

MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

**REVIEW APPLICATION NO.14 OF 2019
IN
ORIGINAL APPLICATION No.103 of 2019**

B.L.Patil)..... **Applicant**

Versus

State of Maharashtra & Ors.)...**Respondents**

Shri Bhushan A. Bandiwadekar, Counsel for the Applicant
Smt. Archana B. K., Presenting Officer for the Respondents

CORAM : SHRI A. P. KURHEKAR, MEMBER (J)

DATE : 27.01.2020.

ORDER

1. Heard Shri Bhushan A. Bandiwadekar, learned Counsel for the Applicant and Smt. Archana B. K., learned Presenting Officer for the Respondents.
2. This R.A. is filed by the unsuccessful Applicant to review the order passed by this Tribunal in O.A.No.103/2019 on 20.06.2019 whereby the claim of the Applicant for benefit of 2nd Time Bound Promotion was rejected.
3. Learned Counsel for the Applicant submits that there is apparent error on the face of record as the Applicant has already worked for 24 years as Mazdoor, and therefore, reasons record by the Tribunal that he was not possessing six years experience in Ice Factory or Air-Conditional plant which was required for the post of Jr. Engineer (Refrigeration) is incorrect. The sum and substance of the submission is that though the Applicant was Mazdoor he was entitled for second Time Bound Promotion by virtue of his continuous service of 12 years from the date of grant of first Time Bound Promotion.

4. The Applicant was claiming second Time Bound Promotion and service benefits for the post of Jr. Engineer (R). As such, he was to satisfy the eligibility criteria for the post of Jr. Engineer (R). The Tribunal has discussed this issue in Para No.13 of the judgment which is as follows:-

“13. Thus, for the benefit of 2nd TBP, the Applicant is required to fulfill eligibility criteria for the post of Junior Engineer (Refrigeration) subject to required gradation in Annual Confidential Report. As such, only because the employee is completed 24 years' service that itself will not qualify him for the benefit of 2nd TBP. The object of grant of TBP is to give non-functional promotion to the employees who are stagnated subject to fulfillment of prescribed qualification for the promotional post. In the present case, the Applicant is claiming non-functional promotion i.e. 2nd TBP benefit for the post of Junior Engineer (Refrigeration) for which he must have Diploma in recognized Institution or matriculate with six years' experience in an Ice Factory or Air-Conditioning Plant. The Applicant is Matriculate, but admittedly working as Mazdoor and his experience is of Mazdoor only and not experience relating to the post of Junior Engineer (Refrigeration) in Ice Factory or Air-Conditioning Plant about refrigeration work. The working on the post of Mazdoor is totally different from working in refrigeration relating to the post of Junior Engineer (Refrigeration). As such, the criteria that the person must have six years' experience in an Ice Factory needs to be understood in the sense that such experience must be of refrigeration work and not of Mazdoor. This being the position, the Applicant cannot be said to have fulfilled required qualification for promotion to the post of Junior Engineer (Refrigeration) and consequently, cannot be said entitled to the benefit of 2nd TBP for the promotional post of Junior Engineer (Refrigeration).”

5. Thus, the eligibility criteria for Jr. Engineer (R) was that the candidate must have diploma in recognized Institution or matriculate with six years experience in an Ice factory or Air-conditioning Plant. Admittedly, the Applicant is matriculate and worked as Mazdoor only. As such, whatever experience at his credit was as Mazdoor and it was not experience relating to the Jr. Engineer (R) in Ice Factory or Air Conditioning plant as required under rules.

6. Thus, on the post of Mazdoor is totally different from working in Refrigeration relating to the post Jr. Engineer (Refrigeration). The Tribunal has

thus held that Applicant is not eligible for promotion to the post of Jr. Engineer (R), and therefore, not entitled to second Time Bound Benefits.

7. True, in earlier round of litigation i.e. O.A.No.103/2019, the first Time Bound Promotion was granted to the Applicant. However, that itself does not qualify the Applicant for second Time Bound Benefit unless he fulfilled eligibility criteria for the post of Jr. Engineer (R).

8. Suffice to say, the Tribunal has discussed the grounds already raised in O.A. and recorded findings with elaborate reasons which cannot be termed as misconception of law of the fact as tried to be canvassed by the learned Counsel for the Applicant. Indeed, these are specific findings recorded by the Tribunal with reasons in support thereof.

9. Needless to mention, if view taken by Tribunal or Court is incorrect or erroneous then the remedy is to challenge the order before the higher forum and not by filing of R.A. otherwise it would be amounting to reassess the factual aspect which has already considered and finding is recorded thereon.

10. At this juncture, it would be apposite to refer the decision of Hon'ble Supreme Court in ***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.

11. For the reasons stated above, having regard to the settled legal position, I have no hesitation to conclude that this is nothing but an attempt to re-open the matter for fresh hearing and to substitute the view already taken by the Tribunal in the matter. There is no such apparent error on the face of record, which could be corrected in revisional jurisdiction. The Review Application, therefore, liable to be dismissed.

12. In view of above, I see no misconception of law or fact in the impugned order. Review Application, is therefore, devoid of merit and deserves to be dismissed.

13. Review Application is dismissed with no order as to cost.

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