

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**REVIEW APPLICATION NO.12 OF 2020
IN
ORIGINAL APPLICATION NO.525 OF 2019**

Dr. Ramchandra B. Nirmale.)
Medical Officer Group 'A' (Retired),)
Age : Adult, Occu.: Retired, Residing at)
107, Tyagraj, Lokpuram, Pokharan Road)
No.2, Thane West.)...**Applicant**

Versus

1. The Commissioner.)
Employees' State Insurance)
Corporation, 6th Floor, Panchdeep)
Bhavan, N.M. Joshi Marg,)
Lower Parel, Mumbai – 400 013.)
2. The State of Maharashtra.)
Through the Secretary,)
Finance Department, Mantralaya,)
Mumbai – 400 032.)...**Respondents**

Mr. K.R. Jagdale, Advocate for Applicant.

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

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

DATE : 08.03.2021

JUDGMENT

1. This Review Application is made invoking Section 22(3)(f) of Administrative Tribunals Act, 1985 read with Order 47, Rule 1 of Civil Procedure Code for review of Judgment rendered by the Tribunal in

O.A.No.525/2019 dated 25.09.2020 whereby O.A. was rejected on the point of limitation.

2. The Applicant was Medical Officer (Group 'A'). He retired on 31.08.2008. He had filed O.A.525/2019 on 07.06.2019 without filing any application for condonation of delay. In O.A, the Applicant had sought relief of grant of benefit of Assured Career Progression Scheme (ACPS) *inter-alia* contending that his temporary service period from 1978 to 1996 ought to have been considered for grant of benefit of ACPS. In O.A, he mainly relied on the decision rendered by this Tribunal in **O.A.632/2011 in the matter of Dr. Anjali Warke Vs. State of Maharashtra, decided on 20.10.2012**. In O.A, the Applicant contended that he being similarly situated person, is entitled to count his earlier service period for grant of benefit of ACPS. As stated above, the Applicant stands retired on 31.08.2008 but did not take any step in this behalf and had filed O.A. belatedly after 11 years on 07.06.2019 without making any application for condonation of delay.

3. The Tribunal, therefore, dismissed O.A.525/2019 by Judgment dated 25.09.2020. During the course of hearing of this O.A, it was pointed out to the learned Advocate for the Applicant that he has not complied with the office objection on the point of limitation. That time, all that, the learned Advocate for the Applicant submits that Applicant's claim is based on the decision delivered in the matter of Dr. Warke, and therefore, the benefit needs to be granted to him being similarly situated persons. The Tribunal while deciding O.A. has categorically held that the matter of Dr. Warke was arising from different situation and the said Judgment *per se* would not apply to the Applicant's case. Apart, the Tribunal held that O.A. being filed after 11 years from the date of retirement without making any application for condonation of delay is not maintainable in terms of Section 21 of Administrative Tribunals Act, 1985. While deciding O.A, the Tribunal placed reliance on the decision of Hon'ble Supreme Court **2001 AIR SCW 2351 (Ragho Singh Vs. Mohan**

Singh & Ors.) wherein it has been held that in absence of application for condonation of delay, the delay cannot be condoned and appeal was dismissed being barred by limitation. In this behalf, the Tribunal has also placed reliance on the decision of Hon'ble Supreme Court ***1994 AIR SCW 2562 (Secretary to Government of India Vs. Shivram M. Gaikwad) and AIR 2011 SC 1085 (Union of India & Ors. Vs. A. Dulairaj)***.

4. It is on the above background, this Review Application is filed wherein one of the interesting prayer is to permit the Applicant to file an application for condonation of delay and then to decide the matter on merit, which obviously does not fall within the scope of review.

5. Shri K.R. Jagdale, learned Advocate for the Applicant, however, sought to contend that inadvertently, in O.A, he could not file copies of representations made by the Applicant for grant of benefit of ACPS. According to him, as the representations were not responded in any manner, the Applicant had continuous cause of action.

6. In so far as the aspect of representation is concerned, admittedly, in O.A, not a single copy of representation was filed. It is for the first time, in Review Application, the Applicant has filed the copies of various representations purportedly made by the Applicant from 11.06.2008 till 28.02.2019 which are at Page Nos.26 to 50 of Paper Book of Review. Even assuming for a moment that the Applicant had made any such representation, in that event also, the O.A. ought to have been filed in terms of Section 20(2)(b) of Administrative Tribunals Act, 1985. As per Section 20 of Administrative Tribunals Act, 1985, the Tribunal shall not ordinarily admit an application unless it is satisfied that the Applicant had availed all the remedies available to him as per the Service Rules as to redressal of grievances. Whereas, as per Section 21 of Administrative Tribunals Act, 1985, the Tribunal shall not admit an application unless it is filed within one year from the date of which the Government has

passed the order about grievance raised by the employee. Whereas, as per Clause (b), the Tribunal shall not admit an application in case where an appeal or representation such as mentioned in Clause (b) of Sub-section 2 of Section 20 has been made and period of six months had expired thereafter without such final order having been made within one year from the date of expiry of the said period of six months.

7. As such, the Applicant was required to file O.A. within 18 months from the date of filing representation. The Applicant's first representation seems to have been made on 11.06.2008 as mentioned in Review Application. This being the position, the O.A. filed after 11 years was obviously barred by limitation. Needless to mention, it is well settled that filing of successive representation would not extend the period of limitation. As such, even assuming that the Applicant had made any such representation as claimed in this Review Application, in that event also, the O.A. could not be termed within limitation.

8. Shri K.R. Jagdale, learned Advocate for the Applicant referred to the decision of Hon'ble Supreme Court **AIR 1987 SC 1353 (Collector, Land Acquisition, Anantnag & Ors. Vs. Katiji & Ors.)**, **AIR 2005 SC 1158 (Divisional Manager, Plantation Division, Andaman and Nicobar Islands, Munnu Barrick & Ors.)** and **AIR 2005 SC 2191 (State of Nagaland Vs. Lipok AO & Ors.)** to contend that while considering the application for condonation of delay, the Court should adopt justice oriented approach and the expression 'sufficient cause' mentioned in Section 5 of Limitation Act must receive a liberal construction. There could be no dispute about settled legal position as expounded in these authorities. These authorities would have been considered, had the Applicant has made an application for condonation of delay in O.A.525/2019. Since no application for condonation of delay, which was of 11 years was not made by the Applicant, the O.A. was dismissed on the ground of limitation. Therefore, these authorities in Review Petition are hardly of any assistance to the Applicant. At the cost of repetition, it is necessary to point out that despite the objection raised

by Office at the time of filing of O.A. on the part of limitation as well as despite specific query raised by the Tribunal during the course of hearing of O.A.585/2019, no steps was taken that time to file application for condonation of delay. The matter was heard and ultimately, it was dismissed mainly on the point of limitation.

9. Suffice to say, the issue of condonation of delay now cannot be the subject matter of review since the powers of review are very limited. Needless to mention that review proceedings will have to be strictly confined to the ambit and scope of Order 47, Rule 1 of CPC and it is not an appeal in disguise. Under Order 47, Rule 1 of CPC, the Judgment may be reviewed, if there is mistake or error apparent on the face of record. In the present case, there is absolutely nothing to indicate that there is any apparent error on the face of record. Since no application for condonation of delay was made despite there being delay of 11 years in filing O.A, the O.A. filed by the Applicant was dismissed. This view is taken by the Tribunal by no stretch of imagination can be termed fall within the scope of review. I am at loss to understand how powers of review can be invoked by the Applicant in such situation.

10. Shri K.R. Jagdale, learned Advocate for the Applicant sought to place reliance on the decision of Hon'ble Supreme Court **AIR 2005 SC 592 (Board of Control for Cricket, India & Ors. Vs. Netaji Cricket Club & Ors.)** wherein it has been held as under :-

“Section 114 of Code of Civil Procedure, 1908 (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. Order XLVII, 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. 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 XLVII, 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". Law has to bend before justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice nothing would preclude the Court from rectifying the error. 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."

11. So far as facts of present case are concerned, this decision is hardly of any assistance to the learned Advocate for the Applicant, since he could not point out any error apparent on the face of record or any other sufficient reason as contemplated under Order 47, Rule 1 of CPC.

12. At this juncture, it would be apposite to refer the decision of Hon'ble Supreme Court in **Civil Appeal No.1694/2006 (State of West Bengal & Ors. Vs. Kamal Sengupta & Anr.) decided on 16.06.2008**. In this matter, the Hon'ble Supreme Court had dealt with various earlier Judgments regarding powers of Court to review its own Judgment and held that the decision cannot be reviewed under Section 22(3)(f) on the basis of subsequent decision of coordinate or larger bench of the Tribunal. The Hon'ble Supreme Court held that the power of review can be exercise only on the ground enumerated in Order 47, Rule 1 of CPC and not otherwise. It would be apposite to reproduce Para Nos.11 and 28 of the Judgment, which are as follows :-

"11. Since the Tribunal's power to review its order/ decision is akin to that of the Civil Court, statutorily enumerated and judicially recognized limitations on Civil Court's power of review the judgment /decision would also apply to the Tribunal's power under Section 22 (3)(f) of the Act. In other words, a Tribunal established under the Act is entitled to review its order/ decision only if either of the grounds enumerated in Order 47 Rule 1 is available. This would necessarily mean that a Tribunals can review its order/ decision on the discovery of new or important matter or evidence

which the applicant could not produce at the time of initial decision despite exercise of due diligence, or the same was not within his knowledge or if it is shown that the order sought to be reviewed suffers from some mistake or error apparent on the face of the record or there exists some other reasons, which, in the opinion of the Tribunal is sufficient for reviewing the earlier order/ decision.

28. *The principles which can be culled out from the above noted judgments are :*

(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."

13. Indeed, as pointed out by the learned P.O. that the claim of the Applicant for the benefit of ACPS was rejected in 2010 itself, since his gradation of ACR were not upto the mark so as to held him eligible for grant of benefit of ACPS.

14. The totality of aforesaid discussion leads me to conclude that there is no such apparent error on the face of record to exercise powers of review. Now, at this stage, the Applicant cannot be allowed to file an application for condonation of delay in O.A, which is already dismissed on the point of limitation. Such relief not at all falls within the ambit of review. The Applicant himself is responsible for causing 11 years delay in filing O.A. and secondly, he did not prefer to file an application for condonation of delay in O.A. knowing fully well the issue of limitation.

15. In view of the matter, the review is devoid of merit and liable 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 : 08.03.2021
Dictation taken by :
S.K. Wamanse.

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