Thakur

[Spl/MAT/F-5/E]

MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI BENCH

NO.MAT/MUM/JUD/2997 /2016
Maharashtra Administrative Tribunal
Pay & Accounts Barrack Nos.3 & 4,
Free Press Journal Marg,
Nariman Point, Mumbai 400 021.

Date : 12 AUG 2016

R.A. No. 18/2016 IN O.A. No. 467/2016.
(Sub :- Transfer)

1. The D.G. of Police, S.B. Marg, Colaba, Mumbai-01.

....**APPLICANT/S.(Ori. Resp.)**

VERSUS

1. Shri Shrikant S. Khot, R/at. Bhor Police Station, Bhor, Pune-06.
2. Shri Arun R. Pawar,
C/o:- Adv. P. Mahajan.

...RESPONDENT/S (Ori. Appli.)

Copy to : The C.P.O. M.A.T., Mumbai.

The applicant/s above named has filed an application as per copy already served on you, praying for reliefs as mentioned therein. The Tribunal on the ***10th*** day *of* ***August, 2016*** *has made the following order:-*

APPEARANCE : Smt. K.S. Gaikwad, P.O. for the Applicant (Ori. Resp.)
Smt. P. Mahajan, Advocate for the Respondent. (Ori. Appl.)

CORAM : **HON'BLE SHRI R.B. MALIK, MEMBER (J).**

DATE : **10.08.2016.**

ORDER : Order Copy Enclosed / Order Copy Over Leaf.

12/8/2016

Research Officer,
Maharashtra Administrative Tribunal,
Mumbai.

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

REVIEW APPLICATION NO.18 OF 2016
IN
ORIGINAL APPLICATION NO.467 OF 2016

1. The Director General of Police)...**Applicants (Ori. Respondents)**

Versus

Shri Shrikant S. Khot.)...**Respondent (Ori. Applicant)**

Smt. K.S. Gaikwad, Presenting Officer for Applicants (Ori. Resps.)

Smt. Punam Mahajan, Advocate for Respondent (Ori. Applicant)

P.C. : R.B. MALIK (MEMBER-JUDICIAL)

DATE : 10.08.2016

O R D E R

1. This application for review is directed against a common Judgment rendered by me on 12th July, 2016 in OAs 466 and 467/2016 (Shri Arun R. Pawar Vs. State of Maharashtra and 2 others and one other OA). A copy

thereof is annexed to the Review Application (RA) at Exh. 'R1R'.

2. The two OAs were brought to challenge the order of transfer vide the same dated 24th May, 2016 whereby a large number of Police Personnel mainly the Police Inspectors were transferred to various places. The original Applicants were two of them. The Affidavits were filed and ultimately, by an order which I consider to be reasoned one, the OA was allowed by quashing the impugned order of transfer and the present Respondents being the Applicants therein were ordered to be reposted to the places, they were transferred from. Several points were raised and were dealt with.

3. The review Applicants being the original Respondents to the OA have brought this RA. The RA is signed by Shri Anil P. Sawant, Desk Officer in the Office of Director General of Police.

4. Right at the outset, I may mention that a technical objection was raised at the threshold by Mrs. Mahajan, the learned Advocate for the original Applicants that one single RA against the orders on two OAs would be an incompetent action. This argument although cannot

just be brushed under the carpet, but I would still proceed further to the pith of the matter. But, it must be made clear that this course of action does not necessarily endorse judicially, the course of action adopted by the review Applicants.

5. The first point raised is with regard to the observations in the Judgment which for the purpose of facility will be called impugned Judgment and it is just for the sake of facility as I mentioned just now. The point raised is that while dealing with the absence of Principal Secretary, Home (Appeals & Scrutiny) in the impugned Judgment, I should have taken note of the fact that there was no pleading to that effect in the OA, and therefore, according to the review Applicants, it is an error in the impugned Judgment. The second point raised is with regard to what the review Applicants perceived as an erroneous interpretation by me of the provisions of Section 22-F(3) as well as Section 22-N (2) of the Maharashtra Police Act, 1951. Some of my observations have been quoted in order to buttress the case of the review Applicants that the Police Establishment Board-II (PEB-2) is the competent authority to make mid-tenure transfers and it apparently appears to be their case that the highest authority namely the Hon'ble Chief Minister and PEB-2

have got concurrent powers. It needs to be emphasized that the issue of whether mid-tenure transfers could be made by the PEB-2 or they should be made by the Government was a significant issue to be decided and that I apparently held against the review Applicants holding that it was the Government. A reference to various proceedings has been made and also a reference is made to the Judgment of the Hon'ble Supreme Court in **Prakash Singh's** case. The maker of the Review Application Shri Sawant in Page 7 thereof goes to the extent of saying that my Judgment runs contra to **Prakash Singh's** case. How I wish, he had restrained himself but so be it. If necessary, I shall deal with this aspect of the matter.

6. Thereafter, another point is raised in the context of a Judgment of the Hon'ble Supreme Court relied upon by the review Applicants in the OA in the matter of **Union of India and another Vs. Shri Janardhan Debanath and others)**. The citation whereof has not been set out in the Review Application, but it was apparently there in the OA. It is the case of the review Applicants that I have not properly applied the principles laid down by the Hon'ble Supreme Court in that particular matter. The context in which this fact arose was the construction of the word, "undesirable" which was peculiar in that particular

Judgment of the Hon'ble Supreme Court dealing with the service conditions of some other Department of some other State.

7. On these grounds, review of my Judgment is sought by recalling that common Judgment.

8. Today is the first date of this RA. Mrs. Mahajan, the learned Advocate for the original Applicant stated at the Bar that the Applicant did not want to file the Affidavit-in-reply and upon that statement, the arguments were heard. Smt. Gaikwad, the learned P.O. and Smt. Mahajan, the learned Advocate advanced their submissions consistently with their briefs that they hold.

9. Now, in the first place, the gist of the case of the review Applicants culled out hereinabove would make it quite clear that the review Applicants bitterly assailed the impugned Judgment. This is not to suggest that they cannot do that. They surely can, if so advised though a desirable point would be with regard to the nature of the language propriety and approach and if they needlessly tried to impute that the Tribunal did not properly understand the order of the Hon'ble Supreme Court, then they must satisfy themselves because after-all a judicial

forum knows the significance of proper application of the Judgments rendered by the highest Court of land.

10. The crux of the matter is that the review jurisdiction is, as per Section 22(3)(f) of the Administrative Tribunals Act, 1985 has to be exercised in accordance with Section 114 and order 47 of the Code of Civil Procedure which deal with the review aspect. Now, the perusal of these two provisions of the CPC would make it very clear that whatever else one might say, but the review Court can certainly not arrogate to itself the powers of the Appellate Court. It goes without saying, therefore, that the parties also cannot take recourse to appellate remedy in a thinly disguised veil of review. Appeals, revisions, review, etc. are not the natural rights as the proceedings of first instance like OA, suit, complaint, etc. They are strictly governed by the statute. They cannot be taken recourse to unless the statutes provides for the same. Needless to say that even if the statute provides, the appeals, review, etc., the ambit thereof will be so restricted as it is by the language of the conferring provisions and if they are interpreted by binding Judgments, then read along therewith. In the first place, therefore, the language of the RA is such that it practically seek to assail the impugned Judgment and if they wanted to do it, they should have moved the higher Court for

scrutinizing the impugned Judgment. On this short point itself, this RA can be worked out because it is not a matter of goodwill or grace to hear and decide the RAs, but they are strictly regulated by the principles of law. Therefore, even as I shall discuss the points raised in the RA, but I make it very clear that the subject matter of the RA is such as not to be made a subject matter thereof and I am legally forbidden in view of the facts herein even to entertain this RA much less to allow it.

11. In spite of this clear position, I think I had better considered the point raised in this RA briefly.

12. In so far as the issue of the absence in the meeting of PEB-2 of the Principal Secretary, Home (A & S), there is a detailed discussion in the impugned Judgment which I need not reproduce herein. The grievance of the review Applicants is that the original Applicants did not plead this aspect of the mater. This is a baseless point on the face of it. It is a common knowledge that the statutory procedure enshrined in CPC is not in terms applicable vide Section 22 of the Administrative Tribunals Act, 1985 to the proceedings before the Administrative Tribunals although the general principles therein consistently with the principles of natural justice will have to be applied. Now.

oral evidence is also not recorded and the matters are decided on Affidavits. The perusal of the impugned Judgment and in fact, the record of the OA would show that this issue was of some moment in the context of the facts. But for that authority, all the others in the Board were Police Personnel and for obvious reasons, his absence was significant. I had in extenso examined this aspect of the matter and found that he was not even informed of the meeting and then I drew my conclusions thereon. In my opinion, therefore, this particular aspect of the matter cannot even be called an error because it is a conclusion drawn upon evaluation of the material on record and if any other view of the matter is to be canvassed successfully, it has to be before the Court that can scrutinize the impugned Judgment and not the same Court in a Review Application. A very elaborate, detailed and if I might say unnecessary discussion is made in the Review Application on the powers of the State Government vis-à-vis the powers of PEB-2, especially in the matter of effecting mid-tenure transfers. In their own wisdom, the review Applicants tend to suggest that the highest authority namely the Hon'ble Chief Minister and the PEB-2 have the concurrent powers to effect such transfers. I have dealt with this aspect in what I consider to be sufficient details and entered a particular finding which is apparently not to the liking of

the review Applicants. In my opinion, once having evaluated the material on record, analyzed the legal provisions and entered a finding, it can by no stretch of imagination be said that the said finding was such an error that could be rectified in review. Even if it was an error, that cannot be rectified in review. On the other hand, it has to be scrutinized and if a case is made out, corrected by the higher Court. The ritualistic uses of the word, 'apparent' error of law has apparently to be made not in good humor but with legal sincerity.

13. The same observation applies to the aspect of the deletion of the proviso, etc. to the details whereof I do not think, I should be going herein. In so far as **Prakash Singh** (supra) and **Janardhan Debhanath** (supra) are concerned, it seems to be the, "grievance" of the review Applicants that I have gone contrary to the law laid down by the Hon'ble Supreme Court or in any case misunderstood those Judgments. I have already expressed dismay at this kind of an attitude because no judicial authority would be so casual, as to ignore or misunderstand the binding Judgments of the Hon'ble Apex Court. However, if the review Applicants still feel that it was so, then again it is a grievance to be placed before the higher Court and not by way of review. I must, however,

hasten to add that the review Applicants themselves have misunderstood both the Judgments of the Hon'ble Supreme Court and my own Judgment (impugned Judgment). They have conveniently ignored the fact that as a result of **Prakash Singh's** Judgment, ultimately, the State had amended Maharashtra Police Act and Section 22(N) of the Act was the product of such an amendment. I had repeatedly observed not only in the impugned Judgment but also in several other similar Judgments at interim stage also that these legislative amendments have to be studied in the context of the law laid down by the Hon'ble Supreme Court in **Prakash Singh's** case and that indeed is the legal position. I quite plainly fail to see as to how it could be contended that I misread **Prakash Singh's** case.

14. In so far as that aspect of the matter is concerned, the review Applicants have carefully avoided to mention that the impugned Judgment was based on another Judgment of the Hon'ble Supreme Court in **Somesh Tiwari Vs. Union of India, 2009(3) SLR 506 SC**. Quite pertinently, there is not even a reference to this Judgment of the Hon'ble Supreme Court in the entire Review Application.

15. The same observation holds good in so far as **Janardhan Debhanath** case is concerned. I had discussed that already in the impugned Judgment *inter-alia* in Para 22 thereof. The fact that **Prakash Singh's** case and **Somesh Tiwari's** case would be applicable to the facts of the OA was clearly noted. There were different Service Rules applicable to this OA and to **Janardhan Debhanath** (supra). It is, therefore, very clear that even upon a re-consideration of the whole thing, I am satisfied that I have correctly construed various Judgments of the Hon'ble Supreme Court, and therefore, the Review Application has got absolutely no merit. The only relief that I can possibly grant to them is to save them from cost, which could be prohibitive. However, the judicial grace mandates against such a course of action being adopted. The Review Application stands dismissed with no order as to costs.

sd/- 10.08.16

(R.B. Malik)
Member-J
10.08.2016

Mumbai
Date : 10.08.2016
Dictation taken by :
S.K. Wamanse.
E:\SANJAY WAMANSE\JUDGMENTS\2016\8 August, 2016\R.A.18.16 in O.A.467.16.w.2016.doc

TRUE COPY
12/8/2016
Asstt. Registrar/Research Officer
Mumbai Administrative Tribunal
Mumbai