IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

REVIEW APPLICATION NO 25 OF 2017

IN

ORIGINAL APPLICATION NO 259 OF 2017

DISTRICT : MUMBAI

1. The State of Maharashtra,)
Through the Secretary,)
Home Department, [Transport],)
Mantralaya, Mumbai 400 032.)

2. The Transport Commissioner,)
Administrative Building,)
4th floor, Government Colony,)
Bandra [E], Mumbai 400 051.)...**Applicants**
(Ori Respondents)

Versus

Shri Dattatraya Baburao Karnale)
R/o: Shriman, 237/14, E-Ward,)
Tarabai Park, Near Gold Gym.)
Kolhapur – 03.)...**Respondent**
(Ori Applicant)

Ms Archana B.K, learned C.P.O for the Applicants (Ori Respondents)

Shri K.R Jagdale, learned advocate for the Respondent (Ori Applicant).

Shri B.A Bandiwadekar, learned advocate for the applicants in O.A 430/2017

Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents.

CORAM : Shri Justice A.H Joshi (Chairman)
Shri P.N Dixit (Member) (A)

RESERVED ON : 21.01.2019
PRONOUNCED ON : 18.02.2019

PER : Shri Justice A.H Joshi (Chairman)

J U D G M E N T

1. Heard Ms Archana B.K, learned Presenting Officer for the Applicants (Ori Respondents) and Shri K.R Jagdale, learned advocate for the Respondent (Ori Applicant) in R.A 25/2017 in O.A 259/2017 & Shri B.A Bandiwadekar, learned advocate for the applicant and Ms Swati Manchekar, learned Chief Presenting Officer for the Respondents in O.A 430/2017

2. By this Review application, the State (Ori. Respondents) pray before this Tribunal to recall and review the judgment and order dated 3.11.2017 passed in O.A 259/2017.

3. Based on the observations contained in the case of Shri Acharya Ratna Deshbhushan Shikshan Prasarak Mandal & Anr Vs. Bhujgonda B. Patil, W.P Stamp No. 41833 of 2002 with W.P 1357/2003, this Tribunal had held that continuation of enquiry commenced under M.C.S. (Discipline & Appeal) Rules, 1978, before superannuation of a Government employee, shall not be permissible, after superannuation.

4. The ground on which review is sought is incorporated in Ground (VI), which reads as follows:-

> "(VI) The order sought to be reviewed is in regard to observations in para 10 of the order as the ground referred in para 4 of the order itself refers to the scheme of Rule 27(2)(a) which provides for deemed continuation of service, which is not specifically discussed and adjudicated in any of the precedents cited by the applicant in Original Application no. 259 of 2017."
>
> (Quoted from page 6 of R.A)

5. Learned advocate Shri Jagdale has conceded that since only questions of law are to be addressed, the Review Application is opposed by the Respondents (Ori Applicants) only by oral submissions urging that no grounds exist for review.

6. Learned Chief Presenting Officer for the applicants (Ori Respondents) has placed reliance on propositions and judgements as below:-

Proposition :-

It shall be legal and permissible to continue the disciplinary proceeding which are instituted while the Government servant was in service whether before his retirement or during his re-employment, after the retirement of the Government servant, be in view of the deeming provision contained in Rule 27 (2)(a) of Maharashtra Civil Services (Pension) Rules, 1982 and it shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service.

(a) Judgment of Bombay High Court in Mr Dhairyasheel A. Jadhav Vs. Maharashtra Agro Industrial Development Corporation Ltd, W.P 1930/2005.

(b) Judgment of Bombay High Court in Manohar B. Patil Vs. The State of Maharashtra & Ors, W.P 3319/2012.

(c) Judgment of Hon'ble Supreme Court in Union of India Vs. Rajiv Kumar, (2003) 6 SCC 516.

Proposition:-

When different judgments apparently contrary to one another are cited, a judgment which is nearer to the text of law as enacted should be followed.

(a) Judgment of this Tribunal dated 20.12.2018 in Shri Prashant S. Pisal Vs. The Principal Secretary, Revenue & Forest Dept, & Ors, O.A 900/2018.

Proposition:-

This Tribunal can exercise power of review if there exists an error apparent on the face of record.

(a) Judgment of Hon'ble Supreme Court in State of West Bengal & Ors Vs. Kamal Sengupta & Anr, (2008) 8 SCC 612.

(b) Judgment of this Tribunal dated 11th December, 2018 in Smt Sairandhri Vilas Bhagat Vs. The State of Maharashtra & Ors, R.A 8/2018 in O.A 468/2017.

7. Shri K.R Jagdale, learned advocate for the Respondent (Ori Applicant in O.A 259/2017) has placed reliance on the following judgments:-

Proposition:-

It is necessary for the Government to serve on the applicant a notice that the departmental enquiry towards any misconduct prior to superannuation shall be continued after retirement, else it shall lapse.

(i) Judgment of Hon'ble Supreme Court in Ajit Kumar Rath Vs. State of Orissa & Others, AIR 2000 S.C 85.

> "30. The provisions extracted above indicate that the power of review available to the Tribunal is the same as has been given to a court under S. 114 read with O. 47, C.P.C. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of a person on 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 order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it. It may be pointed out that the expression "any other sufficient reason" used in Order 47. Rule 1 means a reason sufficiently analogous to those specified in the rule."

(ii) Judgment of Hon'ble Supreme Court in Aribam T. Sharma Vs. Aribam P. Sharma & Ors, AIR 1979 SC. 1047.

> "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 merits. That would be the province of a Court of appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all manner of errors committed by the Subordiante Court."

(iii) Judgment of Hon'ble Supreme Court in Meera Bhanja Vs. Nirmala Kumari Choudhury, AIR 1995 S.C 455.

> "12. In our view the aforesaid approach of the Division Bench dealing with the review proceedings clearly shows that it has over-stepped its jurisdiction under Order 47, Rule 1, C.P.C by merely styling the reasoning adopted by the earlier Division Bench as suffering from a patent error. It would not become a patent error or error apparent in view of the settled legal position indicated by us earlier. In substance, the review Bench has re-appreciated the entire evidence, sat almost as Court of appeal and has reversed the findings reached by the earlier Division Bench. Even fi the earlier Division Bench findings regarding C.S Plot no. 74 were found to be erroneous, it would be no ground for reviewing the same, as that would be the function of an appellate court. Learned Counsel for the respondent was not in a position to point out how the reasoning adopted and conclusion reached by the Review Bench can be supported within the narrow and limited scope of Order 47, Rule 1, C.P.C. Right or wrong, the earlier Division Bench judgment had become final so far as the High

Court was concerned. It would not have been reviewed by reconsidering the entire evidence with a view to finding out the alleged apparent error for justifying the invocation of review powers."

(iv) Judgment of Hon'ble Supreme Court in Mukesh Vs. State of NCT of Delhi, AIR 2018 SC 3220.

"46. We may observe that submissions which have been raised by Shri Sharma before us in this review petition are more or less the submissions which were advanced at the time of hearing of the appeal and this Court had already considered the relevant submissions and dealt them in its judgment dated 5.5.2017. This Court had cautiously gone into and revisited the entire evidences on record and after being fully satisfied had dismissed the appeal. By the review petition the petitioner cannot be allowed to reargue the appeal on merits of the case by pointing out certain evidences and materials which were on the record and were already looked into by the trial court, High Court and this Court as well."

(v) Judgment of Hon'ble Supreme Court in Devaraju Pillai Vs. Sellaya Pillai, AIR 1987 SC 1160.

"On an application being filed for review of the judgment of the learned Single Judge, another learned single judge of the High Court – the Judge who heard the Second Appeal not being available – virtually sitting in judgment over the decision of the learned Judge who decided the Second Appeal construed the document differently and held that it was a will and not a deed of settlement. This the learned single Judge was not entitled to do. If the party was aggrieved by the Judgment of the learned single Judge sitting in Second Appeal, the appropriate remedy for the party was to file an appeal against the Judgment of learned single Judge. A remedy by way of an application for review was entirely misconceived and we are sorry to say that the learned single Judge who entertained the application totally exceeded his jurisdiction in allowing the review and upsetting the Judgment of the learned single Judge, merely because he took a different view on a construction of the document."

(vi) Judgment of Hon'ble Supreme Court in Jaisri Sahu Vs. Rajdewan Dubey & Ors, AIR 1962 S.C 83.

> "15. Law will be bereft of all its utility if it should be thrown into a state of uncertainty by reason of conflicting decisions, and it is therefore desirable that in case of difference of opinion, the question should be authoritatively settled. It sometimes happens that an earlier decision given by a Bench is not brought to the notice of a Bench hearing the same question, and a contrary decision is given without reference to the earlier decision. The question has also been discussed as to the correct procedure to be followed when two such conflicting decisions are placed before a later Bench. The practice in the Patna High Court appears to be that in those cases, the earlier decision is followed and not the later. In England the practice is, as noticed in the judgment in Seshamma v. Venkata Narasimharao I.L.R [1940] Mad. 454, that the decision of a Court of Appeal is considered as a general rule to be binding on it. There are exceptions to it, and one of them is thus stated in Halsbury's Laws of England, third edition, Vol. 22, para 1687, pp. 799,88:-
>
> "The court is not bound to follow a decision of its own if given per incuriam. A decision is given per incuriam. A decision is given per incuriam when the court of a co-ordinate jurisdiction which covered the case before it, or when it has acted in ignorance of a decision of the House of Lords. In the former case it must decide which decision to follows, and in the latter it is bound by the decision of the House of the Lords."

(vii) Judgment of Hon'ble Supreme Court in State of Bihar Vs. Kalika Kuer & Ors, AIR 2003 S.C 2443.

> 10. Looking at the matter, in view of what has been held to mean by per incuriam, we find that such element of rendering a decision in ignorance of any provision of the statute or the judicial authority of binding nature, is not the reason indicated by the Full Bench in the impugned judgment, while saying that decision in the case of Ramkrit Singh (supra) was rendered per incuriam. On the other

hand, it was observed that in case of Ramkrit Singh (supra), the Court did not consider the question as to whether the consolidation authorities are courts of limited jurisdiction or not.

(viii) Judgment of Hon'ble Supreme Court in V. Sudeer Vs. Bar Council of India & Ors, (1999) 3 SCC 176.

"Sri Rao learned Senior Counsel for the Respondent-Bar Council of India tried to salvage the situation by submitting that the said decision was per incuraim on the ground that Section 24(3) (d) was not noticed. We have already held that Section 24(3)(d) is the provision which permits the Bar Council of India by exercise of the rule-making power to make an otherwise ineligible person eligible for enrolment and does not act in the reverse direction to make an otherwise eligible person ineligible. Once that conclusion is reached, Section 24(3)(d) becomes totally irrelevant for deciding the question whether the Rule impugned before the three-Judges Bench in that case could have been sustained by the Bar Council of India by taking resort to Section 24(3)(d). Non consideration of such irrelevant provision, therefore, cannot make the ratio of the decision in the aforesaid case per incuriam."

(ix) Judgment of Hon'ble Supreme Court in K.P Manu Vs. Chairman, Scrutiny Committee for Verification of Community Certificate, AIR 2015 S.C 1402.

"As far as second principle is concerned, it is essential to note that the authorities of larger Bench, in Y. Mohan Rao (supra), Kailash Sonkar (supra) and S. Anbalagan (supra) were not brought to the notice of the Court. Irrefragably, the second principle runs contrary to the proposition laid down in the Constitution Bench in Y. Mohan Rao (supra) and the decisions rendered by the three-Judge Bench. When a binding precedent is not taken note of and the judgment is rendered in ignorance or forgetfulness of the binding authority, the concept of per incuriam comes into play. In A.R Antulay v. R.S Nayak MANU/SC/0002/1988 : (1988) 2 SCC 602,

> Sabyasachi Mukherji, J. (as His Lordship then was) observed that:
>
> 42..... 'Per incuriam' are those decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the court concerned, so that in such cases some part of the decision or some step in the reasoning on which it is based, is found, on that account to be demonstrably wrong."

8. Learned advocate Shri B.A Bandiwadekar, who appeared in O.A 430/2017, also addressed in present Review Application. Learned Advocate Shri Bandiwadekar has relied upon the proposition as decided by this Tribunal in O.A 259/2017 (which judgment is sought to be reviewed). Learned advocate Shri Bandiwadekar, relied upon the following judgments:-

(i) Judgment of Hon'ble Supreme Court in Prem Nath Bali Vs. Registrar, High Court of Delhi & Anr, Civil Appeal No. 958/2010.

> "31. Time and again, this Court has emphasized that it is the duty of the employer to ensure that the departmental inquiry initiated against the delinquent employee is concluded within the shortest possible time by taking priority measures. In cases where the delinquent is placed under suspension during the pendency of such inquiry then it becomes all the more imperative for the employer to ensure that the inquiry is concluded in the shortest possible time to avoid any inconvenience, loss and prejudice to the rights of the delinquent employee.
> .....
>
> 33. Keeping this factors in mind, we are of the considered opinion that every employer (whether State or private) must take sincere endeavor to conclude the departmental inquiry proceedings once initiated against the delinquent employee within a reasonable time by giving priority to such proceedings and so far as possible it should be concluded within six months as an outer limit. Where it is not possible for the employer to conclude due to certain unavoidable causes arising in the proceedings within the time frame then efforts should be made to conclude within reasonable

extended period depending upon the cause and the nature of inquiry but not more than a year.

(ii) Judgment of Hon'ble Supreme Court in State of Andhra Pradesh Vs. N. Radhakishan, AIR 1998 SC 1833.

> "The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he s not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether delay has vitiated the disciplinary proceedings the Court has to consider the nature of charge, its complexity and on what account the delay has occurred. if the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer enterusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse consideration."

9. Learned C.P.O for the applicants (Original Respondents) has made a specific submission that text of Rule 27(1)(2)(a) of the Maharashtra Civil Services (Pension) Rules, 1982 may please be adverted to, and being a statutory text be read as it stands. The text of Rule 27(1)(2)(a) being eloquent need to be read down or construed to mean any other thing than that of the plain reading thereof.

> " 27. Right of Government to withhold or withdraw Pension
> (1).....
> (2)(a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his reemployment, shall, after the final retirement of the Government servant, be deemed to be

proceedings under this rule sand shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service."

10. The legal proposition emerging from various citations relied upon by the respective parties are culled and summarized as below:-

Proposition of State:

(i) *Judgement in the case of Chairman/Secretary of Institute of Shri Acharya Ratna Deshbhushan Shikshan Prasarak Mandal & Anr Vs. Bhujgonda B. Patil, W.P no. 41833/2002 with W.P 1357/2003 and Madanlal Sharma Vs. State of Maharashtra & Ors, W.P 5227/2002, which lays down that "continuation of enquiry against an employee who is superannuated, in absence of specific intimation that such enquiry will continue" as perincuriam inasmuch that in either of the judgments any reference, discussion and interpretation or reading down of Rule 27(2)(a) of M.C S (Pension) Rules, 1982 is not done. Both these judgments are based on an assumption that "lapsing of enquiry" is "well known settled law", however, any previous precedent indicating that law is so settled and well known is not revealing nor it is cited.*

(ii) Judgment in the case of Mr Dhairyasheel A. Jadhav Vs. Maharashtra Agro Industrial Development Corporation Ltd, W.P 1930 of 2005 and Manohar B. Patil Vs. The State of Maharashtra & Ors, W.P 3319/2012.

(a) Punishment in Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 cannot be inflicted in an enquiry in the event it is continued after superannuation.

(b) In view of deeming provision continuance of enquiry of a charge sheet served before superannuation is possible and permissible, automatically in view of deeming provisions and action that would be

permissible would be only under Maharashtra civil Services (Pension) Rules, 1982.

(iii) Judgment in the case of Union of India Vs. Rajiv Kumar, Whenever any judgment is cited as a precedent and it does not contain discussion and ruling, and rather expresses an opinion which is contrary to the express provisions of law without declaring such provisions is ultra virus or without laying down construction or interpretation thereof, would not operate as a binding precedent. (para 18) 2003 (6) SCC. 516).

(iv) Judgment in the case of Kamleshkumar I. Patel Vs. Union of India & Ors 1994 Mh. L.J 1669. When contradicting views expressed in different precedents are cited, the Court which is considering such precedent shall be guided by the text of law which is proximate to the law laid down which is in keeping with the text of law as enacted.

(v) An application for review would be maintainable when the judgment is based on error apparent on the face of record or the review is warranted for sufficient reasons. Reliance is placed on reported judgment of the Hon'ble Supreme Court in State of West Bengal & Ors Vs. Kamal Sen Gupta & Anr, 2009 (8) SCC 612. (para 24).

(vi) When a binding precedent is not taken note of and the judgment is rendered, in ignorance or forgetfulness thereof, the concept of per-incuriam comes into play. K.P Manu Vs. Chairman, Scrutiny Committee for Verification of Community Certificate, AIR 2015 S.C 1402 & A.R Antulay Vs. R.S Nayak (1988) 2 SCC 602.

11. Learned Advocate for the Respondents (Org. applicant in O.A.) has opposed the R.A. relying on sole proposition that a review would be

governed by Order 47 of CPC. In absence of an error of fact apparent on the face of record, review would not be maintainable.

12. This Tribunal has earlier taken a view based on the case of Chairman/Secretary of Institute of Shri Acharya Ratna Deshbhushan Shikshan Prasarak Mandal & Anr Vs. Bhujgonda B. Patil, W.P no. 41833/2002 with W.P 1357/2003 and Madanlal Sharma Vs. State of Maharashtra & Ors, W.P 5227/2002, that unless an intimation is given to an employee, who is being superannuated, it would not be permissible to continue with the D.E. However, this view is dehors the statutory provisions of law.

13. In the light of rival submissions following questions are framed:-

(a) Whether it would be open for this Tribunal to review its judgment rendered in O.A 259/2017?

(b) In the event review is allowed, what shall be the order in O.A 259/2017?

14. After considering rival submission it would be useful to advert to and have a look at Rule 27(2)(a) of M.C.S. (Pension) Rules, 1981. Text thereof is quoted in foregoing para no. 9.

15. Now, this Tribunal shall have to consider other precedents relied upon by the applicant state.

16. It is seen that this Tribunal has all throughout followed the view as laid down in Madanlal Sharma's case the observations which read as follows:-

> "It is also well known that, in case, the Government servant has been charged of causing loss to the exchequer, misappropriation of funds, falsification of record or any such serious misconduct, the disciplinary enquiry could be continued or initiated even after reaching the age of superannuation. In case of an enquiry which is initiated while the Government servant was in service, it is necessary that an order is passed intimating the delinquent that

> the enquiry proceedings shall be continued even after he had attained the age of superannuation, lest it shall be presumed that the enquiry came to an end and the delinquent was allowed to retire honourably."
>
> (Quoted from judgment of Hon'ble Bombay High Court in Madanlal Sharma's case, 2004 (1) Mh.L.J 581).

17. Observations contained in Madanlal Sharma's case have then been followed in Acharya Ratna Deshbhushan Shikshan Prasarak Mandal & Another versus Bhujgonda B. Patil. Observations contained in this Judgment.

18. Observations contained the Judgments namely Madanlal Sharma and Acharya Ratna Deshbhushan Shikshan Prasarak Mandal & Another versus Bhujgonda B. Patil, have to be recognized as based on preposition of law which is denoted on "well known principle". However, this purported well known principle is not seen or shown founded on any particular binding precedent or any Judgment of a bench of coordinate strength.

19. On one hand the view taken in Madanlal Sharma's case is based on well-known principle as rendered to in the said judgment, while in various other judgments relied upon by the State Government which are four in number, Dhairyasheel Jadhav supra, Manohar Patil supra, Rajiv Kumar supra and Harihar Bholenath supra, view is taken based on statutory rules that since statutory rules permit rather create a deeming fiction that an enquiry shall be deemed to be continued if D.E was instituted prior to the date of superannuation.

20. In the judgment relied above by Shri Bandiwadekar, learned advocate for the applicant in O.A 430/2017 also, it is observed that the departmental enquiry initiated prior to retirement has to be continued.

21. Now this Tribunal has to examine as to what is 'well known law' as relied on in Madanlal Sharma's case and as to whether it results in the legal position that the D.E initiated prior to superannuation shall lapse.

22. What is seen as a common and/or concurrent factor in all the judgments read one after another or comparatively can be culled as follows:-

(i) Punishment under (Discipline & Appeal) Rules is not permissible once employee retires.

(ii) Loss caused to the employer/Government could be recovered even after employee retires or is superannuated.

(iii) Enquiry in relation to action by way of forfeiture of pensionary benefits is permissible even after superannuation.

23. The emphasis of learned Presenting Officer is in the judgment of Union of India Vs. Rajit Kumar, (2003) 6 SCC 516, to argue that deeming provisions contained in Rule 27(2)(a) of Maharashtra Civil Services (Pension) Rules, 1982 unambiguously lays down that enquiry once initiated before retirement shall be deemed to be an enquiry for the purpose of action as by way of recovery of loss caused to the Government or reduction of pension. According to the learned CPO's submission that in the background of an unambiguous provisions the observations contained in Madanlal Sharma's case cannot have an effect of a binding precedent particularly in the light of concurrent precedents emerging from the case of Dhairyasheel Jadhav supra, Manohar Patil supra, Rajiv Kumar supra and Harihar Bholenath supra.

24. Now what emerges is as follows:-

That the judgment rendered by this Tribunal in O.A 259/2017 is rendered even without slightest advertence to Rule 27(2)(a) of M.C.S (Pension) Rules, 1982, being a judgment rendered on the basis of judgment in Madanlal Sharma's case, relying upon judgment of

Guwahati High Court in Girija Kumar Phukan Vs. State of Assam & Ors, II-1986 (1) A.I.S.L.J 179.

25. The Hon'ble Supreme Court has laid down in para 35 of judgment in the case of State of West Bengal Vs. Kamal Sen Gupta & Anr. 2008 (8) SCC 612 that powers of the Tribunal to review its own judgment are one and the same as laid down in order 47 of CPC. In addition to this judgment (State of West Bengal Vs. Kamal Sen-supra) Hon'ble Supreme Court has also eloquently laid down which illuminates the invisible area of law in case of A.R Antulay (supra) as followed in K.P Manu (supra) referred to in foregoing para no.10 (VI) that lack of advertence to a binding precedent is liable to be regarded as an error apparent on the face of record.

26. The error relied upon by the State is obviously an error apparent on the face of record in failure to advert to the provisions of law as contained in Rule 27(2)(a) of M.C.S (Pension) Rules, 1982.

27. Hence present is a case where the judgment is sought to be reviewed not because it is barely erroneous and/or different view is possible or permissible or is being faulted due to some error, rather it is being sought to be reviewed on the ground that it is de hors the statutory provisions which has occurred due to lack of advertence to Rule 27(2)(a) of M.C.S (Pension) Rules, 1982, but is contrary to binding precedents due to lack of advertence to the binding precedents. Further the judgment is based on a judgment of Hon'ble High Court in Madanlal Sharma's case which itself is rendered without advertence to Rule 27(2)(a) of M.C.S (Pension) Rules, 1982.

28. In view of the proposition advanced by the learned C.P.O and the judgment relied upon by the learned C.P.O, this Tribunal considers it imperative to be guided by eloquent and speaking judgment of Hon'ble Supreme Court in Union of India Vs. Rajit Kumar (2003) 6 SCC 516, and of Hon'ble High Court of Bombay in the case of Dhairyasheel A. Jadhav,

supra & Manohar B. Patil, supra, the point of error apparent on the face of record is very well brought home.

29. In the result, Review Application succeeds and is allowed. The judgment and order dated 3.11.2017 in O.A 259/2017 is recalled.

30. In the ends of justice, it shall suffice to direct that the enquiry initiated against the applicant by charge sheet dated 9.4.2014 be concluded, including passing of final order therein within six months from the date of this order.

31. Considering the overall lethargy being shown by the Government Officer in the matter of D.E, in present case, the Competent Authority should itself exercise its superintendence over the pace of enquiry and in the event for any reason beyond control it is found impossible to complete the enquiry an application for enlargement may be filed at least 30 days before the last day, i.e. date of expiry of six months.

32. We further direct that if the departmental enquiry in present case including passing of final order is not completed within six months or within time if enlarged by this Tribunal, the charge sheet and the disciplinary proceedings against applicant Dattatraya Baburao Karnale shall lapse in totality and shall be null and void and applicant will be entitled to be treated as not at all charge sheeted.

33. In the facts and circumstances of the case, parties are directed to bear their own costs.

(P.N Dixit)
Member (A)

(A.H. Joshi, J.)
Chairman

Place : Mumbai
Date : 18.02.2019
Dictation taken by : A.K. Nair.