IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

REVIEW APPLICATION NO.18 OF 2022
IN
ORIGINAL APPLICATION NO.188 OF 2022

DISTRICT: PUNE

Mr. Sunil Pundlik Kalgutkar. Age : 59 Yrs, Occu.: Retired. R/at Girija Niwas, Lane No.3, Plot No.31, Virbhadra Nagar, Baner, Pune – 411 045.	))))...**Applicant**

Versus

1.	The State of Maharashtra. through the Under Secretary (Home), IInd floor, Mantralaya, Mumbai – 32.	)))
2.	The Director General of Police. Having Office at: DG Office, Shahid Bhagatsing Road, Mumbai – 400023.	)))
3.	The Commissioner of Police. Pune City, Pune – 414 001.	))...**Respondents**

Shri Sunil P. Kalgutkar, Applicant-in-Person.

Smt Archana B. Kologi, learned Presenting Officer for the Respondents.

CORAM : A.P. KURHEKAR, MEMBER (J)

DATE : 16.11.2022.

JUDGMENT

1. Heard Shri S.P. Kalgutkar, Applicant-in-Person and Smt. Archana B.K., learned Presenting Officer for the Respondents.

2. This R.A. is filed to review order passed by the Tribunal in O.A. No.188/2022 on 02.08.2022 whereby O.A. was dismissed.

3. In O.A. the Applicant has challenged order dated 21.01.2021 passed by the Commissioners of Police, Pune denying his claim for Half Pay Leave on medical ground and further sought direction to the Respondents to sanctioned Commuted Leave. The Tribunal decided the O.A. on merit. The contention raised by the Applicant that he was suffering from Hypertension and other elements and therefore he ought to have been granted Commuted Leave has been rejected by the Tribunal. The Tribunal has recorded his finding that though the Applicant was transferred from Mumbai to Ratnagiri and relieved but did not joined and remained absent. He made application for medical leave. He had challenged transfer order dated 24.05.2016 by filing O.A. No.939/2016 which came to be dismissed. Later the Transfer order was modified by the Department transferring him to Pune and thereafter only he joined on 25.04.2017. In Para Nos.8 to 12 of the order deals with the contention raised by the Applicant as well as findings which are as below:-

> "8. Needless to mention, that leave is not right of employee. Section 10 specifically provides that leave is concession granted by the competent authority at its discretion to remain absent from duty and it cannot be claimed as of right. Here, significant to note that by order dated 24.05.2016, the Applicant was transferred from Mumbai to Ratnagiri was relieved belatedly on 01.09.2016. As such, he was bound to join at Ratnagiri on 02.09.2016, but he did not joint and made an application for Medical Leave. He even challenged the transfer order dated 24.05.2016 by filing O.A.No.939/2016 which came to be dismissed on 13.01.2017. Indisputably, there was no interim relief in favour of the Applicant. Despite it, he did not join at Ratnagiri. Later, he was again transferred from Ratnagiri to Pune and then only, jointed at Pune on 25.04.2017. As such, it is obvious that the Applicant was not willing to join at Ratnagiri rather made all efforts to get the transfer order cancelled, but did not succeed. Suffice to say, the intention of the Applicant was not to join at the place where he was transferred though his O.A. was dismissed. Even after dismissal of O.A, he did not join immediately. He was again transferred to Pune and then only joined on 25.04.2017 at Pune. It is thus explicit that Applicant did not join till he gets transferred as per his choice. Such tendency of a Government servant needs to be curbed, so as to maintain discipline in the Department.

9. Now turning to the Medical Certificates tendered by the Applicant along with leave application, all that it is about Hypertension, which is very common. Admittedly, he was not Indoor Patient nor suffering from any such serious ailment. Except Medical Certificate of Hypertension, he was not produced any other medical evidence to substantiate that he was really ill and was taking some treatment for ailment rendering him unfit to join. It is on this background, the competent authority has treated his absence as E.L.

10. Rule 63(6) of 'Leave Rules of 1981' specifically provides that authority competent to grant may commute retrospectively period of absence without leave to Extra-Ordinary Leave. Whereas in the present case, Respondents have granted E.L. since there were E.L. at his credit. The submission advanced by the learned Advocate for the Applicant that Respondents cannot change the name of leave asked for is totally fallacious and unacceptable. Where it is found that a Government servant abstains himself from joining the place where he was transferred and was avoiding to abide the order of transfer, in that situation, the decision taken by the Respondents to treat the absence period as E.L. can hardly be faulted with.

11. Reliance placed by learned Advocate for the Applicant on the Judgment of Hon'ble Supreme Court in ***Civil Appeal No.6770/2013 [State of Jarkhand & Ors. Vs. Jitendra Kumar Srivastava & Anr]*** is totally misplaced. In that case, the issue of deprival of pension without authority of law ad in that context, Hon'ble Supreme Court held that as per Article 300-A of the Constitution of India, a person cannot be deprived of pension without authority of law.

12. Only because Commuted Leaves were at the credit, that itself cannot confer any right in favour of the Applicant to get it sanctioned as Commuted Leave. The leave has to be granted considering all the attending circumstances. In the present case, it is *ex-facie* that Applicant was avoiding to join at the place where he is transferred and there was no such genuine illness. Therefore, the decision to treat the period of absence as Earned Leave need not be interfered with.

12. The totality of aforesaid discussion leads me to conclude that challenge to the impugned order holds no water and O.A. deserves to be dismissed. Hence, the following order."

4. The Tribunal recorded specific finding that the Applicant was avoiding to join at the place where he is transferred and there was no

such genuine illness so as to remain absent for long period of 235 days i.e. from 02.09.2016 to 28.02.2017.

5. Now in R.A. the Applicant in person sought to contend that he was not only suffering from Hypertension but he had some other aliments also and Department ought to have considered this aspects by granting leave ask for.

6. Once the Tribunal has recorded the finding on merit, if the finding is erroneous then remedy is to challenge it before higher forum. There is no such apparent error on the face of record.

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 or 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. As such, the present case does not fall within the parameters of review as this Court cannot sit in appeal over its own Judgment. The Review Application thus devoid of merit and deserves to be dismissed. Hence, the following order.

10. For the aforesaid reasons, I see no merit in the case and R.A. is dismissed.

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

Place: Mumbai
Date: 16.11.2022
Dictation taken by: N.M. Naik.

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