

"AFR"

Chambers

(By circulation)

Review Application No. 91 of 2016

In re :

T.A. No. : 1489 of 2010

**Union of India & Others-----Vs Ex- Army No.
14445777 Kamala Kant Yadav**

Hon'ble Mr Justice D.P.Singh, Judicial Member

Hon'ble Air Marshal Anil Chopra, Administrative Member

Order

1. The application has been placed in chamber by the registry under the provisions contained in AFT Act and Rules framed thereunder.
2. This is an application for review of the order dated 12 January 2016 passed in T.A. No. 1489 of 2010. While preferring the application for review, the applicant pleaded that only higher authority/ Lieutenant General would have convened the District Court Martial.
3. The grounds raised by the applicant while preferring the review application has been considered and a finding has been accorded in Para Nos 4,5,6 & 7 of the order. Almost all the grounds raised during the course of arguments have been considered and a finding has been recorded while rejecting the application.

4. Accordingly, there appears to be no error apparent at the face of the record.

" **Review** (para 9 to 16 from Review Petition No. 424 of 2013 dated 26.9.2013)

9. Any other attempt of Court except an attempt to correct an apparent error or an attempt not based on any ground mentioned in Order 47 Rule 1 and 2 CPC, would amount to an abuse of power to review its judgment, vide, (1999) 9 SCC 596 Ajit Kumar Rath, Vs. State of Orissa.

10. Power of review conferred on the Court may be exercised when error is apparent at the face of record under Order 47 Rule 1 and 2 of CPC. It is the statutory power conferred on Court. It is neither inherent power nor a power to reappreciate the evidence, vide (2000) 6 SCC 224: Lily Thomas Vs. Union of India.

11. It must be borne in mind that review is perfectly distinguished from an appeal i.e.; quite clear from statutory provision (Order 47 Rule 1 of CPC) that the primary intention of granting a review is the reconsideration of the same subject by the same Judge as contra-distinguished to an appeal which is a hearing before another Tribunal, vide (2005) 2 SCC 334 Ishwar Singh, Vs. State of Rajasthan....

12 In sum and substance, 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 states one in the face, and there could reasonably be no two opinion entertained about it, a clear case of error apparent on the face of the record would be made out vide, (2006) 4 SCC 78 Haridas Das. Vs. Usha Rani Banik.

13. *In (2008) 9 SCC 612: State of west Bengal and others. Vs. Kamal Sen Gupta, their lordships of Hon'ble Supreme Court held that error apparent at the face of record means mistake which prima facie is visible and does not require any detail examination*

14. *In (1995) 1 SCC 170: Meera Bhanja (Smt.). Vs. Nirmala Kumari Chaudhary (Smt.) followed by (1997) 8 SCC 715: Parsion Devi Vs Sumitri Deviu, their lordships of Honible Supreme Court held that power of review does not mean to exercise de novo hearing except the error apparent at the face of record in view of Order 47 Rule 1 of CPC.*

15. *In JT 2012 (12) SC 565: Akhilesh Yadav Vs. Vishwanath Chaturvedi and others, their lordships of Hon'ble Supreme Court held that an erroneous decision in itself does not warrant a review of each decision in absence of error apparent at the face of record.*

16. *In a case reported in 2012 (30) LCD 1594: Haryana State Industrial Development Corporation Ltd. Vs. Mawasi and others Etc., while interpreting Order 47 Rule 1 of CPC, reinstating the ground of review, their lordships of*

Hon'ble Supreme Court held that in guise of seeking review, the petitioner cannot ask for de novo hearing of an appeal.

Review

Order 47 Rule 1, CPC 1908 – Review – Erroneous decision – Permissibility. *Held that an erroneous decision by itself does not warrant a review of each decision. – Direction for CBI enquiry against family members of Akhilesh Yadav and Mulayam Yadav – Scope and ambit of review – Earlier orders passed after full consideration – Orders not without jurisdiction – No error apparent on face of record. Held that review cannot be allowed. Ed. The Court suo-motu corrected the order by directing deletion of portion by which CBI was to submit report to Union of India and liberty given to UOI for taking steps. **Akhilesh Yadav Vs. Vishwanath Chaturvedi and others JT 2012 (12) SC 565.***

5. In the aforesaid settled principle of law, the present review on the aforesaid grounds appears to be not sustainable. It is not the applicant's case that he has pleaded or raised some grounds but it was not considered. In case the arguments advanced by the applicant while deciding the T.A. had been considered and a finding had been recorded, then interfering with the order dated 12th January 2016 in question shall amount to exercise the power conferred on appellate authority under the guise of review.

6. On the basis of pleadings we allow the application for condonation of delay, condoned the delay and reject the review application being devoid of merits.

7. There shall be no orders as to costs.

(Air Marshal Anil Chopra)
Member (A)

(Justice D.P. Singh)
Member (J)

Date : October 3rd , 2016

PKG/