

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

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

----- Chairman

Hon'ble Mr. Arun Singh Rawat

-----Vice Chairman (A)

**REVIEW APPLICATION NO. 08/DB/2024
[IN CLAIM PETITION NO. 37/ SB/2022]**

1. State of Uttarakhand through Secretary, Energy, Secretariat, Subhash Road, Dehradun.
2. Managing Director, Uttarakhand Jal Vidyut Nigam Limited, Maharani Bagh, GMS Road, Dehradun.
3. Executive Director, Human Resource, Uttarakhand Jal Vidyut Nigam Limited, Maharani Bagh, GMS Road, Dehradun

.....Review applicants

VERSUS

Ashok Kumar Joshi, aged about 59 years, s/o Late Sri Khyali Ram Joshi, presently posted as Office Superintendent (Special Grade), UJVN, r/o House No. P-III-27, Yamuna Colony, Dehradun and others.

.....Petitioners (O.Ps. herein)

Present: Dr. N.K.Pant, Advocate, for the review applicants

Sri Shashank Pandey, Advocate, for the petitioners (O.Ps. herein). (online)

JUDGMENT

DATED: OCTOBER 08,2024

Justice U.C.Dhyani (Oral)

Present review petition along with delay condonation application has been filed on behalf of Uttarakhand Jal Vidyut Nigam Ltd., for reviewing

order dated 27.09.2023, passed by the Tribunal in claim petition no. 37/SB/2022, Ashok Kumar Joshi and others vs. State of Uttarakhand and others.

2. Delay in filing the review has not been seriously opposed by Ld. Counsel for the petitioners (O.Ps. herein), therefore, delay in filing the review petition is condoned.

3. It will be useful to reproduce the relevant paragraphs of the order under review, as follows:

"8.5 The Tribunal takes note of the fact that the A.C.P. scheme has not been continued for the Govt. employees in the 7th Pay Commission and has been replaced by the M.A.C.P. scheme. Para 21 and 22 of the C.A. filed by respondent no. 1 are reproduced as below:

"21. That meeting of the aforesaid committee took place on 05.01.2022. In the minutes of the said meeting it is clearly stated that although Secretary Personnel department, Government of Uttarakhand and Secretary Finance Department, Government of Uttarakhand are not in agreement with continuing the earlier system of financial upgradation, but however in view of the decision taken by the Hon'ble Cabinet the entire status should be placed before Hon'ble Chief Minister for taking decision. It has also been noted in the aforesaid minutes that the report of the Committee on Pay Anomalies (Vetan Visangati Samiti) has also been received by the Government. It would be relevant to state here that it is clearly stated in the recommendations of the Committee on Pay Anomalies that the system of financial upgradation of 9, 14 and 19 years of service can be implemented in respect of employees of aforesaid Power Corporations only if the Pay Structure/Pay Matrix prevalent in Power Corporations is implemented/adhered to. It is specifically stated in the recommendations of the Committee on Pay Anomalies that it would not be proper to mix the system prevalent in the State Government and the one prevalent in aforesaid Power Corporations. In sum and substance this is Doctrine of Election as explained earlier.. The true copy of minutes of meeting dated 05.01.2022 and report and recommendations of the committee on Pay Anomalies is annexed herewith as Annexure no. R-5.

22. That pursuant to aforesaid recommendations the decision was taken by the State Government to implement the earlier prevalent pay scales (before 01st January 2017) in the aforesaid three Power Corporations, vide order dated 06.01.2022."

8.6 It is clear from the above that the pay scales as given by G.O, dated 22.12.2017 cannot be continued with the A.C.P. scheme. The Tribunal holds that the G.O. dated 06.01.2022 (Annexure: A1) and the U.J.V.N.L. office memorandum dated 15.03.2022 have been issued in right earnest in the overall and long term interest of the U.J.V.N.L. employees. The Tribunal also agrees to the contention of the learned Counsel for the petitioners that

salary of a person cannot be reduced without his individual personal consent and the consent of the employees' union cannot replace the requirement of the consent of the individual employee before reduction of his salary.

87 In view of the above it shall be in the fitness of the things that every petitioner be asked by the respondents to either opt for pay fixation with M.A.C.P. according to the G.O.s dated 25.09.2017 and 22.12.2017 or opt for A.C.P. and pay fixation according to G.O. dated 06.01.2022 and U.J.V.N.L. office memorandum dated 15.03.2022. The Tribunal hereby directs that such option may be sought from every petitioner within a period of three months of this order and action for fixation of pay and applicability of A.C.P or M.A.C.P. to him/her be taken accordingly.

9. With the above directions, the claim petition is disposed of. No order as to costs."

4. Various grounds have been taken in the review petition with a prayer to review Tribunal's order dated 27.09.2023.

5. Dr. N.K.Pant, Ld. Counsel for the review applicants submitted that if the judgment rendered by the Tribunal on 27.09.2023 in Claim Petition No.37/SB/2022, Ashok Kumar Johi & others vs. State of Uttarakhand & others is implemented, the same will cause hardship to the petitioners He further submitted that the benefit of the order of the Tribunal can be given only to 39 employees of the Respondent Corporation, but not to Sri Ashok Kumar Joshi. If such orders are implemented, the same will create anomaly in pay fixation. Moreover, the same will not be useful and beneficial to Sri Ashok Kumar Joshi.

6. In reply, Sri Shashank Pandey, Ld. Counsel for the petitioners (O.Ps. herein) submitted that implementation of order of the Tribunal dated 27.09.2023 passed in Claim Petition No. 37/SB/2022 will not cause any problem to them, as that order (dated 27.09.2023 passed in Claim Petition No.37/SB/2022), has attained finality, inasmuch as the respondents have not challenged the same before the Hon'ble High Court.

7. Sri Shashank Pandey, Ld. Counsel for the petitioners (O.Ps. herein). submitted that the review petition is not maintainable. It is liable to be rejected in the backdrop of facts, which have been mentioned in the review application. There is no error apparent on the face of record or clerical/arithmetical mistake in the order under review. The same should be dismissed.

8. 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 apparent on the face of it. There is no clerical mistake. There is no other sufficient reason to indicate that the order sought to be recalled should be recalled/ reviewed in the interest of justice.

9. Reasons have been given in the judgment under review, as to why the Tribunal has issued directions to Respondent Corporation (UJVNL) regarding ACP or MACP.

10. Review is not appeal in disguise. In *Lily Thomas vs. Union of India*, reported in (2000) 6 SCC 224, Hon'ble Supreme Court has held that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with such power. The review cannot be treated like an appeal in disguise.

11. Review proceedings are not by way of appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC. Power of review may be exercised when some mistake or error apparent on the face of record is found. But error on the face of record must be such an error which must strike on a mere looking and would not require long process of reasoning on the points where there may conceivably be two options. The power of review may not be exercised on the ground that the decision was erroneous on merits. 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. Here, there was no misconception of fact or law. It was observed by Hon'ble Apex Court in *Perry Kansagra vs. Smriti Madan Kansagra*, (2019) 20 SCC 753: AIR (online) 2019 SC 536, that it is beyond any doubt or dispute that the review Court does not sit in appeal over its own order. A re-hearing of the matter is impermissible in law.

12. Assuming, for the sake of arguments (although not admitted), that the submissions of learned Counsel for the review applicants are valid and

legally sound, still, the fact remains that these grounds may be available to the review applicants in appellate or writ jurisdiction, but not in review jurisdiction.

13. Granting the relief as prayed for by the review applicants is beyond the jurisdiction of a review Court. Even if all the factual grounds taken in the review application are taken to be true, the same would not attract review jurisdiction enabling the Tribunal to grant desired relief to the review applicants.

14. The review petition, therefore, fails and is dismissed. In the circumstances, there shall be no order as to costs.

(ARUN SINGH RAWAT)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: OCTOBER 08, 2024
DEHRADUN

VM