

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**REVIEW APPLICATION NO.02 OF 2021
IN
ORIGINAL APPLICATION NO.580 OF 2019**

DISTRICT : PUNE

Shri Dnyaneshwar S. Shinde.)
Age : 61 Yrs, Retired as Subhedar,)
Residing at Ananda Height, Flat No.9,)
Nirgudi Road, Chirke Colony,)
Pune – 411 047.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)
2. The Addl. Director General of Police)
And Inspector General,)
Maharashtra State,)
Pune – 411 001.)...**Respondents**

Mrs. Punam Mahajan, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 23.08.2021

JUDGMENT

1. This is an Application for review of order dated 10.12.2020 passed by this Tribunal in O.A. No.580/2019 filed under Section 22(3) (f) of Administrative Tribunal Act, 1985 read with Order 47 of Rule 1 of CPC.

2. O.A. No.580/2019 was filed challenging the order dated 04.04.2019 whereby request of the Applicant for House Rent Allowance (HRA) from November, 2010 to November, 2014 was rejected and Departmental action of adjustment of Rs.2,42,715/- from gratuity was confirmed by the Department. The Applicant was in unauthorized occupation at Pune from November, 2010 to November, 2014. The Respondents imposed penal charges at Rs.50/-p.m. in terms of G.R. dated 29.07.2011. In O.A, the Applicant's counsel raised contention that the G.R. dated 29.07.2011 is applicable only to quarter at Mumbai, and therefore, imposing of penal charges at the rate of Rs.50/-p.m., Pune quarter is incorrect. This issue has been dealt with in detail by the decision rendered by this Tribunal particularly in Paragraph Nos. 19, 20, 21 and 22, which are as under:-

19. Smt. Punam Mahajan, learned Advocate for the Applicant adverting to G.R. dated 29.07.2011 relied by the Respondents for recovery of penal charges submits that the said G.R. pertains to recovery of penal charges of the quarters in Greater Mumbai, and therefore, the levying of penal charges at the rate of Rs.50/- is incorrect. I find substance in her submission in so far as quantum of penal charges per sq.ft. is concerned.

20. The Respondents have placed on record the G.R. dated 15.06.2015 to justify levying of penal charges at the rate of Rs.50/- per sq.ft. The perusal of G.R. dated 15.06.2015 (Page No.49 of P.B.) reveals that it is applicable to entire Maharashtra excluding Greater Mumbai. However, material to note that, as per this G.R, the rates of penal charges are prescribed as per classification of the cities issued by Finance Department, Government of Maharashtra by G.R. dated 24.08.2009 which made classification of the cities falling in 'X', 'Y' and 'Z' category. It is stated in G.R. dated 15.06.2015 that the rates prescribed in G.R. dated 29.07.2011 would apply, but it should be as per classification of Cities. Clause No. 14 of G.R. further made it clear that this G.R. dated 15.06.2015 would also apply to the pending recoveries. This being the position, it is necessary to find out whether Pune falls in category 'X', 'Y' or 'Z'.

21. The learned P.O. today has tendered the G.R. dated 24th August, 2009 about the classification of Cities as referred in G.R. dated 15.06.2015. It is taken on record and marked by letter 'X'. The perusal of G.R. reveals that only Mumbai City falls in 'X' category. Whereas, Pune, Nagpur, Nashik, Amravati Municipal

Corporation, Aurangabad, Bhivandi, Solapur and Kolhapur fall within category 'Y'. As per G.R. dated 15.06.2015 for quarters situated in 'Y' category (Pune), the penal rent to be levied is at the rate of Rs.35/- per sq.ft. Thus, it is quite clear that penal charges of Rs.50/- per sq.ft. is applicable to Mumbai only and for Pune, it should be at the rate of Rs.35/- per sq.ft. This being the position, the levying of penal charges at the rate of Rs.50/- per month is incorrect. The Respondent No.2 is thus required to calculate the penal charges at the rate of Rs.35/- per sq.ft. afresh.

22. The totality of aforesaid discussion leads me to conclude that the action of Respondents to adjust penal charges from gratuity of the Applicant is legal and valid but levying of charges at the rate of Rs.50/- per sq.ft. is incorrect and it needs to be calculated afresh at the rate of Rs.35/- per sq.ft. as concluded above. The O.A, therefore, deserves to be allowed partly.

Accordingly directions were given to re-calculate the penal charges at the rate of Rs.35/- per sq.ft. afresh and further adjust the said amount towards gratuity and balance be refunded to the Applicant.

3. Now, this R.A. is filed *inter-alia* contending that the recovery of Rs.1,42,877/- was already done by the Department and secondly, there was no specific G.R. for imposing penal charges at the rate of Rs.35/- per sq.ft. and therefore order needs to be corrected.

4. Smt. Punam Mahajan, learned Advocate for the Applicant sought to contend that the findings recorded by this Tribunal that the G.R. dated 15.06.2015 is applicable to the pending recoveries and in the present case, the recovery of Rs.1,42,877/- was already done, and therefore, the question of applicability of G.R. dated 15.06.2015 would not arise. According to her, the Respondents ought to have placed on record specific G.R. empowering Respondents to recover penal charges at any specific rate and in absence of it, directions given by the Tribunal of recovery of penal charges at rate of Rs.35/- per sq.ft. is incorrect.

5. Whereas, learned P.O. has pointed out that Tribunal has already dealt with this issue in detail and after perusal of relevant G.R. has recorded the findings for recovery of penal charges at the rate of Rs.35/-

per sq.ft. and there is no apparent error on the face of record to take review of the order.

6. At this juncture, it would be apposite to reproduce Order 47 of CPC, which is as follows :-

“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 applied for the review.”

7. Needless to mention that the review proceedings have to be strictly confined to the ambit and scope of Order 47, Rule 1 of CPC. The review is by no means an appeal in disguise whereby the matter is re-heard. True, under Order 47, Rule 1 of CPC, the Judgment may be opened to review, if there is mistake or error apparent on the face of record. An error which is not self-evident and has to be detected by the process of reasoning can hardly be said to be an error apparent on the face of record justifying the Court to exercise its powers of review. In exercise of jurisdiction under Order 47 of CPC, it is not permissible that the matter to be re-heard and erroneous view to be corrected. Suffice to say, it must be remembered that the Review Petition cannot be allowed as an appeal in disguise. There is clear distinction between an erroneous decision and

error apparent on the face of record. Erroneous decision can be corrected by the higher forum in appeal in Writ Jurisdiction, whereas error apparent on the face of record can be corrected by exercise of review jurisdiction. This is fairly settled legal position.

8. At this juncture, it would be apposite to refer the decision of Hon'ble Supreme Court ***Parsion Devi & Ors. Vs. Sumitri Devi & Ors. (1997) 8 SCC 715***, wherein it has been held that if an error is not self-evident and detection thereof requires longer debate and process of reasoning, it cannot be treated as error apparent on the face of record for the purpose of Order 47 under Rule 1 of CPC. In other words, the order or decision or Judgment cannot be corrected merely because its erroneous view in law or on the ground that the different view could have been taken on account of fact or law, as the Court could not sit in appeal over its own Judgment. Similar view was again reiterated by Hon'ble Supreme Court in ***AIR 2000 SC 1650 (Lily Thomas Vs. Union of India)*** where it has been held that the power of review can be exercised for correction of mistake only and not to substitute a view. Such powers can be exercised within limits of statute dealing with the exercise of power and review cannot be treated an appeal in disguise. The mere possibility of two views on the subject is not ground for review.

9. Now, turning to the present case in O.A. the question was about quantum of penal charges. Respondents imposed penal charges at the rate of Rs.50/- per sq. ft. on the basis of G.R. dated 15.06.2015. Tribunal has recorded finding that the said G.R. was applicable to entire Maharashtra excluding Greater Mumbai. Tribunal has also taken note that penal charges was prescribed as per classification of the cities issued by Finance Department by G.R. dated 24.08.2009 which made classification in X,Y and Z category. In G.R. dated 15.06.2015 it is further clarified that rates prescribed in G.R. 29.06.2011 would apply but it should be as per qualification of the cities. G.R. dated 29.06.2011 provides for recovery of penal charges at rate of Rs.50/- per sq. ft.

Clause No.14 of G.R. further made it clear that G.R. dated 15.06.2011 would also apply to pending recoveries. As such on analysis of all these G.Rs., Tribunal has recorded finding that recovery of penal charges of Rs.50/- per sq. ft. is incorrect and it should be at the rate of Rs.35/- per sq. ft. in view of G.R. dated 15.06.2015 which *inter-alia* provides recovery at the rate of Rs.35/- per sq. ft. for quarter situated at Pune. As such the finding recorded by the Tribunal cannot be termed as an error apparent on the face of record. If the view taken by this Tribunal is incorrect it cannot be the ground for review.

10. Learned Advocate for the Applicant tried to emphasis upon recovery of Rs.1,12,877/- from the Applicant and adverting by this aspect it was tried to contend that since recovery was already done before the issuance of G.R. dated 15.07.2015 the question of penal charges at the rate of Rs.35/- per sq. ft. is incorrect. In so far as this aspect is concerned, letter dated 02.03.2015 (page 30 of paper book) reveals that sum of Rs.1,12,877/- has been recovered from the Applicant. It speaks about only recovery of certain amount already done from the pay and allowances of the Applicant. It cannot be construed that it was final recovery of the penal charges payable by the Applicant. It was only part of recovery and not recovery of entire outstanding amount. Indeed, in terms of G.R. dated 29.07.2011 read with 15.07.2015, Applicant was liable to pay penal charge at the rate of Rs.35/- per sq. ft. Therefore part recovery as made by the Department cannot be termed as full and final recovery of the penal charges. It is already made clear in G.R. dated 15.06.2015 that the said G.R. would also apply to pending recovery. In other words, unless there is full and final recovery, G.R. dated 15.06.2015 would apply read with G.R. dated 29.07.2011. As such, I see no such error apparent on the face of record.

11. The totality of the aforesaid discussion leads me to conclude that Review Application is devoid of merit and does not come within the scope of Review contemplated under Order 47 of Rule 1 of CPC.

12. Review Application is dismissed with no order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Place: Mumbai
Date: 23.08.2021
Dictation taken by: N.M. Naik.