

GAHC010205922022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Review.Pet./157/2022

UNION OF INDIA AND 3 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS (MHA), NEW DELHI- 110001.

2: THE DIRECTOR GENERAL
ASSAM RIFLES
SHILLONG
MEGHALAYA- 793011.

3: THE DEPUTY COMMANDANT
STAFF OFFICER-1 RECRUITMENT
DIRECTOR GENERAL
ASSAM RIFLES
SHILLONG- 11.

4: THE DEPUTY COMMANDANT
ASSAM RIFLES TRANSIT CAMP
KHANAPARA
GUWAHATI
ASSAM
PIN- 781022

VERSUS

EX TC 62091 RECT/GD SATBIR SINGH
S/O KASHI RAM,
VILL.- SHIVDHANPURA,
P.O.- SHIVDHANPURA,
DIST.- HANUMANGARH,
RAJASTHAN- 136042.

Advocate for the Petitioner : MRS. A GAYAN

Advocate for the Respondent : MR. R MAZUMDAR

BEFORE
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

For the Applicants/Petitioners : Ms. A Gayan, Advocate,

For the Opposite party/Respondent : Shri R Mazumdar,
Advocate.

Dates of Hearing : 10.05.2024.

Date of Judgment : 10.05.2024.

JUDGMENT & ORDER

Heard Ms. A Gayan, learned counsel for the applicant, who by means of this review petition has prayed for review of the order dated 22.06.2022 passed by this Court in WP(C)/5172/2016. Also heard Shri R Mazumdar, learned counsel for the opposite party/writ petitioner.

2. At the outset, this Court reminds itself that a review cannot be an appeal in disguise wherein there would be a re-hearing and reconsideration of the *inter se* merits of the rival parties. In this connection, there are a catena of decisions of the Hon'ble Supreme Court and one may gainfully refer to some of those decisions:

i) *Aribam Tuleshwar Sharma v. Aribam Pishak Sharma*, (1979) 4 SCC 389;

ii) *Union of India v. B. Valluvan*, (2006) 8 SCC 686; and

iii) *State of W.B. v. Kamal Sengupta*, (2008) 8 SCC 612.

3. In the case of ***Aribam Tuleshwar Sharma*** (*supra*), the following has been laid down:

*“The Judicial Commissioner gave two reasons for reviewing his predecessor’s order. The first was that his predecessor had overlooked two important documents Exs. A-1 and A-3 which showed that the respondents were in possession of the sites even in the year 1948-49 and that the grants must have been made even by then. The second was that there was a patent illegality in permitting the appellant to question, in a single writ petition, settlement made in favour of different respondents. We are afraid that neither of the reasons mentioned by the learned Judicial Commissioner constitutes a ground for review. It is true as observed by this Court in *Shivdeo Singh v. State of Punjab* there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, 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 or 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 powers which may enable an appellate court to correct all manner of errors committed by the subordinate court."

4. In the case of **B. Valluvan** (*supra*), the following has been laid down:

"The Division Bench of the High Court committed a serious error in entering into the merit of the matter while exercising its review jurisdiction. The Court's jurisdiction to review its own judgment, as is well known, is limited. The High Court, indisputably, has a power of review, but it must be exercised within the framework of Section 114 read with Order 47 of the Code of Civil Procedure. The High Court did not arrive at a finding that there existed an error on the face of the record. In fact, the High Court, despite noticing the argument advanced on behalf of the Union of India that the 1st respondent had no legal right to be appointed, proceeded to opine that the panel prepared for filling up of future vacancies should be given effect to. The review of the High Court was not only contrary to the circular letter issued by the Union of India, but also contrary to the general principles of law."

5. In the case of **Kamal Sengupta** (*supra*), the following has been laid down:

“The term ‘mistake or error apparent’ by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3) (f) of the Act. To put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision.”

6. The principles governing review are well settled. In a recent decision dated 18.08.2022 reported in **(2022) SCC OnLine 1034, (S Madhusudhan Reddy Vs. V Narayana Reddy & Ors.)**, a three Judges’ Bench of the Hon’ble Supreme Court, after discussing the relevant case laws has reiterated the principles laid down in the case of **Kamlesh Verma Vs. Mayawati & Ors.** , reported in **(2013) 8 SCC 320** which are as follows:

“20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

20.1. When the review will be maintainable:

- (i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;*
- (ii) Mistake or error apparent on the face of the record;*
- (iii) Any other sufficient reason.*

The words "any other sufficient reason" have been interpreted in Chhajju Ram v. Neki and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in Union of India v. Sandur Manganese & Iron Ores Ltd.

20.2. When the review will not be maintainable:

- (i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.*
- (ii) Minor mistakes of inconsequential import.*
- (iii) Review proceedings cannot be equated with the original hearing of the case.*
- (iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.*

(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negative.”

7. Though this Court is not required again to reopen the facts, for an effective adjudication, bereft of details, it may be mentioned that the opposite party/writ petitioner had challenged an order dated 27.12.2012 by which the writ petitioner was discharged from service from Assam Rifles on the ground of medical incapacity. This Court, vide the order in question had held that though the discharge was on medical ground, the opinion of the expert was after the said decision. To be more specific, the Specialist opinion was dated 05.10.2012 while the report on which the discharge was made is dated 03.10.2012. This Court had held that the impugned order dated 27.12.2012 was not sustainable and the petitioner was directed to be inducted into the services as a Trainee Constable under the Assam Rifles.

8. Ms. Gayan, learned CGC for the applicant has submitted that the review is sought for only on the aspect of the liberty granted to the applicant to have periodical medical review as per the existing Rules by contending that such periodical review would be applicable only for the existing personnel.

9. This Court is unable to accept the said argument for more than one reason. Firstly, the aforesaid argument would be essentially within the ambit of touching upon the merits which cannot be a subject matter of review. Secondly, even if for argument sake the said submission is considered, this Court is of the opinion that the aforesaid observation to have a periodical medical review is only to facilitate the applicant-Assam Rifles to have periodic medical review of the petitioner so that the interest of the organization is not hampered at any stage.

10. In view of the discussions made above, this Court is of the opinion that no case for entertaining a review petition is made out and accordingly, review petition is dismissed.

JUDGE

Comparing Assistant