld. A.P.O. has submitted on behalf of review applicants, is factually correct, then these are hardly the points for review of the well-considered judgment dated 01.10.2021, passed by this Tribunal.

6. At the stage of dictation, Ld. A.P.O. submitted that Directorate has corrected the pay scale of similarly situated Assistant Accountant Sri Arjun Singh, working in Uttarakhand Sadan, in Delhi. Ld. A.P.O. also submitted that excess payment has been ordered to be recovered from Sri Arjun Singh, Assistant Accountant. The decision rendered by Hon'ble Supreme Court in State of West Bengal vs. West Bengal Minimum Wages Inspectors Association has also been referred to by Ld. A.P.O. in support of his contention. In reply, Sri L.K.Maithani, Ld. Counsel for respondents informed the Tribunal that Hon'ble High Court *vide* order dated 25.11.2022, passed in WPSS No. 2239/2022 directed that , "there shall be no recovery from the salary of the petitioner Sri Arjun Singh, on the strength of the impugned order".

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 shows 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 Hon'ble 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".

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."**

[Emphasis supplied]

10. In the decision of *Northern India Caterers (India) Ltd vs. 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.**"

[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 01.10.2021 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: JANUARY 05.2023
DEHRADUN

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