

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**REVIEW APPLICATION NO.10 OF 2021
IN
ORIGINAL APPLICATION NO.768 OF 2020**

DISTRICT : MUMBAI

1. The State of Maharashtra,)
Through The Principal Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai.)

2. Mumbai Metropolitan Region)
Development Authority, Through its)
Metropolitan Commissioner,)
Bandra Kurla Complex, Bandra (E),)
Mumbai – 400 051.)... **Applicants**
(Org. Respondents)

Versus

Shri Devendra Tukaram Katke.)
Age : 46 years, Occu.: Government Service,)
Deputy Collector [Resettlement and)
Rehabilitation], MMRDA, Bandra (E),)
Mumbai – 400 051.)... **Respondents**
(Org. Applicant)

**Ms. S.P. Manchekar, Chief Presenting Officer for the Applicants
(Org. Respondents).**

**Ms. Madhavi Ayappan, learned Advocate holding for Mr. S.B.
Talekar, Advocate for the Respondent (Org. Applicant).**

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

DATE : 27.08.2021

JUDGMENT

1. This application for review is made under Section 22(3)(f) of Administrative Tribunals Act, 1985 read with Order 47 Rule 1 of CPC in respect of order passed by Tribunal on 11.06.2021 in O.A. No.768 of 2020.

2. In O.A. No.768 of 2020 the Applicant has challenged the order dated 15.12.2020 issued by Respondent No.1 – Government of Maharashtra, thereby cancelling his deputation on the post of Deputy Collector (Resettlement and Rehabilitation), MMRDA, Mumbai and repatriation as Deputy Collector, Land Acquisition, Road Project, Yeotmal.

3. O.A. was heard and decided on merit by judgment dated 11.06.2021 thereby impugned order of cancellation of deputation was quashed and directions were given to repost the Applicant on the post he was shifted from within three weeks from the date of the order.

4. Now, Review Application is filed on the ground that work of MMRDA is considerably reduced and consequently no post is available to repost the Applicant in MMRDA. This is the only ground raised for review of the order dated 11.06.2021. In alternative learned C.P.O. submitted that file for reposting of the Applicant is already in process and pending with Hon'ble Chief Minister for approval from yesterday.

5. Per contra, learned Advocate for the Original Applicant submitted that no case is made out to bring the matter within the ambit of review as contemplated under Order 47 Rule 1 of CPC, since there is no error apparent on the face of the record. In this behalf she placed reliance on the decision of ***Hon'ble Supreme Court in (2013) 8 Supreme Court Cases 337, Union of India V/s. Sandur Manganese and Iron Ores***

Limited and Others and 2020 SCC Online SC 896, Ram Sahu (Dead) Through LRs and Others V/s. Vinod K. Rawat and Others. In these two decisions Hon'ble Supreme Court highlighted the scope of review and reiterated that in absence of error apparent on the face of record on the ground which is not germane or relevant to dispute could not be the ground for review.

6. Learned C.P.O. in reference of letter dated 04.09.2020 written by MMRDA addressed to Managing Director, Maharashtra State Road Development Corporation (MSRDC) submitted that some work namely Virar-Alibaug Corridor has been entrusted to MSRDC and the record which was pending with MMRDA pertaining to that project was transferred to MSRDC and no post is available to repost the Applicant.

7. Whereas, learned Advocate for the Original Applicant has pointed out that recently by order dated 20.06.2021, one Shri Nitin Waghmare who was in MMRDA has been transferred as Deputy Collector, Beed and said post is now available to accommodate the Applicant. So far this aspect is concerned there is no rebuttal. Thus the ground that no post is vacant is totally erroneous and eye wash.

8. Basically issue posed for consideration is whether such ground of non-availability of post can be ground for review in its limited jurisdiction and answer is in emphatic negative. Indeed, no such ground of non-availability of post was raised in O.A. which Respondents ought to have raised to contest the O.A. Therefore, letter dated 04.09.2020 which is now relied upon, ought to have been filed in O.A. to raise such defence. In terms of Order 47 Rule 1 of CPC, no such evidence can be produced in review unless it was not within the knowledge or which could not have been produced despite due diligence in original proceeding. Here it is not the case of such excuse for non-filing of such documents in O.A. This being the position ground now raised in review is not at all sustainable since it does not come within the preview of review.

9. Apart, once Tribunal has decided the matter in issue and given direction for reposting of the Applicant having found that impugned transfer order is unsustainable in law, it is incumbent and obligatory on the part of Respondent to implement the order or to challenge the same before Higher forum. Admittedly, Respondents have not challenged the order passed by the Tribunal before Higher forum and it had attained finality. If orders passed by the Tribunal are not implemented on such ground of non-availability of post, there would be no sanctity to the orders passed by the Tribunal on merit. Once order is passed it is for the Respondents to implement the same unless it is modified by Higher forum.

10. This is nothing but an attempt to circumvent the order passed by the Tribunal or to play with the order passed by the Tribunal on totally flimsy and unfounded grounds. I therefore, see no substance in review. It is de hors the law and liable to be dismissed.

11. Review is dismissed with no order as to costs.

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

Place: Mumbai
Date: 27.08.2021
Dictation taken by: N.M. Naik.