

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

**REVIEW APPLICATION NO 41 OF 2015
IN
ORIGINAL APPLICATION NO 946 OF 2014**

DISTRICT : MUMBAI

Shri Narayan Gunaji Dabholkar,)
Occ : Retd, R/o: A/301, Siddhi Avenue)
C.H.S Ltd, TPS-3, Chikuwadi,)
Boriwali [W], Mumbai.)...**Applicant**

Versus

1. The State of Maharashtra)
Through Addl. Chief Secretary,)
Home Department, Mantralaya,)
Mumbai 400 032.)
2. The Commissioner of Police,)
Crawford Market, Mumbai.)...**Respondents**

Shri J.N. Kamble, learned advocate for the Applicant.

Ms Neelima Gohad, learned Presenting Officer for the Respondents.

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CORAM : Shri Rajiv Agarwal (Vice-Chairman)

Shri R.B. Malik (Member) (J)

DATE : 28.03.2016

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Shri J.N. Kamble, learned advocate for the Applicant and Ms Neelima Gohad, learned Presenting Officer for the Respondents.

2. This Review Application has been filed by the Applicant seeking to recall our order dated 14.10.2015 in O.A no 946/2014 and praying that the Original Application may be allowed.

3. Learned Counsel for the Applicant argued that the power of this Tribunal under Section 23(3) are analogous to powers under order 47 of the Code of Civil Procedure, review can be allowed on discovery of new matter or evidence. Learned Counsel for the Applicant stated that the Applicant had filed O.A no 946/2014 for granting deemed date of promotion to the posts of Head Clerk, Superintendent, Administrative Officer and Senior Administrative Officer. However, this Tribunal had not considered the case of the Applicant to grant him deemed

date of promotion in the post of Administrative Officer. Learned Counsel for the Applicant stated that in his case the Government Circular dated 6.6.2002 that Rule 32 of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981 may be relaxed should have been applied. This Tribunal has ignored this provision of the Circular dated 6.6.2012.

4. Learned Counsel for the Applicant contended that in the case of Ramesh Kumar Vs. Union of India, in Civil Appeal no 811/2001, Hon. Supreme Court has held that the principle of no work no pay cannot be accepted as a rule of thumb and matter will have to be considered on a case to case basis in case of retrospective promotion. This judgment could not be cited before this Tribunal, by the Applicant during the hearing of the Original Application. Learned Counsel for the Applicant argued that the Applicant is fully entitled to be given deemed date of promotion as sought in the Original Application and in view of the new and important material discovered after the judgment was delivered in the Original Application, this Review Application may be allowed.

5. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the Applicant has filed this Original Application, mainly on two grounds, viz:



- (i) The Tribunal did not consider clause (2) of the Government Circular dated 6.6.2002, and
- (ii) The judgment of Supreme Court which provides that retrospective promotion with full benefits is permissible, could not be cited during the hearing of the Original Application.

Learned Presenting Officer argued that this cannot be called new material, which was discovered after the Original Application was decided. The Government Circular was placed on record and if the Applicant wanted to rely on the judgment of Hon. Supreme Court, he should have cited the same. Learned Presenting Officer contended that Hon. Supreme Court has in the aforesaid judgment has held that in suitable cases, retrospective promotion can be granted. This issue was considered by this Tribunal. The Original Application was rejected as there was no effective challenge to the impugned order dated 31.3.2011. Learned Presenting Officer argued that Circular dated 6.6.2002 was considered by this Tribunal. Learned Presenting Officer argued that the Review Application does not mention any error in the judgment of this Tribunal, and may therefore, be dismissed.

6. We find that Learned Counsel for the Applicant has cited order 47 of the C.P.C. Hon'ble Supreme Court

in the case of **AJIT KUMAR RATH Vs. STATE OF ORISSA & ORS : (1999) 9 SCC 596**, has held that:

“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 section 114 read with Order 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 the 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.”

7. The Applicant has filed this Review Application alleging that Government Circular dated 6.6.2002 provides for relaxation of Rule 32 of Maharashtra Civil Services (General Conditions of Service) Rules, 1981

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which was not done in his case. It is stated in para 8 of the Review Application that "This provision has been neglected by the Respondent." This issue has been discussed in para 7 of our judgment, even Rule 32 ibid has been extracted. The reasons for rejecting claim of the Applicant was that there was no challenge to the impugned order dated 31.3.2011. It is no doubt true that in suitable cases, Rule 32 ibid can be relaxed as provided in Government Circular dated 6.6.2012. However, the Applicant could not produce material on record to establish that in his case relaxation of Rule 32 was necessary considering the facts of the case. As such, there was no occasion for the Respondents to invoke clause (2) of the Government Circular dated 6.6.2012. The Applicant has not been able to establish that there is any error in the order of this Tribunal in this regard.

8. The Applicant in para 9 of the Review Application has quoted extensively from the judgment of Hon. Supreme Court in Civil Appeal no 811/2011 in the case of Ramesh Kumar Vs. Union of India & others. This judgment is delivered on 31.7.2015, and it was not known to the Applicant when our order in O.A no 946/2014 was made. Hon'ble Supreme Court has held that principles of no work no pay cannot be accepted as a rule of thumb and the matter will have to be considered on a case to case basis. It is observed that:

“Particularly when the administration has wrongly denied his due then in that case he should be given full benefits including monetary benefit subject to there being any change in law or some other supervening factors. However, it is very difficult to set down any hard and fast rule.”(emphasis supplied).

In the present case, the Applicant was not given deemed date of promotion as the Respondents did not think it a fit case to relax Rule 32 of the Maharashtra Civil Services (General Conditions of Service) Rules, 1981. The Applicant could not effectively challenge the impugned order dated 31.3.2011 in this regard. The judgment of Hon'ble Supreme Court is clearly distinguishable.

9. The Applicant has not been able to point out any error in the judgment of this Tribunal. This Review Application is accordingly dismissed with no order as to costs.

Sd/-

(R.B. Malik)
Member (J)

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai

Date : 28.03.2016

Dictation taken by : A.K. Nair.