

**Chambers
(By circulation)**

Review Application No. 104 of 2016

In re:

T.A. No. 351 of 2010

Union of India & ors Vs. Smt Rajni Kumari & Ors

Hon'ble Justice D.P.Singh, Member (J)

Hon'ble Air Marshal Anil Chopra, Member (A).

1. This is an application for review of order dated 20.09.2016, passed in T. A. No. 351 of 2010. While approaching the Tribunal under jurisdiction of review, the applicants have prayed for reviewing the order on the ground that the deceased Air Force personal (Late LAC H.B. Singh) had been provided clear 96 hours to submit reply to the Charge Sheet. The pleadings in the review petition are that before the prosecution case commenced, the petitioner was granted adjournment from 07.10.2004 to 11.10.2004 to prepare his defence. Further on 07.10.2004 the petitioner was granted adjournment up to 11.10.2004, thus he was provided clear 96 hours to submit reply to the Charge Sheet and provisions of Rule 40 of the Air Force Rules, 1969 read with Para 740 (f) of Regulations for Air Force, 1964 stood complied with.

2. While allowing the T. A. the Tribunal had set aside the impugned findings and sentence dated 09.11.2004 confirmed by the confirming authority on 23.12.2004 resulting in dismissal of Late LAC H.B. Singh and subsequent order dated 13.03.2006 passed by the Deputy Secretary to the Government of India

rejecting the petition submitted by the Air Force personal under Section 161 (2) of the Air Force Act, 1950 and had granted him continuity of service with post retiral service benefits to his next of kins.

3. it is settled law that any 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.***

4. 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 re-appreciate the evidence, vide (2000) 6 SCC 224: ***Lily Thomas Vs. Union of India.***

5. It is needless to mention 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 & Ors.***

6. 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 stares one in the face and 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.**

7. 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 Hon'ble 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.

8. In view of the above, the present application for review appears to be not sustainable. As observed above, the jurisdiction conferred under review is not an appellate jurisdiction under the guise of review. No de novo hearing or re-appreciation of evidence is not permissible, except where there is error apparent on the face of record, following the principles laid down for reviewing the order under Order-47, Rule-1 of the Code of Civil Procedure, 1908. After considering the pleadings on record the impugned order has been passed. No new ground may be raised or considered in an application filed for review of the order.

9. In view of observations made hereinabove the review application deserves to be rejected and is accordingly **rejected.**

No order as to costs.

(Air Marshal Anil Chopra)
Member 'A'
Dated 02.11.2016
anb

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