

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

REVIEW APPLICATION NO.01 OF 2021

IN

ORIGINAL APPLICATION NO.935 OF 2017

Shri Swamirao R. Koli)
R/at House No.80/8, Krushna Colony,)
Vijapur Road, June Solapur,)
Solapur 413 255.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Chief Secretary,)
Mantralaya, Mumbai.)
2. The Commandant, SRPF Group)
No.10, Solapur, Soregaon Camp,)
Solapur 413 008.)...**Respondents**

Smt. Punam Mahajan, learned Advocate for the Applicant.

Shri A. J. Chougule, learned Presenting Officer for the Respondent.

CORAM : Shri A.P. Kurhekar, Member-J

DATE : 12.08.2021

J U D G M E N T

This is an application for review of order dated 15.12.2020 passed by this Tribunal in O.A.No.935/2017 filed under Section 22(3) (f) of Administrative Tribunal Act, 1985 read with Order 47 of Rule 1 of CPC.

2. Shortly stated facts giving rise to Review Application are as under:-

The Applicant was serving as Police Constable in SRPF. He had submitted bogus caste certificate to the Department. Consequent to it offence under Section 417, 465, 468 & 471 was registered against him and the Criminal Case vide RCC No.47 of 2000 was filed against him.

He was convicted by learned Chief Judicial Magistrate, Solapur on 03.04.2007 and was sentenced to imprisonment. After conviction, the Applicant was dismissed from service by order dated 05.05.2007. Being aggrieved by conviction, the Applicant had filed Criminal Appeal No.44/2007 which was allowed by the learned Session Judge on 15.05.2015 and the Applicant was acquitted from the charges leveled against him. Thereafter, the Applicant was reinstated in service by order dated 18.08.2016 and accordingly, he joined on 20.08.2016. Later, he was served with the show cause notice dated 17.09.2016 as to why not his out of duty period from 05.05.2007 to 18.08.2013 to be treated only for pension purposes and why 50% pay and allowances only should not be granted to him for the period from 19.08.2013 to 19.08.2016. The Applicant gave reply and thereafter the Respondents issued order dated 05.10.2016 as it was proposed in show cause notice. The said order was challenged by filing O.A.No.935/2017 which was partly allowed upholding the order treating the period from 05.05.2007 to 18.08.2013 for pension purpose and granting 50% pay and allowances for the period from 19.08.2013 to 19.08.2016 but the directions were granted to pay salary and other allowances to the Applicant from the date of his representation dated i.e. 21.08.2015 to 19.08.2016 since there was delay on the part of the Respondents to get him reinstated in service after acquitting in Criminal Case.

3. Now, in this Review Application, the Applicant sought to contend that the provisions invoked by the Respondents i.e. Rule 70(4) of Maharashtra Civil Services (Joining Time, Foreign Service, and Payments during Suspension, Dismissal and Removal), Rules 1981 (Herein after referred to as 'Rules 1981' for brevity) is not applicable to present case and he is entitled to full pay and allowances for the entire period.

4. Smt. Punam Mahajan, learned Counsel for the Applicant sought to contend that Rule 70(4) of 'Rules 1981' invoked by Respondents while passing impugned order, regularizing the out of duty period is not

applicable and its applicability pertains only to the punishment imposed in D.E. and later set aside in appeal or review.

5. Learned Counsel for the Applicant further submits that once the Applicant was acquitted in the Criminal Case, he should have been granted full pay and allowances for entire out of duty period. As such, according to her there is apparent error on the face of record which needs to be corrected in review.

6. Per contra, learned Presenting Officer for the Respondents submits that no case is made out to invoke powers of review as contemplated under Order 47, Rule 1 of CPC and there is no such apparent error on the face of record.

7. 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.”

8. 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.

9. 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.

10. Suffice to say, unless there is apparent error on the face of record, the review is not maintainable and it should not be hearing of a matter under the disguise of review as if appeal.

11. True, once the conviction is set aside, a Government servant is entitled to be reinstated in service if no other departmental proceedings are initiated against him. However, it is well settled that acquittal in appeal wipe out stigma of conviction but that itself would not entitled the Government servant to claim full pay and allowances for the period in which he was out of duty. Each case needs to be decided on the facts and circumstances of a particular case and there could be no straight jacket formula for entitlement to full pay and allowances of a period in which a Government servant was out of duty because of his conviction from the competent court of law. Indeed, on the principle of no work no pay, there could be no such full pay and allowances for the entire period. However, in the present case, the Respondents have already granted some relief to the Applicant by treating entire period for pension purpose and granted 50% pay and allowances for the period from 19.08.2013 to 19.08.2016.

12. Indeed, in O.A. 935/2017, the Tribunal has dealt with the issue of entitlement of the Applicant for full pay and allowances and on merit, O.A. was dismissed. Para Nos.7, 8 and 9 deals with the present issue and following decisions of the Hon'ble Supreme Court were considered.

(I). (1996) 11 SCC 603 (Ranchhodji C. Thakore Vs. Superintendent Engineer, Gujarat Electricity Board, Himmatnagar & Anr.)

(II) (1997)3 SCC 636 (Krishnakant R. Bibhavnekar Vs. State of Maharashtra & Ors.)

(III) (2004) 1 SCC 121 (Union of India Vs. Jaipal Singh)

(IV) (2005) 8 SCC 747 (Baldev Singh Vs. Union of India & Ors.)

(V) (2007) 1 SCC 324 (Banshi Dhar Vs. State of Rajasthan & Anr.)

(VI) (2017) 2 SCC 383 (H. V. P. N. Limited & Ors. Vs. Bal Govind) and 1990 SCC (3) 472 (Virendra Kumar Vs. Avinash Chandra Chadha & Ors.).

13. Conspectus of the aforesaid decision is that even if a Government servant is acquitted in criminal case, he will not be entitled to claim full pay and allowances for out of duty period on his reinstatement in service. Though, the Applicant has been acquitted in criminal appeal, perusal of judgment reveals that acquittal was based on the principle of benefit of doubt to the accused. In other words, it was not clear acquittal and only benefit of doubt was given to the Applicant. In such situation, it would be deleterious if a person convicted for a serious offence is given full pay and allowances on his reinstatement. As such, it is no more *res integra* that only because the Applicant is acquitted in criminal case that *ipso-facto* will not entitle him to claim full pay and allowances. The Applicant was dismissed from service in view of the conviction and it is not a case that he was wrongly prevented from discharging duties. Suffice to say, subsequent acquittal only obliterates conviction but it does not operate retrospectively to wipe out the legal consequences flow from the conviction in the form of dismissal from service.

14. The decisions referred by the learned Counsel for the Applicant i.e. **(1984) 2 SCC 433 (Brahma Chandra Gupta Vs. Union of India)** and **2002 (3) MH. L. J. 390 Baban Wafare Vs. Zilla Parishad** are also discussed by the Tribunal in Para No.12 of the judgment holding that in the light of subsequent judgments of the Hon'ble Supreme Court as adverted to above, these two judgments are of no assistance to Applicant.

15. As such, the issue now raised about the entitlement for full pay and allowances was already raised in O.A. and adjudicated on merit in view of recent decisions of the Hon'ble Supreme Court that acquittal itself *ipso-facto* cannot vest any right in favour of the Applicant to claim full pay and allowances. Needless to mention, the review can be

entertained only in a situation where there is apparent error on the face of record or some new evidence is brought on record which could not have been produced in original proceeding with due diligence or which was not in the knowledge of a petitioner. If the view taken by the Tribunal is erroneous, the remedy is to challenge the same before higher forum and not by review. There is no such apparent error on the face of record. All the grounds now raised are already adverted to and impugned order was confirmed.

16. In this view of matter, I see no merit in Review Application and it deserves to be dismissed. Hence the following order :-

ORDER

Review Application is dismissed with no order as to costs.

Sd/-

**(A.P. KURHEKAR)
MEMBER (J)**

Date : 12.08.2021
Place : Mumbai
Dictation taken by :
Vaishali Santosh Mane

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