

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**REVIEW APPLICATION NO.12 OF 2017
IN
ORIGINAL APPLICATION NO.808 OF 2016**

Shri Jaysingh M. Gurav.)
Age : 58 Yrs, Occu.: Retired, 705-A Ward,)
Sarita Apartments, Plot No.1304, Surnik)
Colony, Shivajipeth, Kolhapur.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)
2. The Deputy Director of Health)
Services, Kolhapur.)...**Respondents**

Applicant in person.

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

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

DATE : 22.10.2021

ORDER

1. This is an application for review of order dated 16th March, 2017 passed by this Tribunal in O.A.No.808/2016 filed under Section 22(3)(f) of Administrative Tribunals Act, 1985 read with Order 47 Rule 1 of Civil Procedure Code.

2. O.A.No.808/2016 was filed for claiming deemed date of promotion as Assistant Superintendent w.e.f. 26.10.1995 and as Superintendent w.e.f.03.06.2005. The Applicant retired on superannuation on 30.11.2012. According to him, his juniors were given promotion earlier to him. The Tribunal heard the matter on merit and dismissed the O.A. by order dated 16.03.2017. The Tribunal in Para Nos.5, 6, 7 and 9 held as under :-

“5. It is true that the Applicant was promoted as Junior Clerk w.e.f. 19.9.1983. The seniority list of Junior Clerk as on 1.1.1991 was published by the Deputy Director, Health Services, Kolhapur on 21.2.1991. The Applicant had made a representation on 16.4.1991 (Exhibit R-2, page 34) seeking seniority in the cadre of Junior Clerk from 1.1.1981 i.e. the deemed date of promotion in the post of Junior Clerk. By letter dated 16.5.1991 this request was rejected. The Applicant then made a complaint to Hon'ble Lok Ayutka on 13.1.2014, which was disposed of by order dated 11.2.2014. It appears that the Applicant did not make any representation to the Respondents after his representation dated 16.4.1991 was rejected by the Respondent no.2 on 16.5.1991 till his retirement on 30.11.2012. He approached Hon'ble Lok Ayukta on 13.1.2014, but his representation was not considered and he was informed accordingly on 11.2.2014. He apparently applied on 22.12.2014, again in this regard to the Respondent No.2. However, the Applicant has not placed copy of the representation dated 22.12.2014 on record with this OA. The Respondent No.2 by letter dated 30.12.2014, has given the following instructions to Medical Officer, Shashikala T.B. Hospital, Jaysinghpur:

“वरील विषय व संदर्भिय अर्ज आपले कार्यालयास सादर केलेला आहे त्याचे अवलोकन करावे. श्री. जयसिंग महादेव गुरव, सेवानिवृत्त अधिक्षक हे दि.३०.११.२०१२ रोजी जिल्हा हिंवाताप कार्यालय, सातारा येथून सेवानिवृत्त झाले आहेत. श्री. गुरव यांचा अर्जाचा विचार करून श्री. गुरव यांच्या सेवापुस्तकात मानीव दिनांकाची नोंद त्यांचे सेवापुस्तकात घेणेबाबत प्रचलित शासन नियमानुसार घेणेबाबत कार्यवाही करावीतसचे केलेल्या कार्यवाहीचा अहवाल कार्यालयास व श्री. गुरव यांना पाठविणेत यावा.”

The Applicant claims that the aforesaid Medical Officer made an entry in his service book as below:

“मानीव दिनांक नोंद:- मा. उपसंचालक आरोग्य सेवा पुणे मंडळ, पुणे यांचे आदेश क्रमांक बीसीएनसी-१११/१६७८-९६/ पुणे. दिनांक २७.०१.१९८२ अन्वये श्री. जे.एम. गुरव यांना कनिष्ठ लिपिक पदाचा दिनांक ०१.०१.१९८१ चा मानीव दिनांक मंजूर केला आहे.”

The question is whether this endorsement in the Service Book amounts to grant of deemed date of promotion as on 1.1.1981 to the Applicant in the post of Junior Clerk from the date of entry in the Service Book. The Applicant was informed by the Respondent No.2 on 16.5.1991 as follows:

“कनिष्ठ लिपिकांची जेष्ठतासुची तयार करतांना प्रत्यक्षात कनिष्ठ लिपिक पदावर पदोन्नती दिलेची तारीख विचारात घेतली जाते. त्यासाठी मानीव तारीख विचारात घेता येत नाही. व त्यामुळे जेष्ठतासुचीमध्ये दर्शविलेला आपला क्रमांक बरोबर आहे.”

It is clear that this issue was already decided by the Respondent No.2 way back in 1991. The Applicant did not challenge the aforesaid order till his retirement on 30.11.2012. Now after almost 25 years, the Applicant wants the issue to be reopened. The endorsement in the Service Book of the Applicant does not make any change in the situation. The order of the Respondent No.2 dated 16.5.1991 does not undergo any change by virtue of this endorsement.

6. Hon'ble Supreme Court in the case of **C. JACOB VS. DIRECTOR OF GEOLOGY AND MINING, AIR 2009 SC 264** has held that:

“6. The present case is a typical example of ‘representation and relief’. The petitioner keeps quiet for 18 years after the termination. A stage is reached when no record is available regarding his previous service. In the representations which he makes in 2000, he claims that he should be taken back to service. But on rejection of the said representation by order dated 9.4.2002, he filed a writ petition claiming service benefits, by referring the said order of rejection as the cause of action.”

7. The present case is quite similar. The Applicant kept quiet for 25 years regarding his seniority in the cadre of Senior Clerk. Then he raises the issue which was decided in 1991, which he had never challenged. By some endorsement of an authority, which does not change the situation at all, he had renewed his claim, as if that endorsement made by the Medical Officer is the cause of action. This is clearly not permissible as held by Hon'ble Supreme Court in the aforesaid judgment, where Hon'ble Supreme Court has held that original date of order will give rise to the cause of action. In the present case, cause of action arose on 16.5.1991 and not on 30.12.2014 or thereafter.

9. In the present case, the Applicant is trying to revive a ‘dead’ issue, decided in 1991, by giving representation on 22.12.2014, a copy of which is also not placed on record. It is quite clear that the Applicant cannot be allowed to revive the issue of his seniority in the cadre of Senior Clerk, after 23 years. He was informed by the Respondent No.2 on 16.5.1991 that his representation in that regard has been rejected. This OA is not maintainable.

3. Now this review is filed reiterating the pleas raised in original O.A. and no new ground is introduced or taken. The Tribunal has categorically held that the Applicant kept quiet for 25 years regarding his seniority in the cadre of Senior Clerk which was rejected in 1991 but remained silent for years together and cause of action accrued to him in 1991 for challenging the seniority or for deemed date of promotion. The

Tribunal has further held that mere giving of representation will not furnish new cause of action.

4. Heard the Applicant in person and learned Presenting Officer.

5. All that, the Applicant in person sought to reiterate his grounds raised in O.A. However, nothing is pointed out as to how the finding recorded by the Tribunal that his claim is barred by limitation is incorrect. He could not point out any error apparent on the face of record which could be corrected in review. As such, I see no such apparent error apparent on the face of record to review the order dated 16.03.2017.

6. 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.”

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 of 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. In view of aforesaid discussion, I see no merit in the Review and it is liable to be dismissed.

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

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

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