

Chambers
(By circulation)

Review Application No. 96 of 2016

In re :

O.A. No. : 120 of 2012

Sepoy Bhudiman Thapa - **Applicant**
Vs.
Union of India and others - **Respondents**

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 12.10.2015, passed in O.A. No. 120 of 2012 alongwith an application for condonation of delay.
3. We have perused the affidavit supported with an application for condonation of delay. Cause shown seems to be sufficient to condone the delay, hence the delay is condoned.
4. A prayer for review of the order has been made (supra), challenging the order of dismissal passed on account of fraud committed during the course of recruitment by not disclosing the correct facts. Ld. Counsel for the applicant pleaded that once he was dismissed from service, mandatory requirement provided in Army

Rules has not been complied with. It is also submitted that since the allegation was of fraudulent recruitment and it was triable by SCM and otherwise also dissolution of service by administrative action was not permissible. It is well settled that once the finding is arrived at and the charge of fraudulent nature has not been denied, the respondents do not seem to have committed any substantial irregularity. The applicant had submitted incorrect certificates during the course of enrolment, which seems to be admitted fact on record. While filing the review application, the applicant has not stated that certificates submitted by him of class IX as well as the T.C., are genuine and correct. A litigant cannot be permitted to avail appellate forum under the guise of review.

5. 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.

6. 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.

7. 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....

8. 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.

9. 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

10. 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.

11. 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.

12. In view of the above, the present application for review appears to be not sustainable, more so, when the factual matrix with regard to commission of fraud has not been disputed.

13. Review lacks merits and is rejected.

14. There shall be no orders as to costs.

(Air Marshal Anil Chopra)
Member (A)

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

Date : October 3rd , 2016

JPT