

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

REVIEW APPLICATION NO 35 OF 2015

IN

ORIGINAL APPLICATION 682 OF 2014

DISTRICT : THANE

Smt Mukta Vijay Vaishnav,)
[since before marriage, Mukta Madhukar)
Ghosalkar], retd as Store Keeper from the)
Office of the below named Respondent,)
R/o: Shri Siddhi Apts, B-4-402,)
Near Datta Mandir, Kopari, Thane [E].)
Add for service of notice :)
R/o: Shri Siddhi Apartment, B-4-402,)
Near Datta Mandir, Kopari, Thane [E].))...**Applicant**

Versus

The Director [Administration],)
Information and Public Relation)
Directorate, [M.S], having office at)
New Administrative Building, Mantralaya,))
Mumbai 400 032.)...**Respondents**

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Shri B.A Bandiwadekar, learned advocate for the Applicant.

Shri K.B. Bhise learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 18.07.2016

ORDER

1. Heard Shri B.A Bandiwadekar, learned advocate for the Applicant and Shri K.B. Bhise learned Presenting Officer for the Respondents.

2. This Review Application has been filed seeking review of the order of this Tribunal dated 9.6.2015 in O.A no 682/2014. The Applicant is seeking recall of order dated 9.6.2015 in the aforesaid Original Application and praying that O.A no 682/2014 may be allowed.


3. Learned Counsel for the Applicant argued that O.A no 682/2014 was heard along with two other O.As viz O.A no 506/2014 and 654/2014 and a common judgment was pronounced. Learned Counsel for the Applicant argued that facts in different O.As got mixed which is an error apparent on the face of the order in O.A no 682/2014. Learned Counsel for the Applicant stated



that in para 10 (f) of the common judgment dated 9.6.2015, it is observed that:-

“The material difference between the facts of the case in O.A no 177 of 2014 which was relied upon by the Applicant, is that in the said matter as soon as the applicant was instructed, he appeared in the examination and promptly cleared it. He called the lower standard examination in 2007 and higher standard in 2008. He retired on 31.12.2013 and recover order is dated 19.11.2013. The facts of the case matter were different. In this case, the applicant despite having been told repeatedly did not bother to comply with the requirements of law.”

This observation is in O.A no 654/2014, where the Applicant was repeatedly told to pass Marathi Language Examination, but he failed to do so. It is, therefore, held that recovery from him, on account of increments released to him, though the same should not have been released, was justified. Reliance was placed on the judgment of Hon'ble Supreme Court in the case of **Chandi Prasad Uniyal & Others Vs. State of Uttrakhand & Ors : (2012) 68 SCC 417**. Learned Counsel for the Applicant contended that facts in the case of the Applicant, i.e. in O.A no 682/2014 were different. She had passed higher level Marathi Language Examination on 11.2.2013. The Applicant had claimed



that she was not informed till January 2013 that she had to pass higher grade Marathi Language Examination.

4. Para 5 of the order in O.A no 682/2014 is reproduced below:-

“Contentions of the applicant:-

5.a) The applicant objected to the aforesaid order dated 1.7.2013 because till January, 2013 she was never informed about the requirement of passing the higher grade examination.

b) Recovery cannot be affected from her retiral benefits because she had retired long back.

[Remarks: She retired from service on 30.6.2013. Recovery order is dated 1.7.2013. Therefore, this contention is factually incorrect].

Rest of the contentions of the applicant are on the same lines as in O.A no 654/2014.”

5. Learned Counsel for the Applicant argued that the conclusion of this Tribunal in para 8 & 9 are clearly erroneous. These paras are reproduced below:-

“8. The analysis of the contentions in OA No.654 of 2014 are applicable mutatis mutandis to the

contentions of the applicant herein too. Clause 9 of the appointment order reads as follows:

“खात्यात अस्ताना आवश्यक असल्यास योग्य त्या परीक्षेस असने आवश्यक आहे. (मराठी भाषा परीक्षा व मराठी टंकलेखन)”

The letter dated 29.12.1993 reads as follows:

“श्रीमती मुक्ता म. घोसाळकर लिपिक यांना कळविण्यात येत आहे की आपली या कार्यालयात अनुकंपा कारणास्तव नियुक्ती झाली आहे. नियुक्ती आदेशात आपल्याला मराठी भाषा परीक्षा व टंकलेखन मरीठी/हिन्दी परीक्षा पास होणे आवश्यक आहे असे नमूद करण्यात आले आहे. तरी आपण शासकीय वाणिज्य प्रमाणपत्र (३० शब्द प्रति मिनिट मराठी टंकलेखन व ४० शब्द प्रति मिनिट इंग्रजी टंकलेखन) परीक्षा उत्तीर्ण केल्या बद्दलचे प्रमाणपत्र नियमानुसार ह्या कार्यालयात आदेश नियुक्तीच्या दिनाकापासून सहा महिन्यांच्या आत तयार करण्यात यावे-”

9. Therefore, the contention that the applicant was not aware of the requirement of passing the higher grade examination is not acceptable. Further, the applicant contends that recovery has been effected after retirement without any notice. However, it needs to be noted that as early as 18.6.2012, the PVU had recorded a note as follows:

“प्रस्तुत प्रकरणात श्री वैष्णव यांची दि १६/११/९३ रोजी अनुकंपा तत्वावर नियुक्ती झाली आहे. डिसेंबर ९४ मध्ये निम्नस्तर परीक्षा उत्तीर्ण झाले परंतू उच्चस्तर भाषा परीक्षा उत्तीर्ण झाल्याची नोंद से. पु. दिसून येत नाही परंतू वेतनवाडी च्या नोंदी घेतलेल्या दिसून येतात याबाबत पुनर्विलोकन करून शासन

निर्णय सा.प्र.वि दि. ३०/१२/१९९७ अन्वये अचुक कर्यावाही करून तशा नोंदी घेण्यात याव्यात अतिप्रदान होत असल्यास वसुली करून तश्या नोंदी से. पु. घेण्यात याव्यात पुर्ननोदनी दि. १/१/२००६ ची अचुक वे.नि. करून से.पु. सादर करावे-”

Clearly, this had been brought to the notice of the applicant, hence the belated but successful attempt to clear the examination in 2013.”

6. Learned Counsel for the Applicant stated that the Applicant in O.A no 654/2014 was repeatedly informed to submit certificate of passing Marathi Language Examination, but he failed to do so. However, the present Applicant was never informed that she was required to pass Higher Grade Marathi Language Examination till January, 2013 and as soon as she was informed, she passed the same in February, 2013.

7. The Respondents had contended that the Applicant had passed Lower Grade Marathi Examination in 1994. In her appointment letter dated 10.1.1993, it was clearly told that she was required to pass Marathi Language Examinations as per rules, which included both Lower and Higher Grade Marathi Examinations.

8. On carefully perusing the judgment of the Tribunal dated 9.6.2015, the contention of the Applicant does not appear to be correct. The Tribunal in order

dated 9.6.2015 has considered the following facts to conclude that the Applicant was fully aware of the requirement to pass Lower and Higher Grade Marathi Examinations, viz:-

(i) Appointment letter dated 10.11.993, which clearly mentioned that the Applicant was required to pass Marathi Language Examination. The Applicant cannot claim that she was unaware of rules in this regard.

(ii) Letter dated 29.12.1993 informing her that she was required to pass Marathi Language Examinations.

(iii) This Tribunal has inferred that the Applicant was aware of the observations of the Pay Verification Unit dated 18.6.2012, which prompted her to appear in the Higher Grade Marathi Examination in January, 2013.

This Tribunal accepted the contention of the Respondents that the Applicant did not make efforts to pass the examination, despite being fully aware of such requirement. All other contentions raised by the Applicant were examined and rejected by this Tribunal.

9. The question is whether the Applicant has made out a case for reviewing the earlier order of this Tribunal dated 9.6.2013. In the case of **Ajit Kumar Rath Vs. State of Orissa & Others : (1999) 9 SCC 596**,

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Hon'ble Supreme Court has examined the scope and power of review of the Administrative Tribunals. It has been held that the power of review available to the Tribunal is the same or has been given to a Court under Section 114 read with Order 47 C.P.C. The power is not absolute and is hedged 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. In the present case, no new facts or evidence is brought out in this Review Application.

10. The power of review can also be exercised on account of some mistake or error apparent on the face of record. Though the Applicant has tried to make out a case that the conclusion of this Tribunal that the facts in O.A no 654/2014 and O.A no 682/2014 were similar was an error apparent on the face of record, the same has not been found to be correct. This Tribunal in both the cases had held that the Applicants therein were aware that they were required to pass requisite Marathi Language Examinations, but did not pass them.

11. The only ground on which the Applicant can claim review is the judgment of Hon'ble Supreme Court in the case of **State of Punjab and others etc. Vs. Rafiq**

Masih (While Washer) etc. in Civil Appeal no 11527/2014 dated 18.12.2014. On careful perusal of judgment of this Tribunal dated 9.6.2015, it is not clear whether the aforesaid judgment was brought to the notice of this Tribunal. Whether a case fully decided by the Tribunal can be reviewed in the light of a judgment of Hon'ble Supreme Court, which was not brought to its notice is the moot question. The judgment of this Tribunal dated 9.6.2015, which is sought to be reviewed, in my opinion has correctly interpreted Hon'ble Supreme Court's judgment in Uniyal's case (supra). Even the judgment of Hon'ble Supreme Court in Rafiq Masih's case (supra) may not help the Applicant as Hon'ble Supreme Court has held in para 3 of the aforesaid judgment that:-

“Any participation of the private respondents in the mistake committed by the employer in extending the undeserved monetary benefits to the respondent-employee, is totally ruled out.”

In the present case, i.e. in O.A no 682/2014, it was held by this Tribunal that the Applicant was fully aware that she was getting monetary benefits, which would have been available to her only on passing of the higher grade Marathi Examinations, which she had not passed. This could said to be constructive participation in the mistake committed by the employer in extending the underserved monetary benefits of the Applicant. It cannot be held that

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the Applicant was as innocent as the employer in the wrongful determination of her inflated emoluments.

12. In Ajit Kumar Rath's case (supra), Hon'ble Supreme Court has held that review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier. In the present case, the Applicant's claim is that this Tribunal has taken an erroneous view while passing judgment dated 9.6.2015 and therefore review is not maintainable.

13. Having regard to the aforesaid facts and circumstances of the case, this Review Application is dismissed with no order as to costs.

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai

Date : 18.07.2016

Dictation taken by : A.K. Nair.