

(1998) 01 AHC CK 0003

In the Allahabad High Court

Case No : Civil Misc. Recall/Review Application No. 657 of 1997 in Civil Misc.
Writ Petition No. 19295 of 1990

Munna Lal Yadav

APPELLANT

Vs

Commanding Officer, 388 D.S.C. Platoon, Central Ordinance
and Others

RESPONDENT

Date of Decision : 20-01-1998

Acts Referred:

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

Citation : (1998) 1 UPLBEC 581

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : Cononel Ashok Kumar Retd, for the Appellant; Sushil Harkauli, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Seth, J.—The writ petition was disposed of by an order dated 30.10.1996. By means of the present review application, the said order has been sought to be reviewed on the ground that there was an error apparent on the face of the record with regard to the fact as has been recorded in the order in paragraphs 8 & 9 that the petitioner did not request for his own discharge, though in fact the petitioner had so requested for his discharge. The second ground that was taken was that the Army cannot play with the career of an army personnel by using a back door method in discharging the petitioner when on the facts alleged the petitioner should have been subjected to Section 41 of the Army Act for the alleged disobedience. The third point that was taken that the order was signed by the Lt. Col. Who was not authorised to do so and the same ought to have been signed by a Brigadier in view of Army Rule 36 and as such the notice dated 14.4.1988 was wholly without jurisdiction. It was fourthly contended that a view has been taken in the impugned order which is contrary to the ratio decided in the case of Ranjit Thakur Vs. Union of India (UOI) and Others, . He has also

pointed out various other legal proposition with regard to the impugned order and contended that in law the views taken cannot be supported.

2. Admittedly an appeal has been filed by the petitioner being Special Appeal No. 43 of 1997 on 8.1.1997 whereas the review application was filed on 3.1.1997

3. Lt. Col. Ashok Kumar, learned Counsel for the petitioner made elaborate arguments on all the points and had contended that with reference to the various documents on record that there was an error apparent on the face of the record with regard to the first point noted above and had relied on a decision in the case of Major Radha Krishan Vs. Union of India and Others, , and contended that disobedience of the nature on which discharge was effected cannot be upheld. He also contends that 1985 policy is bad in law and the same could not be challenged in writ petition since it was not within the knowledge of the petitioner and therefore he has sought to challenge the same by means of the present review application.

4. Shri Sushil Harkauli, learned Counsel for the respondents, on the other hand, contended that proper Court fee was not paid. He has also pointed out that in view of the pendency of the Special Appeal, the review applications not be entertained. He further contends that there is no error apparent on the face of the record. A question raised considered and, even assuming a wrong view taken thereon, cannot be termed to be an error apparent on the face of the record. Error of law cannot be a ground for review. Since 1985 policy was not challenged in writ petition, the same cannot be a ground for review.

5. The ground for review specified in Order XLVII, C.P.C. can also be made equally applicable as ground for review in a proceeding under Article 226. The grounds that are mentioned are :-

(i) that some new and important matter of evidence which despite exercise of due diligence was not within the applicant's knowledge has since been discovered;

(ii) or some important matters or some new and important matter or evidence which could not be produced by the applicant when the order was passed despite exercise of due diligence when the order was passed;

(iii) some mistake or error apparent on the face of the record;

(iv) or for any other sufficient reasons.

6. In seats of judicial decisions sufficient reasons have been interpreted to mean "a reason sufficient on the grounds atleast analogous those specified immediately previously vide Chhajju Ram v. Neki AIR 1922 P.C. 112 AIR 1949 106 (Federal Court) ; and Moran Mar etc. v. Mal Polus AIR 1954 S.C. 526 . This interpretation has necessarily been followed in subsequent cases. Therefore, it is necessary to test whether the ground taken in the present review application is a ground within the meaning of Order XLVII, C.P.C. Inasmuch as in the case of Gujarat

University, Ahmedabad and etc. Vs. Sonal P. Shah, , it was held that the power to review a proceeding under Article 226 of Constitution of India, the following principles are settled:-

(i) The provisions of CPC in Order XLVII are not applicable to the High Court's power to review in proceedings under Article 226 of the Constitution.

(ii) Powers to be exercised by the High Court only to prevent miscarriage of justice or to correct grave or palpable errors (epithet palpable means that which can be felt by simple touch of the order and not which could be dug out after a long drawn out process of argumentation and ratiocination).

(iii) The inherent powers, though ex facie plenary, are not to be treated as unlimited or unabridged, but they are to be invoked on the grounds mentioned in Order XLVII, Rule 1.

7. This decision had drawn inspiration from the decision in the case of Babboo alias Kalyandas and Others Vs. State of Madhya Pradesh, . That review is permissible in a proceeding under Article 226 was held in the case of Shiv Deo Singh v. State of Punjab AIR 1963 S.C. 1963 on the ground that such a proceeding is a civil proceeding. This was also so held by this Court in the case of State of U.P. Vs. Jawahar Lal Bhargava and Another, . The High Court of Goa in the case of Gajanan Vishnu v. Construction Material AIR 1974 GAU 4, had held that review in a writ proceeding is permissible only on the ground referred to Order XLVII, Rule (1) C.P.C. Admittedly the power to review by the High Court in a proceedings under Article 226 inhere in it but there are limits on exercise of the powers of review. The power can be exercise on discovery of new or important matter of evidence which, after exercise of due diligence was not within the knowledge of the person seeking 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 on the face of the record is found, it may also be exercised on any analogous ground. But it cannot be exercised on the ground that the decision was erroneous on merits. This is within the province of appeal. This has been so observed in the case of A.T. Sharma (supra).

8. Therefore, it is to be found out whether any ground has been made out for review of the said order by means of the present application or not.

9. So far as the first point is concerned it appears that such question has been dealt with in paragraphs 9 of the impugned order where it has been mentioned that the petitioner was asked to show caused by Annexure-CA.-I dated 14.4.1988. In reply thereto through Annexure-CA-2 dated 16.4.1988, the petitioner had pointed out that he could not perform the duty of Waherman since such trade was contrary to his heritage and therefore he should be discharged from Army. It was noted in the said paragraph that the petitioner had never applied for discharge before fulfilling the condition of his enrolment. Only when he was asked to show cause on certain charges, he wanted to avoid the same by seeking discharge. Such a request cannot be contemplated to be a discharge

within the meaning of clause (iv) of Rule 13 quoted in paragraph 7 of the judgment. Therefore, it appears that the fact that the petitioner had requested of his own for his discharge does not appear to be correct. However, in his usual fairness Col. Ashok Kumar, had admitted the position and contended that the fact was misappreciated in the light of the conclusion arrived at.

10. That it appears that this is not an error apparent on the face of the record so as to bring the judgment within the purview of review. Therefore, the first point urged by Col. Ashok Kumar fails.

11. So far as the other points as have been noted above appears to be points with regard to legal proposition, as has been alleged by Col. Ashok Kumar, seems to have been wrongly decided. Thus the same can at best be adjudged as error of law. Admittedly, error of law cannot be a ground for" review. The scrutiny of the ground taken in the review application clearly indicates that the attack was purely on the ground that there was error of law in deciding the case. If the question is raised and considered and a wrong view is taken the, same cannot be an error of fact. The view taken is a conclusion arrived at on the basis of the facts of a case. The conclusion may be erroneous but such conclusions are not error of facts and as such cannot be treated to be an error apparent on the face of the record. Howsoever a wrong conclusion is arrived at the same may be a ground in an appeal but can never form a ground for review when the correct facts are noted and dealt with. It may be at best be termed to be an perversity for the purpose of challenge in the higher forum but can never be a ground for review.

12. However in the present case the conclusion does not appear to be so perverse. Be that as it may, it is not necessary to go into other questions in the review application.

13. Though several points have been raised as mentioned above but a perusal of the point raised and grounds taken in the review application clearly indicate that none of those grounds satisfy the tests laid down for treating those as grounds for review within the meaning of Order XLVI1, Rule 1 of the Code of Civil Procedure, on the principle where of a review has to be decided.

14. In that view of the matter, the review application fails and is accordingly dismissed. No costs.