

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**AT MUMBAI**

**REVIEW APPLICATION NO. 14 OF 2020**  
**IN**  
**ORIGINAL APPLICATION NO. 28 OF 2018**  
**WITH**  
**ORIGINAL APPLICATION NO. 938 OF 2018 (D.B.)**

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**ORIGINAL APPICATION NO. 28 OF 2018**

- |                                       |                           |
|---------------------------------------|---------------------------|
| 1. The Special Inspector General,     | )                         |
| of Police, Konkan Range, Navi Mumbai, | )                         |
| Having office at Konkan Bhavan,       | )                         |
| C.B.D., Belapur, Navi Mumbai.         | )                         |
| <br>                                  |                           |
| 2. The Superintendent of Police,      | )                         |
| Palghar, Having office at Palghar.    | )                         |
| <br>                                  |                           |
| 3. The State of Maharashtra,          | )                         |
| Through the Principal Secretary,      | )                         |
| Mantralaya, Mumbai.                   | )                         |
|                                       | <b>)...Applicants</b>     |
|                                       | <b>(Org. Respondents)</b> |

**Versus**

- |   |                         |
|---|-------------------------|
| Shri Dnyaneshwar Laxman Awate,          | )                       |
| Occ. Police Sub Inspector,              | )                       |
| Wada Taluka Police Station,             | )                       |
| Dist. Palghar (Under Suspension)        | )                       |
| R/o A/P Yelvi, Tal. Jath, Dist. Sangli. | )                       |
|   | <b>)...Respondent</b>   |
|   | <b>(Org. Applicant)</b> |

**WITH**

**ORIGINAL APPICATION NO.938 OF 2018**

- |   |   |
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| 1. The Special Inspector General of Police, | ) |
| Konkan Range, Navi Mumbai,                  | ) |

Having office at Konkan Bhavan, )  
C.B.D., Belapur, Navi Mumbai. )

2. The Superintendent of Police, )  
Palghar, Having office at Palghar. )

3. The State of Maharashtra, )  
Through the Principal Secretary, )  
Mantralaya, Mumbai. )

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### **Versus**

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Occ. Police Sub Inspector, )  
Wada Taluka Police Station, )  
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**)...Respondent  
(Org. Applicant)**

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**Ms. S.P.Manchekar, the 1d. Chief Presenting officer for  
Applicants (Org. Respondents).**

**Shri S.S.Dere, 1d. Counsel for the Respondents (Org.  
Applicant).**

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**Coram :- Hon'ble Shri Shree Bhagwan, Vice-Chairman (A),  
& Hon'ble Shri A.P. Kurhekar, Member (J).**

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### **JUDGMENT**

**PER : VICE CHAIRMAN (A)**

**(Pronounced on this 3<sup>rd</sup> September, 2021)**

1. The present Review Application is filed under Section 22(3)(f) of Administrative Tribunals Act, 1985 read with Order 47 Rule 1 of Civil Procedure Code seeking review of the order dated 16.11.2019 delivered in O.A.No.28/2018 with O.A.No.928/2018. This Review Application is

heard through Video Conferencing since one of us Shri Shree Bhagwan, Vice-Chairman (A) is sitting at Nagpur.

2. This Review Application is filed along with an application for condonation of delay vide M.A.No.296/2020. In so far as application for condonation of delay is concerned, Shri S.S. Dere, learned Advocate for original Applicant submits that the delay of 10 months and 14 days caused in filing Review Application may be condoned so as to decide review on merit. It may be noted that initially, being aggrieved by the order dated 16.11.2019 passed in O.A, the original Respondents have filed Writ Petition No.4777/2020 before Hon'ble High Court which was dismissed on 27.10.2020 with liberty to the Respondents to seek review of the order passed by this Tribunal in O.A. It is on the basis of order passed by Hon'ble High Court, the Review Application is filed within a month from the order of Hon'ble High Court. As such, in view of fair submission advanced by the learned Advocate for original Applicant, we deem it appropriate to condone the delay and to decide review on merit.

3. Now turning to the review, the issue posed for consideration in O.A. was as to whether the impugned order dated 18.12.2017 dismissing the Applicant from service was legal and valid. The Tribunal heard the matter on merit and held that the appointing authority of the Applicant is Director General and Inspector General of Police, M.S, Mumbai and consequently, the order of dismissal being passed by Special Inspector General of Police, Konkan Range is bad in law being subordinate authority.

4. Now, this Review Application is filed on the basis of appointment letter dated 01.10.2012 to contend that appointing authority of the Applicant is Deputy Inspector General of Police/Deputy Director, Maharashtra Police Academy, Nashik, but the said letter could not be produced when the O.A. was heard.

5. On the basis of this appointment order dated 01.10.2012, now it is tried to contend that the appointing authority is Deputy Inspector General of Police, and therefore, the order of dismissal being passed by Special Inspector General of Police, Konkan Range, who is of higher rank than Deputy Inspector General of Police is legal and valid and order passed by this Tribunal needs to be reviewed under Section 22(3)(f) of Administrative Tribunals Act, 1985.

6. Ms. S.P. Manchekar, learned Chief Presenting Officer adverting to the appointment order dated 01.10.2012 now produced in revision sought to contend that the appointing authority of the Applicant is Deputy Inspector General of Police, who holds higher rank than Special Inspector General of Police, Konkan Range who has dismissed the Applicant, and therefore, the apparent error on the face of record needs to be corrected by exercising powers of review under Order 47 Rule 1 of CPC.

7. Per contra, Shri S.S. Dere, learned Advocate for original Applicant submits that there is no such apparent error on the face of record, so as to invoke powers of review and further pointed out that there is no difference much less material in the appointment order dated 05.11.2012 referred and relied by the Tribunal while deciding O.A. and appointment order dated 01.10.2012, which is now tendered for the first time in revision except that order dated 05.11.2012 contains the names of 1592 Police Sub-Inspectors it being joint order of all the candidates whereas the order dated 01.10.2012 now tendered in revision is single order in the name of Applicant. Both the orders are issued by same authority. We find merits in his submission.

8. Before adverting to the grounds raised in review, it would be apposite to note that Writ Petition No.4777/2020 challenging the order passed by this Tribunal was dismissed on 27.10.2010. While dismissing Writ Petition, the Hon'ble High Court in Para Nos.2 and 3 held as under:-

**“2.** Mr. Panchpor, learned AGP appearing for the State seeks to reply on a document which, according to him, is the order of appointment of the original applicant. Such order of appointment is neither a part of the writ petition nor was it a part of the counter affidavit that was filed before the tribunal. As and by way of explanation, it has been submitted before us that the said order was not traceable at the relevant point of time and, therefore, could not be made part of the affidavit filed by the petitioners before this tribunal.

**3.** Since the document on which reliance is sought to be placed was not part of the records before the tribunal for its consideration, we do not propose to entertain this writ petition. It shall be open to the petitioners to seek review of the order dated November 16, 2019 in accordance with law. Reserving such liberty, this writ petition stands dismissed. There shall be no order as to costs.”

9. As stated above, the issue posed for consideration in O.A. was whether the dismissal order was issued by the appointing authority of the Applicant and it was found on merit that dismissal order was not issued by the appointing authority viz. Director General of Police, State of Maharashtra. The Tribunal has discussed this issue in Para Nos.4, 5, 6, 11,12 and 18, which are as under :-

**“4.** In the MPA order dated 5.11.2012, certain terms and conditions are mentioned. In para 2.5 (I), it is mentioned that if training is not satisfactory, the D.G.P., M.S, Mumbai, can extend the probation period up to six months. In the same para 2.6 (II), it is also mentioned that in the said extended period of six months, D.G & I.G.P, M.S, can take any action including terminating/cancelling the appointment of any candidate. In para 2.6 it is also mentioned that candidates till their probation period in Maharashtra Police Academy any officer parallel to D.I.G or above him, that is Deputy Director of Maharashtra Police Academy will be treated as Appointing Authority.

**5.** Subsequently, after successful completion of training period, the applicant was appointed to the post of P.S.I by the Director General of Police, M.S, Mumbai by order dated 26.2.2015, (Exh. B, pages 24 to 26 in O.A. No.28 of 2018). With the above discussion it is clear that till the candidates remain under training in the Maharashtra Police Academy, their appointing authority is treated equivalent to Dy. Director of Academy, i.e. D.I.G rank Officer in Police Department of DIG rank officer in Police Department and above DIG rank in Police Department.

**6.** However, once they are appointed after successful completion of training, their final appointment is done by the Director General and Inspector General of Police, M.S, Mumbai and so after this appointment their appointing authority becomes the D.G & Inspector General of Police, M.S, Mumbai.

**11.** As per Article 311 of the Constitution of India, Dismissal, removal or reduction in rank of persons employed in civil services under the Union or a State, no person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed. In the present case, the Special I.G.P, has interpreted the order of Deputy Director/D.I.G of Police dated 5.11.2012 as the appointing authority and accordingly it has been interpreted that Special I.G.P, Konkan Division is the competent authority.

**12.** However, as discussed in para 2.5 (I) and (II) of the letter (MPA letter dated 5.12.2019), the appointing authority of P.S.I remains equivalent to D.I.G or any officer above D.I.G, i.e. equivalent to Deputy Director, Maharashtra Police Academy only till the candidate remains in Maharashtra Police Academy. Once the candidate completes the successful training and appointed in a regular post of P.S.I as per order dated 26.2.2015, Exh. B, page 24, Director General of Police, M.S, Mumbai becomes the appointing authority and competent authority for dismissal of Police Sub Inspector from service and for all other purposes of role of appointing authority also.”

**18.** Indeed there is clear admission of the Respondents in O.A.No.409 of 2018. In the said O.A. the Home Department had filed affidavit (page 280 and 281 of the O.A.No.938 of 2018), wherein the Home Department clearly admits that PSI is the post of Group B (non-gazetted) and the appointing authority of the said post is Director General and Inspector General of Police, Maharashtra State.

10. As such, even if appointment order dated 01.10.2012 which is now for the first time tendered in revision is considered, it also does not make any difference, since all the terms and conditions mentioned in this appointment order dated 01.10.2012 and appointment order dated 05.11.2012 are same. The Tribunal has also recorded specific findings on the basis of appointment order dated 26.02.2015 (Page Nos.24 to 26 of O.A.) that appointing authority of the Applicant is Inspector General of Police.

11. Suffice to say, there is no such apparent error on the face of record, as contemplated under Order 47 Rule 1 of CPC to review the order passed by this Tribunal.

12. Reliance placed on the decision of Hon'ble Supreme Court **(2009) 11 SCC 737 [P. Venkatkrishnan Vs. Central Bureau of Investigation]**

wherein it is observed that “It is fundamental principle of service jurisprudence that an employee, subject to statutory interdict, cannot have two masters” is of no assistance here. There could be no dispute about this principle of service jurisprudence. However, in the present case, it is quite clear that appointing authority of the Applicant is Director General of Police and Inspector General of Police, Maharashtra State and it is not a case of two appointing authorities.

13. The reference made by learned CPO about the provisions of Police Manual is misplaced, since it does not have statutory force and cannot override over the settled principles of law that dismissal order should be by the appointing authority and not by any authority subordinate to appointing authority in view of protection under Article 311(1) of the Constitution of India.

14. Needless to mention that 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 in appeal and it disguise whereby the matter is re-heard. In exercise of jurisdiction under Order 47 of CPC, it is not permissible that the matter is re-heard. There is clear distinction between erroneous decision and error apparent on the face of record. The erroneous decision can be corrected by the higher forum in writ jurisdiction. Whereas error apparent on the face of record only can be corrected by exercise of review jurisdiction. As stated above, the Hon’ble High Court has already dismissed the Writ Petition and only leave was granted to seek review on the basis of one appointment order dated 01.10.2012, which is of no avail to the Respondents, as discussed above.

15. Shri S.S. Dere, learned Advocate for original Applicant referred to decisions **(1999) 9 SCC 596 [Ajit Kumar Rath Vs. State of Orissa & Ors.]** and **(2001) SCC Online SC 1475 [Subhash Vs. State of Maharashtra]** wherein it has been reiterated that review cannot be claimed or asked for merely for fresh hearing or correction of an

erroneous view taken earlier and it is confined to parameters indicated in Order 47 Read 1 of CPC only. It has been further observed that power of review can be exercised only for correction of a patent error which stares in the face without any elaborate argument. These principles are squarely applicable to the present case.

16. In view of aforesaid discussion, we see no substance in Review Application and it being devoid of merit, deserves to be dismissed. Hence, the following order.

**ORDER**

The Review Application No.14 of 2020 is dismissed with no order as to costs.

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

Sd/-  
**(SHREE BHAGWAN)**  
**Vice-Chairman (A)**