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**(2012) 02 AHC CK 0238**  
**In the Allahabad High Court**  
**Case No : Review Petition No. 74 of 2004**

Pramod Kumar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision : 08-02-2012**

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1  
Constitution of India, 1950 — Article 311(2)  
Penal Code, 1860 (IPC) — Section 354, 395, 397, 504, 506

**Citation : (2012) 02 AHC CK 0238**

**Hon'ble Judges : Surendra Vikram Singh Rathore, J**

**Bench : Single Bench**

**Final Decision : Dismissed**

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## Judgement

Hon"ble Surendra Vikram Singh Rathore, J.—Heard learned counsel for the parties.

2. By means of this review petition, the petitioner has prayed for review of the order dated 16.2.2004 passed in Writ Petitions No. 5086(S/S) of 2000 and 664(S/S) of 1999. The aforementioned writ petitions were decided by a common order and this review petition was filed by the petitioner of Writ Petition No. 664 (S/S) of 1999 Pramod Kumar Vs. State of U.P. and otherRs.

3. The case of the petitiioenr was that the petitioner was recruited as Constable in P.A.C. Force at Sitapur. Thereafter, the authorities verified, character and antecedents of the petitioner, in which it was found that case crime No. 229 of 1993 under Sections 354/395/397/504/506 IPC was registered against the petitioner. The petitioner in this affidavit filed along with the application form for appointment had stated that no criminal case has been registered against him and he was never challaned under any cognizable or non-cognizable offence. There was also a declaration by the petitioner to the effect that in case any of the information is found incorrect, he may be removed from service or may be punished under law. It is true that subsequently the petitioner was acquitted in

the said case. This Court after hearing the petitioner at length disposed of the above mentioned two petitions by a common order and the petitions were dismissed.

4. Feeling aggrieved by the said order the present review petition has been filed and it is submitted that the case of the petitioner was fully covered by the case of Awadhesh Kumar Sharma Vs. Union of India and others reported in (2000)1 UPLBEC 763 and the benefit of the said judgment was not given to him.

5. On the point of scope of review petition, learned counsel for the petitioner has placed reliance on the pronouncement of Hon'ble Apex Court in the case of Board of Control for Cricket, India and Another Vs. Netaji Cricket Club and Others, , in which in para 89 and 90 the Hon'ble Apex Court has held as under:-

89. Order 47 Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discover of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason.

90. Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words "sufficient reason" in Order 47 Rule 1 of the Code are wide enough to include a misconception of fact or law by a court or even an advocate. An application for review may be necessitated by way of invoking the doctrine "actus curiae neminem gravabit."

6. It is submitted on behalf of the State that the scope of the review petition is extremely limited and this Court while exercising its review jurisdiction can not assume the powers of the appellate court. It is further submitted that the case of Awadhesh Kumar Sharma (supra) was considered and distinguished by the Court on the ground that the petitioner had made wrong statement on oath that they were never charged any cognizable or non-cognizable offence and no criminal case was pending against him on the date of swearing of the affidavit by them. This information was wrongly and deliberately given by him and therefore the case of the petitioner was found to be on different footing and accordingly the benefit of the case of Awadhesh Kumar Sharma (supra) was not extended to the petitioner.

7. The Order 47 Rule 1 C.P.C. deals with the scope of the review petition, which reads as under:

Order XLVII (1). Application for review of judgment-(1) Any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred.

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

8. In the case of Board of Control for Cricket in India (supra) the Hon''ble Apex Court has held that what would constitute sufficient reason would depend on the facts and circumstances of the case. In that case an undertaking was given by the senior counsel for the parties, which was not complied with. Therefore, the facts of that case are entirely different and no such circumstance exists in the present case.

9. The Hon''ble Apex Court in the case of Rajendra Kumar and others v. Rambhai and others reported in AIR 2003 Supreme Court 2095 has held that the limitations on exercise of the power of review are well settled. The first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and permitting the order to stand will lead to failure of justice. In the absence of any such error, finality attached to the judgment/ order cannot be disturbed.

10. In another case Inderchand Jain (D) through L.Rs. Vs. Motilal (D) through L.Rs., ; it was held that it is beyond any doubt or dispute that the review court does not sit in appeal over its own order. A rehearing of the matter is impermissible in law. It constitutes an exception to the general rule that once a judgment is signed or pronounced, it should not be altered. It is also trite that exercise of inherent jurisdiction is not invoked for reviewing any order.

11. In the case of Lily Thomas, Vs. Union of India and Others, ; the Hon''ble Apex Court has held as under:

It follows, therefore, that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise.

12. In view of the aforementioned legal position it is clear that scope of the review is very limited. Keeping in view the facts of the present case there is no

change in the fact situation that the affidavit sworn by the petitioner at the time of moving the application for appointment, a criminal case was pending against him but that fact was deliberately concealed by him. He had further given a declaration in the application form that if any of the information furnished by him is found to be incorrect, he may be removed from service or may be punished under law. So far as this fact situation and at the date swearing of the affidavit and making declaration it remains unchanged.

13. The effect of the acquittal of the petitioner was also considered in the judgment under the review and his plea was not accepted. In a reasoned judgment departmental enquiry and acquittal in criminal case has been dealt with in the case of The Divisional Controller, KSRTC Vs. M.G. Vittal Rao, and has held as under:-

The question of considering reinstatement after decision of acquittal or discharge by a competent criminal court arises only and only if the dismissal from services was based on conviction by the criminal court in view of the provisions of Article 311(2) (b) of the Constitution of India, or analogous provisions in the statutory rules applicable in a case. In a case where enquiry has been held independently of the criminal proceedings, acquittal in a criminal court is of no help. The law is otherwise. Even if a person stood acquitted by a criminal court, domestic enquiry can be held, the reason being that the standard of proof required in a domestic enquiry and that in a criminal case are altogether different. In a criminal case, standard of proof required is beyond reasonable doubt while in a domestic enquiry it is the preponderance of probabilities that constitutes the test to be applied.

14. In the facts of the present case the petitioner was not entitled for any benefit of his acquittal because he was not removed from the service because of the said criminal case but he was actually removed from service for concealment of the material fact and also in view of declaration made by the petitioner himself. Keeping in view the aforementioned fact and legal situation and the limited scope of review jurisdiction this Court is of the considered view that there is no error apparent on the record which may justify the interference in the said judgment in review jurisdiction.

15. Accordingly, review petition is devoid of merit and deserves to be dismissed and is accordingly dismissed.