

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH : NAGPUR****C.A.258/23 In****Review Application No.10/23 In****ORIGINAL APPLICATION NO.566/2019**

1. Chief Executive Officer,
Zilla Parishad, Nagpur. ... (Org. Respdt. No.4)
2. District Health Officer,
Zilla Parishad, Nagpur ... (Org. Respdt. No.5)**Applicants.**

-Versus –

1.Dr. Dnyaneshwar s/o Wamanrao Papadkar, Retired,
R/o Plot No.189, Ramnagar, Nagpur. (Orig. Applicant)

2.The State of Maharashtra, through its Secretary,
Public Health Department, G.T. Hospital, 10th Floor,
Sankul Building, Mantralaya, Mumbai – 400001

3.Director of Health Services, Arogya Bhawan, St.George
Hospital Compound, P. Dmelo Road, Mumbai – 400 001.

4.Deputy Director of Health Services, Nagpur Region,
Mata Kacheri, Shraddhanand-peth, Nagpur -22.

5.Accounts and General A & E (II) Office,
Maharashtra, Civil Lines, Nagpur.

-----**Respondents**

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- 1.Shri Majid Shaikh ... Adv. for the applicants
(Org.Respdt. Nos. 4 & 5)
 - 2.Shri M.I. Khan P.O. for Respondents.
 - 3.Shri A.P. Sadavarte ... Adv. for Respondent No.1(Org. Applicant)
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CORAM : HON. SHRI M.A. LOVEKAR : MEMBER (J)

DATED : 20/06/2023

Judgment is reserved on this 14th June,2023

Judgment is pronounced on this 20th June,2023

JUDGMENT

Heard Shri Majid Shaikh, Id. Counsel for Review Applicants/Original Respondent Nos. 4 & 5, Shri A.P. Sadavarte, Id. Counsel for the original applicant/Respondent No.1 herein and Shri M.I. Khan, Id. P.O. for the Respondent Nos. 2 to 5 herein.

2. By this proceeding, review of judgment and order dt.27/01/2023 passed by this Tribunal in O.A. No.566/2019 is sought.

3. In the Original Application question of delayed payment of retiral benefits to the original applicant, and interest payable thereon came up for consideration. It was held that delay was caused in making these payments. The Respondent department was directed to calculate the extent of delay in making payment of each item of retiral benefits and pay interest thereon as per Rules 129-A/129 B of the Maharashtra

Civil Services (Pension) Rules, 1982 to the applicant, till the date of actual payment. It was further directed that the order shall be complied with within one month from the date of the judgment.

4. In para 6 of the judgment under review, it was observed –

“ The only issue to be dealt with is of delayed payment of retiral benefits to the applicant and interest payable thereon. The applicant as well contesting respondents have given Charts of payment. These Charts have been reproduced above. I have referred to the conclusions drawn in report of inquiry (Annex-A-4). It is apparent that the applicant is entitled to get interest as per Rules 129-A and 129-B of the Maharashtra Civil Services (Pension)Rules, 1982. The respondent department shall calculate the extent of delay in making payment of each item of retiral benefits and pay interest thereon as per Rules 129-A/129-B of the Maharashtra Civil Services(Pension) Rules, 1982 to the applicant till the date of actual payment. This order shall be complied with within one month from today. ”

In para 6 of the judgment under review there was a reference to the conclusions drawn in report of enquiry (Annex.A-4). These

conclusions which are as follows, were set out in para 2 of the judgment –

“अभिप्राय :-

- 1) उपप्राचार्य अपारंपारीक अभियान प्रशिक्षण केंद्र नागपूर यांचे पत्र कं 2345 दि.1/12/2015 अन्वये डॉ.पापडकर यांना दि.18/6/2015 ते दि.14/9/2015 पर्यंत एकूण 89 दिवस परावर्तीत रजा मंजूरीची शिफारस जिल्हा आरोग्य अधिकारी, नागपूर यांचेकडे करण्यात आली होती. यावर निर्णय घेतांना डॉ.पापडकर यांच्या आजारपणाच्या सत्यतेबाबत जर जिल्हा आरोग्य अधिकारी, नागपूर यांना शंका असल्यास वैद्यकीय मंडळाकडे पाठवून शंका निरसन करून घेता आली असती परंतु तसे न करता असाधारण रजा मंजूर करणे समर्थनीय वाटत नाही.
- 2) डॉ. पापडकर यांनी स्वेच्छा निवृत्तीचा नोटीस दि.21/10/2015 ला सादर केल्या नंतर लगेच त्यांच्या सेवा पुस्तकातील त्रुटी दुर करण्याची कार्यवाही सुरु करणे अपेक्षित होते. सदर प्रकरणी हि कार्यवाही दि.24/5/2016 रोजी सुरु करण्यात आली. यामध्ये 7 महिने विलंब झालेला आहे. त्यामुळे डॉ. पापडकर यांनी त्यांचा दि 14/8/2017 रोजी मा.उपसंचालक आरोग्य सेवा नागपूर मंडळ नागपूर तसेव मुख्य कार्यकारी अधिकारी जि.प.नागपूर यांचेकडे सादर केलेल्या तक्रारीनुसार त्यांना निवृत्ती विषयक लाभ प्राप्त होण्यास विलंब झालेला आहे.
- 3) डॉ. पापडकर यांचे सेवा निवृत्ती प्रकरण मा.महालेखाकार नागपूर यांचेकडे सादर करतांना सेवा निवृत्ती वेतनामध्ये एन.पी.ए. तसेव सहा अतिरिक्त वेतनवाढी विचारात न घेता सादर केल्यामुळे सुधारीत प्रस्ताव सादर करावा लागला व त्यामुळे सुधारीत सेवानिवृत्ती वेतन व इतर लाभ मिळण्याकरिता विलंब झालेला आहे.
- 4) कोषागारातुन परत आलेली देयके फेर सादर करतांना त्रुटी पुर्तता करण्याची दक्षता न घेतल्यामुळे देयक वारंवार परत आले व त्यामुळे सेवानिवृत्ती विषयक लाभ मिळण्यास विलंब झालेला आहे.”

5. Original Respondent Nos. 4 & 5 have sought review of the judgment on the following grounds :-

- A) *“ That, the enquiry report referred and the conclusions drawn therein accepted by the learned Member of the Maharashtra Administrative Tribunal, Nagpur has no legal sanctity for the reason that, the enquiry was not initiated by the competent Authority nor it was conducted in accordance with the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, and hence, the conclusions drawn and the findings arrived at by the learned Tribunal on the basis of enquiry report (Annexure 4 of the O.A.) are unsustainable in law.*
- B) *That, the enquiry report (Annexure 4) was submitted by the Inquiry Officer who is of the same rank as that of the Applicant No.2 (District Health Officer, Zilla Parishad, Nagpur and hence was incompetent to conduct the enquiry.*
- C) *That, there is nothing on record and in the enquiry report that, due notice was issued to the Applicant No.2 before initiation of the enquiry . Hence, the enquiry report is itself in breach of the M.C.S. (Discipline and Appeal) Rules, 1979 and in breach of the principles of natural justice.*
- D) *That the learned Member of the Hon’ble Tribunal ought to have considered that, the enquiry report filed by the Respondent No.1 at Ananexure-4 in the O.A. cannot be referred to or relied upon in arriving at the conclusion that there was any delay on the part of the applicants.*

E) *It is thus, submitted that, there is apparent mistake on the face of the record which has resulted into passing of the impugned order and needs to be corrected by properly construing the legality and validity of the enquiry report. The applicants, therefore, submit that, there is apparent mistake on the face of the record as pointed out by the applicants and hence, the impugned order dated 27/01/2023 needs to be quashed and set aside and the O.A. has to be dismissed for the aforesaid facts and legal grounds raised in the above Review Petition.*

6. The Id. Advocate for the review applicants raised all these grounds during oral submissions.

7. In his reply, Respondent No.1 herein/Original applicant has contended that the present review clearly falls beyond the scope of Section 22(3)(f) of the Administrative Tribunals Act and hence, it is liable to be dismissed. It was further contended that while exercising powers of review under section 22(3)(f) of the Administrative Tribunals Act, limitations placed on these powers by Order 47, Rule 1, CPC are required to be considered.

8. In their Rejoinder, the Review Applicants/Original Respondent Nos. 4 & 5 have contended as follow :-

“ That, it is also admitted by the Respondent that the enquiry is not initiated as per M.C.S.R. (D & A) Rules, 1976. It is stated that, the enquiry was only initiated to find-out the delay in the disbursement of the retiral benefit on the part of Zilla Parishad and the District Health Officer. It is submitted that, the respondent No.1 has not stated the provisions under which such an enquiry by the Assistant Director of Health Services can be initiated against the District Health Officer. It is further submitted that the post of Asst. Director Health Service (Malaria) who has conducted enquiry is not a higher post than the District Health Officer. It is further pointed out that the Dy. Director of Health Services the Respondent No. 4 in the present review application has no legal right or authority under any of the provisions of law to direct such enquiry with respect to the alleged delay in disbursement of retiral benefits. That for the aforesaid reason the reply of the Respondent No. 1 has no merits and cannot be considered by this Hon’ble Tribunal. ”

9. It is further pleaded in the Rejoinder-

“ It is submitted that, the applicant has made –out a good case showing the mistake apparent on the face of record which has occurred and the misrepresentation of the Respondent No. 1 has resulted into passing the impugned order dated 27/1/2023 which needs to be modified/set aside by dismissing the original Application. That the power under section 114 read with order 47 rule 1 of Civil

Procedure Code is squarely attracted in the facts and circumstances of the case. The Reply filed by the Respondent No. 1 is misleading, vague and cannot be considered. The review application may kindly be allowed for the reasons aforesaid and in the interest of justice.”

10. The question which goes to the root of the matter is whether there is an error apparent on the face of the record so as to exercise powers of review. It was submitted by Id. Advocate Shri Sadavarte for the Original Applicant/Respondent No. 1 herein that there is no error apparent on the face of the record and hence, this is not a fit case to exercise powers of review. To support this submission, reliance was placed on the following Rulings :-

1. Union of India & Ors. –Vs/- Col. Ivan Singh (2023(1) ALL MR 313).

In this case, it is held-

“ Thus, from the above, the following can be culled out:

(a) Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1 of the Code of Civil Procedure.

(b) The power of review can be exercised :

(i) on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the

knowledge of the person seeking the review or could not be produced by him at the time when the order was made;

- (ii) where some mistake or error apparent on the face of the record is found, which mistake or error has to be self evident and must be such an error which must strike one on mere looking at the record. That is to say where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it. An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record; and*
- (iii) on any analogous ground.*

But :

- (c) It may not be exercised on the ground that the decision was erroneous on merits as a review is not an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may*

enable an appellate court to correct all manner of errors committed by the subordinate court.

(d) It does not postulate a rehearing of the dispute because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the court and thereby enjoyed a favourable verdict.

(e) The fact that the decision on a question of law on which the judgment of the court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment.

(f) Where the order in question is appealable the aggrieved party has adequate and efficacious remedy and the court should exercise the power to review its order with the greatest circumspection. It would thus be apparent that unless a plea seeking review falls within the above parameters, a review shall not lie.”

2. **Chandrabhaga Ananda Kudle and Another –Vs/- Proposed Sanjay Sahakari Grah Nirman (2019(6)Mh.L.J.182)**

In this case, on facts it was held that there was no error apparent on the face of the record and hence, powers of review

as provided under Order 47, Rule 1 CPC could not be exercised.

3. **Perry Kansagra –Vs/- Smriti Madan Kansagra (2019 ALL SCR 1068)**

In this case it is held that error in the impugned judgment must be self-evident for exercising powers of review and error which is required to be detected by process of elaborate reasoning can hardly be said to be an error apparent on the face of the record. It is further held that exercise of powers of review is not to be equated with exercise of powers of appeal and even if there is no correct appreciation of facts and law in the earlier judgment, the parties can be left to challenge the decision in an appeal.

11. I have considered what is held in the judgment under review, reasons therefor, grounds raised by review applicants, reply of the Original Applicant/Respondent No. 1 herein and the legal position in respect of how powers of review should be exercised. According to the Review Applicants, this Tribunal committed an error by relying on report of the enquiry which was not at all sustainable in the eye of law. This cannot be said to be an error apparent on the face of record. To decide

sustainability or otherwise of this submission, a process of elaborate reasoning will have to be resorted to. Consequently, I find no merit in the Review Application. Accordingly Review application stands dismissed with no order as to costs.

C.A. No.258/2023 also stands disposed of.

**M.A. Lovekar
(Member (J))**

DATE :20/06/2023

Skt.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

DATE :20/06/2023

`Skt.