

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**REVIEW APPLICATION NO.21 OF 2017  
IN  
ORIGINAL APPLICATION NO.138 OF 2016**

1. The State of Maharashtra. )  
The Addl. Chief Secretary, Home Dept., )  
Mantralaya, Mumbai. )
  2. The Commissioner of Police. )  
Thane City, Near Kalwa Bridge, Thane. )
  3. The District Treasury Office. )  
Premises of District Collector Office, )  
Court Naka, Thane (W) – 400 601. )
  4. The Addl. Chief Secretary. )  
Finance Department, Mantralaya, )  
Mumbai – 400 032. )
- )...Applicants  
(Ori. Respondents)**

**Versus**

Shri Arun Laxman Pansare (ASI/SM). )  
Age : 59 Yrs., Occu. ASI-SM, )  
R/o. B-Wing, Flat No.306, Police Paradise, )  
Near Jakat Naka, Dhanori, Pune – 411 015. )

**)...Respondent  
(Ori. Applicant)**

**Mrs. K.S. Gaikwad, Presenting Officer for Applicants (Ori. Respondents)**

**Mr. R.M. Kolge, Advocate for Respondent (Ori. Applicant)**

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

**DATE : 20.02.2019**

**ORDER**

1. This is an application for review of the order passed by this Tribunal on 13.04.2017 in O.A.No.138/2016 thereby issuing direction to release gratuity to the Applicant.

2. The Respondent herein had filed O.A.138/2016 to set aside the Impugned order dated 25.05.2015 and for direction to the Applicant (State of Maharashtra) to pay gratuity. The said application was resisted by the State contending that, as the present Respondent had joined Government service after 01.11.2005, he is not entitled to gratuity in terms of G.R. dated 31.10.2005 whereby the State of Maharashtra has implemented new Scheme viz. Defined Contribution Pension Scheme. However, this Tribunal allowed the O.A.138/2016 thereby quashing the impugned order dated 25.05.2015 and issued direction to release gratuity within six weeks from the date of order on the ground that there is no express exclusion of gratuity in G.R. 31.10.2005.

3. Being aggrieved by order passed by this Tribunal, the original Respondents have filed the present application for review on the ground that in O.A.138/2016, the Applicant has not challenged the G.R. dated 31.10.2005 whereby new Scheme viz. Defined Contribution Pension Scheme made applicable and in absence of any such challenge to the said G.R, the O.A. should not have been allowed. Secondly, there is apparent error on the face of record in view of repeal of M.C.S. (Pension) Rules, 1982, M.C.S. (Commutation of Pension), Rules, 1984 and the existing General Provident Fund Scheme. As such, there is manifest error apparently on the face of record, which needs to be corrected by exercising the powers of review.

4. The Respondent i.e. original Applicant has resisted the application for review contending that there is no such apparent error on the face of record to warrant the review of the order. He further contends that there is no exclusion Clause of gratuity in G.R. issued by Finance Department on 31.10.2005. According to him, by G.R. dated 31.10.2005, the exclusion relates to the M.C.S. (Pension) Rules, 1982, M.C.S. (Computation of Pension) Rules, 1984 and G.P.F. Scheme to those, who joined the service on 01.11.2005 or thereafter. As such, there is no apparent error on the face of record, and therefore, the application for review is not maintainable.

5. Mrs. K.S. Gaikwad, learned P.O. strenuously urged that the reasoning given by the Tribunal in order dated 13.04.2017 that there is no exclusion of gratuity and G.R. dated 31.10.2005 is manifestly incorrect, as the exclusion is obvious in view of repeal of 'Pension Rules 1982' under which the gratuity was earlier payable. As such, she emphasized that there is apparent error on the face of record, which can be corrected by exercising the powers of review. She further urged that in O.A.138/2016, there was no challenge to the G.R. dated 31.10.2005 and in absence of any such challenge, the order of direction to pay gratuity is not sustainable in law.

6. Per contra, Shri R.M. Kolge, learned Advocate for the present Respondent urged that the reasoning given by the Tribunal in impugned order is proper and if the present Applicants are aggrieved by the decision, the remedy was to challenge the same before Hon'ble High Court in Writ Petition. On this line of submission, in alternative, he urged that even assuming that the view taken by the Tribunal in O.A.138/2016 is erroneous, it cannot be the subject matter of review, as the powers of review are very limited. In this behalf, he referred to the Judgment of Hon'ble Supreme Court in ***AIR 2000 SC 85 (Ajit Kumar Rath Vs. State of Orissa)***.

7. Admittedly, by G.R. dated 31.10.2005, the State Government has introduced new contribution pension Scheme known as “Defined Contribution Pension Scheme” on the lines of Government of India replacing existing pension scheme i.e. by repealing M.C.S. (Pension) Rules, 1982, M.C.S. (Computation of Pension) Rules, 1984 and existing General Provident Fund Scheme. Clause No.2 of G.R. dated 31.10.2005 is important which is as follows :

“2.(a) Government has now decided that a new “Defined Contribution Pension Scheme” on the lines of Government of India, replacing the existing pension scheme, as detailed below, would be made applicable to the Government servants who are recruited on or after 1<sup>st</sup> November 2005 in State Government service;

(b) Government is also pleased to decide that for the purpose of implementation of the above new Defined Contribution Pension Scheme, this State Government would join the aforesaid, new defined contribution pension system introduced by Government of India.

(c) The Government is also pleased to decide that the provisions of, -

(i) the existing pension scheme (i.e. Maharashtra Civil Services (Pension) Rules, 1982 and Maharashtra Civil Services (Commutation of Pension) Rules, 1984) and

(ii) the existing General Provident Fund Scheme (GPF) would not be applicable to the Government servants, who are recruited on or after 1<sup>st</sup> November 2005 in State Government Service.”

8. Now, turning to the Judgment passed by this Tribunal in O.A.138/2016. The Tribunal held that, there is no specific clause of exclusion of gratuity in G.R, and therefore, there being no such express exclusion, the gratuity is payable. In Para Nos.5 and 8 of the Judgment, the Tribunal held as follows :

“5. Now, it is very clear from the above discussion that Clause 2(c) above quoted is clearly exhaustive and on its plain reading, no room is left for any interpretation. In the other words, the items excluded therefrom on its plain reading can certainly not be read thereinto and if that be so, then in my opinion, to read the head of gratuity therein would be an instance of Rule making rather than interpretation of the Rule. It is very pertinent to note that therein the provisions of the Commutation of Pension Rules have been specifically mentioned and so also, the existing Pension Scheme and the GPF Scheme. On its

plain reading, there is no scope left to include something which is quite clearly excluded thereby.

8. The learned PO, therefore, contended that if the pension includes gratuity and if no pension is payable, the gratuity would also not be payable. I am not in a position to agree with the learned PO in so far as that submission is concerned. The governing Rule would be of the new Scheme and as already mentioned above, if gratuity was to be read *ipso-facto* therein and if there was a new Scheme for pension introduced, then there was no need for specifically providing the exclusionary clause for commutation of Pension Rules. As I mentioned above, the provisions of Rule 2(c) are exhaustive and admit to inclusion of no other head of post retiral benefits.”

9. Now, the question comes whether the present case falls within the scope of review under Section 22(3)(f) of Administrative Tribunals Act, 1985. Needless to mention that the provisions of Section 22(3)(f) indicates that the power of review available to the Tribunal is the same, as has been given to a Court under Section 114 read with Order XLVII of C.P.C. In other words, if the case falls within the parameters laid down in Section 114 read with order XLVII of C.P.C, then only review is permissible.

10. Here, it would be apposite to reproduce Order XLVII of C.P.C, which is as follows :

**“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.

(Explanation.- The fact that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such judgment.)”

11. Shri R.M. Kolge, learned Advocate for the Applicant referred to **Ajit Kumar Rath's** case, wherein Para Nos.30 and 31 are relevant, which are as follows :

**30.** The provisions extracted above indicate that the power of review available to the Tribunal is the same as has been given to a court under S. 114 read with O. 47, C.P.C. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of a person on 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 order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it. It may be pointed out that the expression “any other sufficient reason” used in Order 47, Rule 1 means a reason sufficiently analogous to those specified in the rule.

**31.** Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment.”

12. Now, the question comes whether there is error apparent on the face of record or it is a case of only erroneous view. In the light of Judgment in **Ajit Kumar Rath's** case itself as well as from the language of Order XLVII of C.P.C, it goes without saying that, if there is patent error apparent on the face of record and which does not require elaborate argument, then it can be corrected by

exercising the powers of review. What is the error apparent on the face of record, of-course cannot be defined precisely or exhaustively and it depends upon the facts.

13. The question whether there is apparent error of law on the face of record has to be answered in the light of examination of 'Pension Rules 1982' as well as Rules of gratuity, if any, which separately provides for the payment of gratuity to Government servants other than 'Pension Rules 1982'.

14. Rule 9(37) of 'Pension Rules 1982' defines 'Pension' as follows :

“Pension. - Pension includes gratuity.”

15. Chapter X of 'Pension Rules 1982' provides for determination and authorization of the amount of pension and gratuity. Chapter XI provides for determination and authorization of the amount of family pension and death gratuity in respect of Government servant dying while in service. Whereas, Chapter XII provides for sanction of family pension and residually gratuity in respect of deceased pensioners. Thus, gratuity was payable as per these Chapters of 'Pension Rules 1982'. As such, the said Rules pertaining to gratuity were one of the component of 'Pension Rules 1982' itself being composite Rules. There are no other Rules governing gratuity to the Government servant. Suffice to say, prior to G.R. dated 31.10.2005, the gratuity was payable as per the Chapters indicated above which were the components or part of 'Pension Rules 1982'. Perhaps, this aspect was not brought to the notice of Tribunal while deciding O.A.No.138/2016. Whereas, with effect from 01.11.2005, the 'Pension Rules 1982' are replaced by "Defined Contribution Pension Scheme" which admittedly does not have any provision for gratuity at present. This being the position, when 'Pension Rules 1982' are repealed and no more in existence, the question of entitlement of gratuity on the basis of 'Pension Rules 1982' does not survive in view of it's repeal by the Government.

16. The observation made by the Tribunal in impugned order that, there is no exclusion of the Rules of Gratuity is thus apparently incorrect in view of repeal of 'Pension Rules 1982' itself. At the cost of repetition, I would again like to mention that the gratuity was one of the component of the 'Pension Rules 1982' and it is under those Rules only, the Government servants were entitled to the gratuity.

17. At this juncture, it is material to note that, in pursuance of decision taken by the Government to repeal 'Pension Rules 1982', the necessary amendment has been carried out to 'Pension Rules 1982' that 'Pension Rules 1982' shall not apply to the Government servant who are recruited on or after 1<sup>st</sup> November, 2005. In this behalf, Rule No.2 has been inserted as follows :

“2. These rules shall not apply to the Government servants who are recruited on or after 1<sup>st</sup> November, 2005.”

18. When these substantive Rules itself are repealed, the question of necessity of separate exclusion does not survive. Therefore, in my considered opinion, there is apparent error on the face of record, which definitely falls within the scope of review. It is not a case of mere different or erroneous view on the facts which cannot be the subject matter of review. Here is a case of apparent error of law on the face of record in view of repeal of 'Pension Rules 1982' under which, only gratuity was earlier payable.

19. It is rightly pointed out by the learned P.O. that the order under review does not indicate under which provision, the gratuity is payable to the Applicant in view of repeal of 'Pension Rules 1982'. As 'Pension Rules 1982' stands repealed, it is imperative to enlighten as to under what provision now gratuity can be paid. However, the leaned Advocate could not point of any other provision of law under which new gratuity can be claimed by the Applicant.



20. The learned Advocate for the Respondent referred to the Office Memorandum issued by Ministry of Personnel, Central Government of India, dated 26<sup>th</sup> August, 2016 to bolster-up his contention that the gratuity can be claimed under National Pension Scheme. The reliance on the said communication is misplaced. It speaks about Central Government employees only and not State Government employees. This communication seems to have been issued stating that, as new "Defined Contribution Pension Scheme" has been notified by the Central Government, subsequently, the orders were issued for the payment of gratuity on provisional basis in respect of employees covered under National Pension System on their retirement from Government service. Suffice to say, it has been made applicable to Central Government employees only, which is very much clear from Para Nos.2 and 5 of communication, which is as follows :

"2. The issue of grant of gratuity in respect of government employees covered by the National Pension System has been under consideration of the Government. It has been decided that the government employees covered by National Pension System shall be eligible for benefit of 'Retirement gratuity and Death gratuity' on the same terms and conditions, as are applicable to employees covered by Central Civil Service (Pension) Rules, 1972.

5. These orders will be applicable to those Central Civil Government employees who joined Government service on or after 1.1.2004 and are covered by National Pension System and will take effect from the same date i.e. 1.1.2004."

21. In so far as the State Government employees are concerned, admittedly, till date, no such decision has been taken by the State Government. This being the position, so long as no decision is taken by the State Government on the lines as of Central Government communication referred to above, the Applicants are not entitled to gratuity in view of repeal of 'Pension Rules 1982' and the implementation of new "Defined Contribution Pension Scheme".

22. In view of above, I am satisfied that there is apparent error on the face of record which can be corrected by exercising the powers of review contemplated under order XLVII of C.P.C.

23. For the aforesaid conclusion, I am guided by the decision of Hon'ble Supreme Court in **AIR 2006 SC 75 (Rajender Singh Vs. Lt. Governor, Andaman & Nicobar Islands)** wherein it has been held that the error apparent on the face of record can be corrected by exercising powers of review contemplated under Rule XLVII of C.P.C. The Hon'ble Supreme Court further held that, any error apparent on the face of record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent from its very nature. The Hon'ble Supreme Court in Para No.16 in **Rajender Singh's** case held as follows :

“16. The power, in our opinion, extends to correct all errors to prevent miscarriage of justice. The courts should not hesitate to review its own earlier order when there exists an error on the face of the record and the interest of the justice so demands in appropriate cases. The grievance of the appellant is that though several vital issues were raised and documents placed, the High Court has not considered the same in its review jurisdiction. In our opinion, the High Court's order in the revision petition is not correct which really necessitates our interference.”

24. As such, what can be termed as error apparent on the face of record is a question of fact which depend upon the peculiar facts and circumstances of the case and there is no such straight-jacketed formula to restrict its application to certain situations only.

25. In so far as the contention raised by the learned Advocate for the Applicant that in O.A.138/2016, there was no challenge to G.R. dated 31.10.2005, and therefore, in absence of any challenge to G.R, the O.A. should not have been allowed is concerned, it is not acceptable. Admittedly, the Applicant has not challenged the G.R. dated 31.10.2005 in O.A.138/2016. However, that aspect to

my mind is immaterial for the purposes of decision of the present R.A. The material question would be whether there is error apparent on the face of record which can be corrected by exercising the powers of review.

26. The necessary corollary of the aforesaid discussion leads me to sum-up that in view of repeal of 'Pension Rules 1982', the claim of gratuity who joined service on 01.11.2005 or thereafter is not sustainable. There is exclusion to the applicability of entire 'Pension Rules 1982'. Therefore, the decision of this Tribunal that there is no exclusion to the gratuity is obviously error apparently on the face of record. Hence, the following order.

**ORDER**

- (A) The Review Application No.21 of 2017 is allowed and consequently, O.A.138/2016 stands dismissed.
- (B) No order as to costs.

Sd/-

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

Mumbai

Date : 20.02.2019

Dictation taken by :

S.K. Wamanse.