

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**REVIEW APPLICATION NO.10 OF 2017
IN
ORIGINAL APPLICATION NO.941 OF 2016**

Smt. Suman Shivaji Mali.)
Age : 59 Yrs., Occu.: Nil,)
Retired as Sr. Clerk from the office of)
Respondent No.1, R/o. 301, 'Sai Lila' Apt.,)
A-Wing, Plot No.276-278, Sector-6,)
Nerul (W), Navi Mumbai.)...**Applicant**

Versus

1. The Director of Vocational Education))
& Training Directorate, M.S,)
Mumbai and having office at 3,)
Mahapalika Marg, Dhobi Talav,)
P.B.No.10036, Mumbai – 1.)
2. The State of Maharashtra.))
Through Principal Secretary,)
Higher & Technical Education Dept.,)
Mantralaya, Mumbai – 400 032.)
3. The State of Maharashtra.))
Through Principal Secretary,)
Skill Development & Entrepreneurship)
Department, Mantralaya,)
Mumbai – 400 032.)
4. The Director.))
Skill Development & Entrepreneurship,)
M.S, Mumbai and having office at)
3, Mahapalika Marg, Dhobi Talav,)
P.B. No.10036, Mumbai – 1.)...**Respondents**

Mr. Arvind V. Bandiwadekar, Advocate for Applicant.

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

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

DATE : 31.05.2021

JUDGMENT

1. This is an application for review of Judgment delivered by the Tribunal in O.A.No.941/2016 decided on 15.03.2017 invoking jurisdiction of this Tribunal under Section 22(3(f) of Administrative Tribunals Act, 1985 read with order 47, Rule 1 of Code of Civil Procedure. The O.A. was decided by the then Vice-Chairman (Shri Rajiv Agarwal). Since he has demitted the office on completion of his tenure, the present Review is assigned to me for hearing and decision in accordance to law.

2. The Applicant had filed O.A.No.941/2016 challenging the orders dated 20.04.2015 and 23.07.2015 granting first and second benefit of Assured Career Progression Scheme (Time Bound Promotion) from 18.10.2002 and 18.10.2014 respectively instead of from 10.02.1996 and 10.09.2008 respectively when the Applicant had completed 12 years and 24 years of continuous service. The Applicant joined service as Junior Clerk on 10.09.1984 on temporary/ad-hoc basis without being selected through MPSC. She was selected through duly constituted Committee. Later, his services were regularized in terms of G.R. dated 01.09.1994. The Applicant's claim in O.A. was for grant of benefit of TBP on completion of 12 years' service from the date of his initial appointment i.e. 10.09.1984. She had completed 12 years' continuous service on 10.09.1996 from the date of his initial temporary appointment. However, Respondents have not granted the benefit of TBP from 10.09.1996 on the ground that she did not pass Post Recruitment Examination in terms of Post Recruitment Examination for the

Ministerial Staff of Technical Education Rules, 1973. In O.A, the Applicant contended that he was not relieved on 03.09.2001 to undergo training to enable her to appear for the Post Recruitment Examination despite the order to relieve her by Respondent No.1. As such, according to Applicant, it was because of non-relieving her, she could not undergo training so as to enable her to appear in Post Recruitment Examination. The Applicant had completed 45 years' of age on 18.10.2002, and therefore, Respondents have granted benefit of 1st TBP from 18.10.2002 and granted 2nd TBP from 18.10.2014. Whereas, Applicant's claim was that she was entitled to 1st benefit on 10.09.1996 and to 2nd benefit from 10.09.2008.

3. The O.A. was resisted by the Respondents *inter-alia* contending that since the Applicant had failed to pass the examination within 4 years and 3 chances in terms of Post Recruitment Examination Rules, she was not entitled for the benefit of TBP scheme. Later, she was exempted on attaining 45 years' age in terms of Rule 6 of Post Recruitment Examination Rules. Therefore, the benefit of 1st TBP was rightly granted from 18.10.2002 and 2nd benefit was granted from 18.10.2014. Thus, Respondent's contention was that the Applicant was not eligible for promotional post, so as to claim benefit of non-functional promotion in terms of TBP Scheme.

4. The O.A. was head on merit and dismissed on 15.03.2017 with the findings that the Applicant was not entitled to the benefit of TBP on completion of 12 years' service without passing the departmental examination within the stipulated period of 4 years and 3 chances and/or before completion of 12 years' service. As regard non-relieving of the Applicant to undergo training, the Tribunal held that it is Rules called "महाराष्ट्र शासन दुय्यम मंत्रालय सेवा (निम्नस्तर लिपिक) सेवा प्रवेशोत्तर प्रशिक्षण परीक्षा नियम १९७७" which would apply since all earlier Rules including Post Recruitment Examination for the Ministerial Staff of the Department of Technical Education Rules, 1973 have been superseded and the training

was made optional. In terms of Rule 14(2) of Rules of 1977, training is held optional and not compulsory, so as to enable to appear for Post Recruitment Examination. As such, the stand taken by the Applicant that she could not appear in the examination because of non-relieving by the Department, and therefore, could not appear in examination has been negated.

5. This Review Application has been filed mainly on the ground that the Tribunal did not consider earlier decisions rendered by the Tribunal in **O.A.No.1493/2009 (Shantaram Gaikwad Vs. Treasury Officer, Nashik)** which was decided along with **O.A.No.1494/2009, O.A.No.244/2010 and O.A.No.246/2010 by Judgment dated 30.10.2015** as well as one more Judgment rendered by the Tribunal in **O.A.No.166/2016 (Avinash Garvare Vs. District Collector, Thane) decided on 15.12.2016** wherein relief was granted in somewhat similar situation.

6. Shri A.V. Bandiwadekar, learned Advocate for the Applicant urged that the Judgments in **Shantaram Gaikwad's** matter were relied upon by the Applicant by placing the copies of those Judgments on record, but the Tribunal failed to follow these decisions though the point in issue about the passing of departmental examination within stipulated time is held inconsequential. Thus, according to learned Advocate for the Applicant, once the issue is already covered by the earlier decision of the Tribunal, it was required to be followed and not doing so amounts to apparent error on the face of record and such legal error can be corrected by exercising powers of review under Order 47 of CPC read with Section 22(3)(f) of Administrative Tribunals Act, 1985. Thus, in short, according to learned Advocate for the Applicant, this O.A. ought to have been decided and allowed on the line of decision rendered in **Shantaram Gaikwad's** matter as well as **Avinash Garvare's** matter.

7. Shri Bandiwadekar, learned Advocate for the Applicant further submits that though Tribunal while deciding O.A. in its Judgment had taken note of the decision of **Shantaram Gaikwad's** matter and **Avinash Garvare's** mater, in ultimate conclusion the Tribunal declined to act upon it without assigning specific reasons for taking different view. He, therefore, submits that in absence of any such discussion for taking different view, the non-following earlier decisions of the Tribunal as a precedent has to be termed legal error apparent on the face of record and it comes within the ambit of review.

8. Shri Bandiwadekar, learned Advocate for the Applicant referred to certain decisions to bolster-up his contention that non-following the earlier decision rendered in O.A.No.166/2016 amounts to apparent error on the face of record and the same can be reviewed exercising powers under Order 47 Rule 1 of CPC. The decisions referred by him are as follows :-

(a) ***1997 VI AD S.C.257 [K. Ajit Babu Vs. Union of India].***

The said matter relates to seniority. Earlier, Central Administrative Tribunal in Application No.263/1986 decided issue of seniority and promotion to which Petitioner **K. Ajit Babu** was not party. He, therefore, filed independent and separate O.A. before CAT which was dismissed on the ground that he is not entitled to file an application under Section 19 of Administrative Tribunals Act, but can only file Review Petition seeking review of the decision adversely affecting him. As such, the issue posed for Hon'ble Supreme Court whether Tribunal can entertain fresh application for decision on its merit. The Hon'ble Supreme Court set aside the order of CAT rejecting his application summarily and remanded the matter to the Tribunal to decide the application in accordance with law. It is in fact situation in Para No.5 which is relied by the learned Advocate for the Applicant, the Hon'ble Supreme Court held as under :-

“5. Consistency, certainty and uniformity in the field of judicial decisions are considered to be the benefits arising out of the "Doctrine of Precedent". The precedent sets a pattern upon which a future conduct may be based. One of the basic principles of administration of justice is, that the cases should be decided alike. Thus the doctrine of precedent is applicable to the Central Administrative Tribunal also. Whenever an application under Section 19 of the Act is filed and the question involved in the said application stands concluded by some earlier decision of the Tribunal, the Tribunal necessarily has to take into account the judgment rendered in earlier case, as a precedent and decide the application accordingly. The Tribunal may either agree with the view taken in the earlier judgment or it may dissent. If it dissents, then the matter can be referred to a larger bench/full bench and place the matter before the Chairman for constituting a larger bench so that there may be no conflict upon the two Benches. The large Bench, then, has to consider the correctness of earlier decision in disposing of the later application. The larger Bench can over-rule the view taken in the earlier judgment and declare the law, which would be binding on all the Benches (See Jhon Lucas (supra). In the present case, what we find is that tribunal rejected the application of the appellants thinking that appellants are seeking setting aside of the decision of the tribunal in Transfer Application No. 263 of 1986. This view taken by the Tribunal was not correct. The application of the appellant was required to be decided in accordance with law.”

(b) **1970 (3) SCC 643 [Gulam Abbas & Ors. Vs. Mulla Abdul Kadar]**

In the said matter, the issue was whether the decision rendered by Single Judge without considering Circular regarding limitation can be corrected in review. The Circular had force of law. It is in that context, the Hon'ble Supreme Court held that failure to consider circular having force of law constitutes error and it can be corrected in review jurisdiction.

(c) **2005 AIR SCW 230 [Board of Control for Cricket, India and Anr. Vs. Netaji Cricket Club & Ors.].**

The learned Advocate for the Applicant referred Para Nos.88 to 90 and 93 from the Judgment, which are as follows :-

“88. We are, furthermore, of the opinion that the jurisdiction of the High Court in entertaining a review application cannot be said to be

ex facie bad in law. Section 114 of the Code empowers a court to review its order if the conditions precedents laid down therein are satisfied. The substantive provision of law does not prescribe any limitation on the power of the court except those which are expressly provided in Section 114 of the Code in terms whereof it is empowered to make such order as it thinks fit.

89. *Order 47, Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason.*

90. *Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words 'sufficient reason' in Order 47, Rule 1 of the Code is wide enough to include a misconception of fact or law by a court or even an Advocate. An application for review may be necessitated by way of invoking the doctrine "actus curiae neminem gravabit".*

93. *It is also not correct to contend that the court while exercising its review jurisdiction in any situation whatsoever cannot take into consideration a subsequent event. In a case of this nature when the court accepts its own mistake in understanding the nature and purport of the undertaking given by the learned senior counsel appearing on behalf of the Board and its correlation with as to what transpired in the AGM of the Board held on 29th September, 2004, the subsequent event may be taken into consideration by the court for the purpose of rectifying its own mistake."*

- (d) Lastly, reference was made to the order of Hon'ble High Court in **Writ Petition No.340/2014 (Namdeo T. Shelke Vs. Addl. Director General of Police & Inspector General of Prisons) decided on 16th December, 2014** whereby O.A. was remanded to the Tribunal for decision afresh. It was O.A. relating to transfer. The Petitioner Namdeo Shelke had contended before the Tribunal that his case is identical to earlier decision rendered by the Tribunal, but the said decision was not even referred to by the Tribunal in his matter and O.A. was dismissed. Therefore, in fact situation, the Writ Petition was disposed of remanding the matter to

Tribunal for decision of O.A. afresh. Thus, in that matter, the earlier decision given by the Tribunal was not at all referred to and on that ground O.A. was restored and remanded to the Tribunal for decision afresh. Whereas, in the present case, the Tribunal had already considered and commented upon the earlier decisions in **Shantaram Gaikwad's** matter and **Avinash Garvare's** matter.

9. I have gone through the earlier Judgments in **Shantaram Gaikwad's** matter as well as in **Avinash Garvare's** matter. Significant to note that in **Shantaram Gaikwad's** matter, the Applicants therein passed post recruitment examination after time limit, but within a period of 12 years, and therefore, in fact situation, O.As were allowed with the finding that on the date when the Applicants therein were entitled for benefit of TBP, they had already passed departmental examination within time limit and attempts, and therefore, held entitled for the benefit of TBP. Whereas, in **Avinash Garvare's** matter, the Applicant therein did not pass post recruitment examination within stipulated time as well as within the period of 12 years from entry into service. Later, in view of attaining the age of 45 years, he was declared exempted from passing the examination. The Tribunal referred to its earlier decision in **Shantaram Gaikwad's** matter and held that final order should be in the line of his earlier order in **Shantaram Gaikwad's** case. As such, though facts in **Shantaram Gaikwad's** matter were clearly distinguishable, the O.A. filed by Avinash Garvare was allowed giving him benefit of decision in **Shantaram Gaikwad's** matter.

10. Now turning to the Judgment under review, material to note that learned Vice-Chairman has considered as well as commented upon both the earlier decisions in detail and impliedly distinguishing those Judgments and dismissed the O.A. with following observations.

“5. In the present case, two important issues have been raised, which are examined hereinafter. The first issue is the rules, which are

applicable in this case. The Applicant is relying on the Post Recruitment Examination for the Ministerial Staff of the Department of Technical Education Rules, 1973 (Exhibit 'C' on page 28). Rule 4 provides that a Junior Clerk will be given training to enable him /her to pass the examination. The Applicant's claim is that she was not deputed for training till 2001 and in 2001, though the Respondent no. 1 deputed her for training, the Deputy Director did not relieve her, she could not have appeared for the Examination, without undergoing the training. She should have been deemed to have passed the examination. The Respondents case is the rules called "महाराष्ट्र शासन दुय्यम मंत्रालय सेवा (निम्नस्तर लिपिक) सेवा प्रवेशोत्तर प्रशिक्षण परीक्षा नियम १९७७" (Exhibit R-1, page 81) are applicable as all the earlier rules have been superseded. Rule 14(2) of these rules make it clear that it is optional to attained training class and it will not be compulsory to attend training classes. The Applicant need not have waited for undergoing training and appeared for the Departmental Examinations. In the affidavit in rejoinder dated 28.11.2016, this is not denied by the Applicant. The Applicant has stated that:-

"It is not compulsory for Clerk-typist to undergo training and as such the said training is optional. Thus the Respondents blamed me for having failed to pass the said departmental examination in the requisite time and chances and therefore, according to them till I got exemption to pass the said examination on attaining the age of 45 year, that I did not become eligible to claim the time bound promotion benefits, despite having completed 12 years' service long there before.

I say that in few such similar cases, the Hon'ble Tribunal has already taken a consistent view and has ruled that failure to pass such departmental examination in the requisite time and chances, does not deprive the Government servant to claim the time bound promotion benefits from due date, when the only condition is that the case of such Government servant for time bound promotion benefits could be considered only after he passes such examination disregard of any number of chances and outside the outer limit or even by way of getting exemption from passing the said examination."

The Applicant joined service in 1984 and her services were regularized in 1994. She could have passed the necessary examination within 4 years and 3 chances, after regularization, which she failed to do. She was entitled to be exempted from passing the said examination only on attaining the age of 45 years.

6. The next issue is whether a Government servant is entitled to get Time Bound Promotion after completion of 12 years of service, even if on that date, he has not passed the qualifying examination. By judgment dated 30.10.2015 in O.A. No. 1493/2009 etc. this Tribunal has held as follows:-

"11. **Baviskar's** case also was based on more or less the same principles. Although, it would appear that the successor of 1995

G.R dated 20.7.2001 whereby the Assured Career Progression Scheme (ACP) was introduced was also considered therein. The essence of the matter is the same. It was observed in Para 2 that a certain judgment of this Tribunal taking the view that was ultimately taken in **Baviskar's** case was in fact affirmed by the Hon'ble High Court in Writ Petition no. 4808/2006. From para 4, it would appear that there also the Applicant did not clear the examination within the time limit and the number of attempts. It was held that in so far as Time Bound Promotion was concerned, the seniority had no role to play and relying upon another judgment of this Tribunal and a judgment of Hon'ble Supreme Court in K.C Sharma & others Vs. Union of India & Others (1997) 6 SCC 721, the O.A was allowed and the Applicants were held eligible to be considered for the benefit of Time Bound Promotion (ACP) from the date of completion of 12 years of service provided they had passed the departmental examination on that date and were otherwise eligible."

It is clear that if a Government servant had passed the departmental examination on the date of completion of 12 years of service, he would be eligible to get Time Bound Promotion. However, if he has not passed the Departmental Examination, on that date, obviously, he would not be entitled to get Time Bound Promotion, as he would not fulfill the essential requirements of G.R dated 20.7.2001, which reads as follows:-

“(५) या योजनेअंतर्गत पदोन्नतीच्या पदाची वेतनश्रेणी देय ठरविली असल्याने वरिष्ठ वेतनश्रेणी मिळण्यासाठी पदोन्नतीच्या पदाकरिता विहित केलेली अर्हता, पात्रता, ज्येष्ठता, अर्हता परिक्षा, विभागीय परिक्षा या सर्व बाबींची पूर्तता करणे तसेच पदोन्नतीची कार्यपध्दती अनुसरणे आवश्यक राहिल. जेथे या शासन निर्णयासोबतच्या परिशिष्टातील वेतनश्रेणी मंजूर करण्यात येईल तेथे गोपनीय अहवालाच्या आधारे पात्रता तपासण्यात यावी.”

11. The Tribunal in further Judgment also observed as under :-

“Obviously, a Government servant cannot be held eligible for Time Bound Promotion, unless on the date, on which he completed 12 years of continuous service, he fulfills all the conditions of regular promotion. His failure to pass the Departmental Examination in requisite time and chances may be ignored, if he passes the examination before he completes 12 years of continuous service. However, if a Government employee has not passed the Departmental Examination at all, he is not eligible for promotion except on getting exemption from passing the Examination on attaining the age of 45 years. He will be eligible for Time Bound Promotion on the date on which he is exempted from passing the Departmental Examination and not before that. This is the ratio laid down by this Tribunal in **Baviskar's** case. This Tribunal has held that:-

“5. This issue was raised before this Tribunal in O.A 22/2005, wherein it was held that the issue of seniority has no role to play in granting the benefits of time bound promotion. It is clear from the G.R dated 20.7.2001 that for becoming eligible for getting the

benefits of this scheme, the applicant must have completed 12 years continuous service and passed the departmental examination for becoming eligible to the promotional post. As long as he has passed the examination before completion of 12 years, he is eligible to get the benefits of this scheme. The loss of seniority is only relevant for the purpose of functional promotion and not for the purpose of time bound promotion. This decision of the Tribunal was upheld by the Hon'ble High Court in Writ Petition No.4804/2006 and has thus attained finality." (emphasis supplied).

It is clear that passing the departmental examination (or exemption on reaching 45 years of age) is essential to get the benefit of Time Bound Promotion. It is not envisaged that a person will get Time Bound Promotion on completion of 12 years and then he can pass (or exempted from passing) the Departmental Examination. The Applicant was given Time Bound Promotion on the date of her attaining 45 years, which was correct.

Having regard to the aforesaid facts and circumstances of the case, this Original Application is dismissed with no order as to costs."

12. Thus, the perusal of Judgment particularly Paragraph reproduced above makes it explicit that the Tribunal was cognizant of the earlier decisions in **Shantaram Gaikwad's** matter and in **Avinash Garvare's** matter. The Tribunal has dealt with relevant Paragraphs from the Judgment and impliedly distinguished it and by disagreeing with the views taken by Tribunal in **Avinash Garvare's** case dismissed the O.A. with a specific finding that the Applicant was required to pass departmental examination within 12 years from the date of completion of 12 years' service and otherwise, he would be ineligible. The Tribunal has also considered the effect of "महाराष्ट्र शासन दुय्यम मंत्रालय सेवा (निम्नस्तर लिपिक) सेवा प्रवेशोत्तर प्रशिक्षण परीक्षा नियम १९७७" which makes training optional. As such, the stand taken by the Applicant that he was not relieved, and therefore, not appeared in examination has been negated. The Applicant was initially appointed purely on temporary basis in 1984 and thereafter in 1994, her services were regularized. This aspect was also noted by the Tribunal. Admittedly, the Applicant has not passed post recruitment examination within four years and three chances in terms of Post Recruitment Service Rules, which renders him ineligible to hold

promotional post, so as to avail the benefit of TBP. Needless to mention, for the benefit of TBP, a candidate must be eligible and possess all requisite qualification necessary for promotion. Suffice to say, the Tribunal has distinguished and impliedly disagreed with the view taken by the Tribunal in **Avinash Garvare's** matter. As such, where the Tribunal has taken note of the earlier decision and distinguished it while dismissing the O.A, such situation can hardly be termed apparent legal error on the face of record.

13. The decisions relied by the learned Advocate for the Applicant referred above, nowhere laid down the proposition that where a Tribunal disagreed with the view taken in earlier matter and distinguished the same in reference to relevant Rules, it cannot be subject matter of review. At the most, it could be erroneous view which can be corrected in appeal only and not in disguise of review. The Applicant is seeking re-hearing of the matter which is not permissible in the limited jurisdiction of review. This is not a case where Judgment rendered by the Tribunal is in ignorance of well-established principles of law settled by Hon'ble High Court and Hon'ble Supreme Court or in ignorance of any other legal settled position of law. Therefore, in my considered opinion, the decisions cited by the learned Advocate for the Applicant are of little assistance to him.

14. 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.

15. 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.

16. The Tribunal is also guided by the decision of Hon'ble Supreme Court in ***Civil Appeal No.1694/2006 (State of West Bengal Vs. Kamal Sengupta & Anr.) decided on 16.06.2008*** wherein the Hon'ble Supreme Court has laid down well settled principles in Para No.28 of the Judgment, which are as under :-

“(i) The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/analogous to the power of a Civil Court under Section 114 read with Order 47 Rule 1 of CPC.

(ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.

(iii) The expression "any other sufficient reason" appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.

(iv) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(f).

(v) An erroneous order/ decision cannot be corrected in the guise of exercise of power of review.

(vi) A decision/ order cannot be reviewed under Section 22(3)(f) on the basis of subsequent decision/judgment of a coordinate or larger bench of the Tribunal or of a superior Court.

(vii) While considering an application for review, the Tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/ decision as vitiated by an error apparent.

(viii) Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the Court/Tribunal earlier."

17. True, in the matter of one Shri Thakur, the Department appears to have granted the benefit of TBP from the date of completion of 12 years' service though he had not passed the examination within stipulated period and was exempted from passing examination on attaining the age of 45 years. In reference to this aspect, the learned Advocate for the Applicant sought to raise issue of discrimination. In my considered opinion, such ground of discrimination which was not specifically raised in O.A. can hardly be considered in review. Apart, if the benefit granted to Shri Thakur by the Department was not in accordance to Rules, then it cannot be raised as a ground of discrimination since there could not be discrimination where the orders are contrary to the Rules. In other words, there cannot be equality in illegality. Otherwise, it would amount to perpetuation of thing contrary to Rules.

18. The necessary corollary of aforesaid discussion leads me to conclude that the ground raised by the learned Advocate for the

Applicant holds no water and Review is not maintainable. The Review therefore deserves to be dismissed. Hence, the following order.

ORDER

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

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

Mumbai
Date : 31.05.2021
Dictation taken by :
S.K. Wamanse.

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