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**(2012) 05 DEL CK 0030**

**In the Delhi High Court**

**Case No : RA No. 198 of 2012 in WP (C) No. 11925 of 2009**

Kishan Pal Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

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**Date of Decision : 18-05-2012**

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1  
Constitution of India, 1950 — Article 226

**Citation : (2012) 05 DEL CK 0030**

**Hon'ble Judges : J.R. Midha, J;Anil Kumar, J**

**Bench : Division Bench**

**Advocate : Abhimanyu Kumar, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

Anil Kumar, J.—The petitioner has sought review of order dated 30th January, 2012 passed by this Court in WP(C) No.11925/2009 dismissing the writ petition of the petitioner challenging the charge sheet dated 11th March, 2006, enquiry report, order dated 9th September, 2006, order dated 6/7th December, 2006, show cause notice dated 6th March, 2007, order dated 29th May, 2007 and order dated 5th November, 2007 passed by the respondents. The petitioner had also prayed for issuance of a writ of mandamus or any other appropriate writ or direction to reinstate him in service with all the consequential benefits of pay, arrears of pay-salary and seniority etc. and to treat his suspension period from 9th September, 2006 till the date of reinstatement as period spent on duty for all intents and purposes. The writ petition was dismissed and all the reliefs claimed by the petitioner were declined. The petitioner/applicant has sought the review of order dated 30th January, 2012 dismissing his writ petition on the ground that the material facts have been ignored by the respondents while passing the order of his dismissal and the punishment awarded to the petitioner is disproportionate. According to him, the disproportionate punishment imposed on the petitioner is apparent from the fact that the respondents had reduced the

punishment from removal from service to the reduction of pay by three stages for a period of two years with a further direction that during that period of deduction, the petitioner shall not earn the increments of pay and on expiry of the said period, reduction will have the effect of postponing his future increments of pay by the appellate authority which was enhanced to dismissal by the higher authorities. According to the petitioner, the IG/APS, CISF has wrongly used the power of review and enhanced the punishment in an illegal, arbitrary and unjust manner.

2. The petitioner has also sought review of order dated 30th January, 2012 on the ground that there was no evidence against him before the Enquiry Officer as none of the witnesses produced in the enquiry had seen the petitioner committing the theft, nor the stolen mobile phone was recovered from him. The petitioner has contended that the best evidence of CCTV was withheld by the respondents without any cogent reasons. The petitioner has also contended that it was for the respondents to prove the charges against him and the petitioner was not liable to disprove the charges against him.

3. The petitioner reiterated that he was falsely implicated by Inspector Chandrasenan and Inspector Molfa in connivance with other persons as they were annoyed with the petitioner on account of his repeated requests for relieving him. The petitioner asserted that Inspector Molfa and Inspector Chandrasenan fabricated the evidence against the petitioner. The allegation is also made by the petitioner that the evidence was selected by the Enquiry Officer selectively and the case of the respondents against the petitioner is based on the alleged confession/admission of the petitioner that he had lifted the mobile phone in question and concealed it in the rest room, though the petitioner had been making the submission from the beginning that he had not made any confession/admission.

4. The petitioner in the application for review has reiterated all the pleas and contentions which were raised by the petitioner in the writ petition and which were argued and dealt with by this Court while dismissing the writ petition of the petitioner by order dated 30th January, 2012.

5. The petitioner has not disclosed any such plea which was raised by the petitioner and which was not dealt with or considered by this Court while dismissing his writ petition by order dated 30th January, 2012 whose review is sought by the petitioner in order to re-argue the whole matter. The petitioner has not shown any patent error or any such error apparent on the face of the record except reiterating the pleas and contentions which were raised in the writ petition.

6. The petitioner who has appeared in person has not been able to refute that the power of review is not an absolute power and is circumscribed by the restriction indicated in the Order 47 of the Code of Civil Procedure. Such power can be exercised on the application of a person, on account of some mistake or

error apparent on the face of record or for any other sufficient reason or in case of discovery of new and important matter of evidence which, after exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time when the order was made. This is not disputed that the petitioner/applicant has not relied on discovery of new or important matter of evidence which had not been produced by him earlier or which was not within his knowledge or could not be produced by him or was not considered by the Court when the order dated 30th January, 2012 was passed.

7. This is no more res-integra that review cannot be sought merely for fresh hearing or argument or correction of an erroneous view taken earlier. The power of review can be exercised only for correction of a patent error of law or fact which are apparently incorrect without any elaborated argument being noted for establishing it.

8. In Babboo alias Kalyandas and Others Vs. State of Madhya Pradesh, the Supreme Court held that:-

It is true there is nothing in Article 226 of the Constitution to preclude the 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 of 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 merit.

9. It is also well settled that review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 CPC. Under Order 47 Rule 1 CPC a judgment may be open to review inter-alia if there is a mistake or an error apparent on the face of the record. An error which is not self evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be reheard and corrected. A review petition, it must be remembered has a limited purpose and cannot be allowed to be an appeal in disguise.

10. Attempt of the applicant by filing the present applications is only to re-agitate the issues which were raised in the writ petition and which had been considered before the order dismissing his writ petition was passed. No error much less an error apparent on the face of the record has been pointed out by the petitioner. An error which is not self evident and has to be inferred by a process of reasoning can hardly be said to be an error apparent on the face of

the record. This principle was reiterated by the Supreme Court in the case of Lily Thomas, Vs. Union of India and Others, with a clear caution that in exercise of power of review, the Court may correct the mistake but it is not to substitute its earlier view. The mere possibility of two views on the subject, is not a ground for review. A review cannot be sought merely for fresh hearing or arguments or correction of an erroneous view taken earlier. The power of review can be exercised only for correction of a patent error of law or fact which stays in the face without any elaborate argument being needed for establishing it. The petitioner/applicant has reiterated the pleas and contentions which had been canvassed on his behalf by his counsel before the order dismissing his writ petition was passed. In the circumstances there are no grounds made out by the petitioner for review of order dated 30th January, 2012 dismissing his writ petition. The review application is without any merit and is liable to be dismissed. The review application is therefore, dismissed.