

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

**REVIEW APPLICATION NO.19 OF 2022
IN
ORIGINAL APPLICATION NO.956 OF 2021**

DISTRICT: Mumbai

Shri Vijay Ashok Chavan,)
Aged 38 years, Occupation – Police Sub -)
Inspector attached to Coastal Security, SID, o/at)
Dadar (E), Mumbai 14.)
R/o. Krishna Niwas, Plot No.41, Flat No.1,)
behind Pritam Hotel, Dadar (W), Mumbai 14.).... **Applicant**

Versus

The Director General and Inspector General of)
of Police, (M.S.), Mumbai, having office at Old)
Council Hall, Shahid Bhagatsingh Marg,)
Mumbai 400 039.) ...**Respondents**

Shri Arvind V. Bandiwadekar, learned Advocate for the Applicant
Smt. Archana B. K., learned Presenting Officer for the Respondent

CORAM : Shri A.P. Kurhekar, Member (J)

DATE : 11.04.2023.

JUDGMENT

1. This R.A. is filed to review the order passed by the Tribunal on 25.08.2022 in O.A.No.956/2021.

2. Heard Shri Arvind V. Bandiwadekar, learned Counsel for the Applicant and Smt. Archana B. K., learned Presenting Officer for the Respondents.

3. The Applicant had filed O.A. for directions to Respondents to pay full pay and allowances for the period from 29.08.2019 to 08.03.2021. The facts giving rise to O.A. was that while Applicant was serving as PSI at Dhule, he was subjected to D.E. and the DGP by order dated 10.04.2019 removed him from service. However, the Appellate Authority by its order dated 29.08.2019 modified the order of removal from service and substituted it by imposing punishment of reduction to basic pay for two years. However, the DGP has not reinstated him in service within reasonable time despite representations made by him. The Tribunal decided the O.A. and directed the Respondents to pay full pay and allowances to Applicant for the period from 19.09.2020 to 08.03.2021 (the date of reinstatement in service) with consequential service benefits. For this conclusion, the Tribunal recorded its reasoning in para nos.4 to 7 which are as under :-

4. *In view of above, the small issue posed for consideration is whether the Applicant is entitled to full Pay and Allowances for the period from 29.08.2021 to 08.03.2021 in which he was out of service. Indisputably, initially the D.G.P. by order dated 10.04.2019 passed the order of removal of service but the Appellate Authority set aside the order of removal from service and imposed the punishment of reduction of lower scale for two years. The Appellate Authority ordered that the period from the date of compulsory retirement till reinstatement shall be treated only for counting pension and no other purposes meaning thereby he will not be entitled to Pay and Allowances for out of duty period.*

5. *In the present case, the Appellate Authority passed order on 29.08.2019 setting aside the order of removal from service and consequent to it, the Applicant ought to have been reinstated in service within reasonable time. However, no such steps were taken. On the contrary, the D.G.P. requested the Government to reconsider its decision of setting aside the punishment of removal from service but the Government rejected it by order dated 09.03.2020. Notably by the said order, the directions were given to D.G.P. to act upon the order passed by the Appellate Authority dated 29.08.2019 and to submit the compliance report. However, no further steps were taken by the office of D.G.P. for immediate reinstatement of the Applicant. The Applicant waited for long time and then made representation on 19.08.2020 for reinstatement in service (Page No.23 of PB). There is acknowledgment of the office of D.G.P. on the said representation. As such, the office of D.G.P. was expected to take cognizance of the said representation and to pass further order immediately or within reasonable time for reinstating the Applicant in service but here again no further steps were taken and belatedly the order for reinstatement was passed on 04.02.2021. The Applicant accordingly joined on 09.03.2021.*

6. *The submission advanced by learned Counsel for the Applicant that his client is entitled to full Pay and Allowances from the date of order of Appellate Authority i.e. from 19.08.2019 till 08.03.2021 is not acceptable. True, the D.G.P. was required to take necessary steps in terms of the order passed by the Appellate Authority within reasonable time but that would not ipso-facto entitled the Applicant to claim full Pay and Allowance from the date of order of Appellate Authority. One also need to see the attempts made by the Applicant for joining. The Applicant made representation for the first time on 19.08.2020. By the said representation, the Applicant thus brought to the notice of D.G.P. that he is kept out of service for more than one year and requested for immediate reinstatement so that he could get Pay and Allowances from the date of joining at least on receipt of representation. The D.G.P. ought to have taken necessary steps without loss of time for passing orders for reinstatement of the Applicant. However, here again there was inaction and inordinate delay on the part of D.G.P. in issuance of reinstatement order. It is thus explicit that the delay and inaction is on the part of D.G.P. for getting the Applicant reinstated in service. In such situation, the Applicant cannot be penalized by not paying Pay and Allowanced for out of duty period. Where employee is kept out of duty for no fault on his part, the employer is bound to pay full Pay and Allowance.*

7. *The Applicant by representation dated 19.08.2020 clearly exhibited his willingness and readiness to resume the work but thereafter also no steps were taken within reasonable time. The office of D.G.P. was aware about the order of Appellate Authority. Thus, this is not a case where D.G.P. was not aware about the order of Appellate Authority whereby the directions given to reinstate the Applicant. In any event at least within the period of one month from the receipt of representation dated 19.08.2020, necessary orders of reinstatement of the Applicant ought to have been issued so that there should have been no loss of Pay and Allowances. In other words, at least from 19.09.2020, the Applicant ought to have been reinstated in service since there was no fault on his part. Therefore, in my considered opinion, the Applicant is entitled to full Pay and Allowances for the period from 19.09.2020 to 08.03.2021. He was kept out of service due to sheer inaction and negligence on the part of office of the D.G.P. in getting the Applicant reinstated in service. Hence, the following order :-*

ORDER

- (A) *Original Application is allowed partly.*
- (B) *The Respondents are directed to pay full Pay and Allowances to the Applicant for the period from 19.09.2020 to 08.03.2021 with other consequential service benefits.*
- (C) *Two months time is granted for compliance of the order.*
- (D) *No order as to costs."*

4. Thus, the Tribunal has recorded conclusion that it is one month after the representation dated 19.08.2020 made by the Applicant, he would be entitled to pay and allowances.

5. Now, this R.A. is filed *inter-alia* contending that in fact the Applicant had already made representation much earlier on 02.12.2019 for reinstatement in service in terms of order passed by the Appellate Authority but inadvertently it was not placed on record in O.A. Adverting to the aspect, the Applicant, therefore, claimed pay and allowances from 02.12.2019 till reinstatement in service. Whereas in O.A., he was granted pay and allowances from 19.09.2020 till reinstatement in service.

6. Shri A. V. Bandiwadekar, learned Counsel for the Applicant sought to contend that in fact in terms of order passed by Appellate Authority, there was no such necessity to Applicant to make representation and he ought to have been reinstated in service immediately. He, further pointed out that the Respondents do not dispute the factum of making representation on 02.12.2019 in their Affidavit in Reply in R.A. He, therefore, submits that the order passed by the Tribunal restricting pay and allowances from 19.09.2020 to 08.03.2021 is incorrect and there is error apparent on the face of record.

7. Per contra, Smt. Archana B. K., learned P.O. submits that scope of R.A. is very limited and there being no satisfactory explanation for not producing representation dated 02.12.2019 in O.A. now, the Applicant cannot be allowed to reopen the matter. She submits that in any case if findings recorded by the Tribunal in O.A. was incorrect, the remedy was to file W.P. and review is not maintainable.

8. The scope of review in Order 47, Rule 1 of CPC is very limited. 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.”

9. 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.

10. 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.

11. Turning to the fact of present matter, admittedly the representation dated 02.12.2019 which is now filed in R.A. at page no.14 of R.A. was not produced during the hearing of O.A. All that in Para No.6 of R.A., the Applicant stated that he could not trace the representation dated 02.12.2019 which is now traced and it amounts to discovery of important evidence. This contention is hardly sufficient to invoke the powers of review. The review is not permissible unless it is established that the Applicant could not produce the document on record after due diligence. Therefore, mere statement in R.A. that representation dated 02.12.2019 was not traceable is not acceptable to invoke the powers of review. Test of due diligence is not fulfilled.

12. The next submission advanced by learned Counsel for the Applicant that there was no necessity of making any such representation and Applicant ought to have been reinstated in service immediately after the order of Appellate Authority is concerned, notably, the Tribunal has considered all these aspects and granted pay and allowances one month after the representation dated 19.08.2020 which was produced in O.A. If the conclusion or finding recorded by the Tribunal is incorrect then remedy is to challenge the order before appropriate forum and not to file

the R.A. R.A. cannot be heard as an appeal in disguise or rehearing of the matter afresh.

13. That apart on principle of 'no work, no pay' also the Applicant would not be entitled to pay and allowances for the period in which he was not on duty. Therefore, considering all these aspects, the Tribunal has granted pay and allowances, one month after representation dated 19.08.2020 which was filed by the Applicant in O.A.

14. The totality of the aforesaid discussion leads me conclude that Applicant has not make out a case to invoke the powers of review and review application is liable to be dismissed. Hence, the following order:-

ORDER

Review Application is dismissed with no order as to costs.

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

Place: Mumbai

Date: 11.04.2023

Dictation taken by: V.S. Mane

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