

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

**Review Application No.290/00009/2018
(OA No.290/00118/2017)**

Jodhpur, this the 22nd day of October, 2018

CORAM

Hon'ble Mrs. HINA P.SHAH, Judicial Member

1. The Union of India through General Manager, HQ Office, North Western Railway, Malviya Nagar, Near Jawahar Circle, Jaipur-17.
2. Chief Medical Director, North-Western Railway, Jaipur
3. Chief Medical Superintendent, North-Western Railway, Jodhpur
4. Divisional Medical Officer, North-Western Railway, Jodhpur

..Applicants/Respondents

(By Advocate: Shri Salil Trivedi)

Versus

Chhanwar Lal Borana s/o Sh. Heeralal Ji, aged about 60 years, resident of Railway Station, Mokalsar, Mukam & Post Mahilawas, Tehsil Siwara, District Barmer.

.. Respondent/Applicant

ORDER (By Circulation)

In the present Review Application, the applicants, who were respondents in OA, seek review/recall of the order dated 17.9.2018 passed in OA No.290/00118/2017. They have prayed that the review application may be allowed and

the OA filed by the applicant may kindly be ordered to be heard and dismissed.

2. The applicants aver that this Tribunal vide the aforesaid judgment did not record any finding on the issue and has given direction for referring the matter to an expert committee on the issue of emergent situation and settle the claim of the applicant, whereas in reply to the OA the issue of emergent situation had already been decided by the expert on the subject within the parameters laid down by examining the admission and discharge summary of the applicant's mother. Therefore, it is apparent error on the face of record which needs to be reviewed.

3. I have gone through the Review Application. It would be pertinent to mention here that the scope of review is very limited and the applicants (original respondents) cannot seek review for correction of the view taken earlier or for rehearing of the matter. Even otherwise, it was not the case of the respondents in the OA that they have referred the matter to an expert committee and the said committee has considered the matter, but which was felt necessary by the Tribunal in the facts and circumstances of the case while deciding the OA.

4. The scope of review has been considered by the Hon'ble Apex Court in Review Petition (Crl.) No.453 of 2012 in Writ Petition (Crl.) 135 of 2008 in the case of Kamlesh Verma vs. Mayawati and Ors. vide judgment dated 8th August, 2013, wherein in paragraphs 13,14 & 15, the Hon'ble Apex Court has held as under:-

13) In a review petition, it is not open to the Court to re-appreciate the evidence and reach a different conclusion, even if that is possible. Conclusion arrived at on appreciation of evidence cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto. This Court, in Kerala State Electricity Board vs. Hitech Electrothermics & Hydropower Ltd. & Ors., (2005) 6 SCC 651, held as under:

"10.In a review petition it is not open to this Court to reappreciate the evidence and reach a different conclusion, even if that is possible. Learned counsel for the Board at best sought to impress us that the correspondence exchanged between the parties did not support the conclusion reached by this Court. We are afraid such a submission cannot be permitted to be advanced in a review petition. The appreciation of evidence on record is fully within the domain of the appellate court. If on appreciation of the evidence produced, the court records a finding of fact and reaches a conclusion that conclusion cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto. It has not been contended before us that there is any error apparent on the face of the record. To permit the review petitioner to argue on question of appreciation of evidence would amount to converting a review petition into an appeal in disguise."

14) Review is not re-hearing of an original matter. The power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. A repetition of old and overruled argument is not enough to re-open concluded adjudications. This Court, in Jain Studios Ltd. vs. Shin Satellite Public Co. Ltd., (2006) 5 SCC 501, held as under:

"11. So far as the grievance of the applicant on merits is concerned, the learned counsel for the opponent is right in submitting that virtually the applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negatived. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. It is settled law that the power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases.

12. When a prayer to appoint an arbitrator by the applicant herein had been made at the time when the arbitration petition was heard and was rejected, the same relief cannot be sought by an indirect method by filing a review petition. Such petition, in my opinion, is in the nature of "second innings" which is impermissible and unwarranted and cannot be granted."

15) Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XLVII Rule 1 of CPC. In review jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in the guise that an alternative view is possible under the review jurisdiction."

5. Viewing the matter in the light of the above ratio of the Hon'ble Apex Court, I find no merit in this Review Application and the same is accordingly dismissed by circulation.

6. Needless to clarify that Government of India, Ministry of Health and Family Welfare, Department of Health and Family Welfare vide OM dated 6th June, 2018 in compliance of the judgment dated 13th April, 2018 of the Hon'ble

Supreme Court in the case of Shiv Kant Jha vs. UOI in WP (Civil) No. 694/2015 have issued guidelines for settlement of medical claims of pensioners and others and have advised to refer the matter to expert committees for considering the cases of full reimbursement/cases for relaxation of rules. On the same analogy, the respondent railway is required to refer the case of the applicant to an expert committee for its recommendation/decision on the issue of 'emergent' case.

(HINA P.SHAH)
JUDL. MEMBER

R/