

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL**

**MUMBAI**

**REVIEW APPLICATION NO.28 OF 2015**

**IN**

**ORIGINAL APPLICATION NO. 190 OF 2011**

**DISTRICT :**

- 1) Shri Yogesh Chandrabhan Wasnik, )  
Aged 40 Yrs, Occ. Government Service )  
as Clerk-Cum-Typist, Having office at )  
Public Works Department, Mantralaya, )  
Mumbai – 400 032. )  
R/O.2A, 401, Sai Sankul Annex )  
Khadakpada, Kalyan [W], Dist. Thane. )
- 2) Sou. Kalpana Jagannath Jadhav )  
Before Marriage )  
Miss Kalpana Ganpat Shinde, )  
Aged 44 Yrs, Occ. Government )  
Service as Bill Accountant, )  
Having Office at Public Health )  
Department, G.T. Hospital )  
Campus, 10<sup>th</sup> Floor, L.T. Marg, )  
Mumbai – 400 001. )  
R/O. B-5/2, Sawali, P.W.D. Quarters, )  
Ganpat Jadhav Marg, Worli, )  
Mumbai – 400 018. )
- 3) Sou. Vijaya Shantaram Salunkhe, )  
Before Marriage )  
Miss Jayashri Vitthal Rewale, )  
Aged 40 Yrs, Occ. Government )  
Service as Clerk-Cum-Typist, )  
Having Office at Public Works )

- Department, Matralaya, )  
 Mumbai – 400 032. )  
 R/o. 1/1, Vaijanath Yadav Chawl, )  
 Majaswadi, Jogeshwari [E], )  
 Mumbai – 400 060. )
- 4) Sou. Swati Shailesh Paranjape, )  
 Before Marriage )  
 Miss Aarti Dnyaneshwar Vaidya )  
 Aged 41 Yrs, Occ. Government )  
 Service as Clerk-Cum-Typist, )  
 Having Office at Public Works )  
 Department, Mantralaya, )  
 Mumbai – 400 032. )  
 R/O. B-35, Gajanan Bhawan, )  
 Kolbad Road, Pratap Talkies )  
 Road, Khopat, Thane (West). )
- 5) Shri Makarand Keshavrao Gayawal, )  
 Aged 59 Yrs, Occ. Government Service )  
 as Cashier, Having Office at Revenue & )  
 Forest Department, Mantralaya, )  
 Mumbai – 400 032. )  
 R/O.101, Jay Ambika Darshan, )  
 Shivaji Nagar, B Cabin, Naupada, )  
 Thane [W] – 400 602. )
- 6) Sou. Shweta Sharad Raut, )  
 Before Marriage )  
 Miss Nandini Pandurang Gode, )  
 Aged 43 Yrs, Occ. Government )  
 Service as Clerk-Cum-Typist, )  
 Having Office at General )  
 Administration Department, )  
 Mantralaya, Mumbai – 400 032. )  
 R/O. 169/5492, A Division, )

Kannamwar Nagar No.1, Vikhroli [E], )  
Mumbai – 400 083. )

- 7) Shri Hemant Sharad Ledade, )  
Aged 41 Yrs, Occ. Government Service )  
as Clerk-Cum-Typist, Having Office at )  
General Administration Department, )  
Mantralaya, Mumbai – 400 032. )  
R/O. B-56/4, Govt. Colony, )  
Bandra [E], Mumbai – 400 051. )
- 8) Shri Girish Ganpat Surve, )  
Aged 37 yrs, Occ. Government )  
Service as Clerk-Cum-Typist, )  
Having Office at General )  
Administration Department, )  
Mantralaya, Mumbai – 400 032. )  
R/O. 003, Shri Ganesh Darshan )  
Co-operative Housing Society, )  
Jaydeep Nagar, Bhandup [E], )  
Mumbai – 400 042. )
- 9) Shri Sachin Ashok Joshi, )  
Aged 44 Yrs, Occ. Government Service )  
as Clerk-Cum Typists, Having Office at )  
General Administration Department, )  
Mantralaya, Mumbai – 400 032. )  
R/O.4, Koyana, Government Colony, )  
12 Bungala, Kopari, Thane [E]. )
- 10) Sou. Rohini Rajesh Sakpal, )  
Before Marriage )  
Miss Rohini G. Dambe, )  
Aged 42 Yrs, Occ. Government )  
Service as Clerk-Cum-Typists, )  
Having Office at Law and Judiciary )

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- Department, Mantralaya, )  
 Mumbai - 400 032. )  
 R/O. A-407, Aditya Park )  
 Co-op. Housing Society, C.S. Road, )  
 Dahisar [E], Mumbai - 400 068. )
- 11) Sou. Mangal Vishwas shiwalkar, )  
 Before Marriage )  
 Miss Mangala Eknath Gavankar, )  
 Aged 44 Yrs, Occ. Government )  
 Service as Cashier, Having Office at )  
 Food & Civil Supplies Department, )  
 Mantralaya, Mumbai - 400 032. )  
 R/O. 104, C, Shiwalkar Niwas, )  
 Opp. Maruti Mandir, Worli, )  
 Koliwada, Mumbai - 400 030. )
- 12) Sou. Sharmilee Shivaji Sawant )  
 Before Marriage Miss Sulabha Shantaram )  
 Kalebere, Aged 47 Yrs, Occ. Government )  
 Service as Clerk-Cum-Typist, )  
 Having Office at Rural Development )  
 and Water Resources Department, )  
 Bandkam Bhawan, 25, Marzbaan Road, )  
 Fort, Mumbai - 400 001, )  
 R/O. Sahjeevan, B 10, C-Wing, )  
 First Floor, S.S. Wagh Road, )  
 Naigaon, Mumbai - 400 014. )
- 13) Sou. Puja Dnyaneshwar Desai, )  
 Before Marriage Miss Parvati )  
 Ramchandra More, Aged 40 Yrs, )  
 Occ. Government Service as Clerk-Cum- )  
 Typist, Having Office at Housing )  
 Department, Mantralaya, )  
 Mumbai - 400 032. )

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- R/O. 12 B/19, Best Officers )  
Quarters, MHADA Colony, )  
Mahakali Caves Road, )  
Andheri [E], Mumbai - 400 093. )
- 14) Sou. Anagha Anant Sawant, )  
Before Marriage )  
Miss Manisha Sadananda Rane, )  
Aged 45 Yrs, Occ. Government )  
Service as Bill Accountant, )  
Having Office at Water Resources )  
Department, Mantralaya, )  
Mumbai - 400 032. )  
R/O. B-304, Om Suryodaya, )  
Co-op. Housing Society, S.V. Cross )  
Road, Ashokwan Rawalpada, )  
Dahisar [E], Mumbai - 400 068. )
- 15) Shri Yogesh Chandrakant Jadhav, )  
Aged 38 Yrs, Occ. Government )  
Service as Clerk, Having Office at )  
Industries, Energy and Labour )  
Department, Mantralaya, )  
Mumbai- 400 032. )  
R/O. 1/14, Panbai Niwas, Sane )  
Guruji Marg, Chinchpokali, )  
Mumbai - 400 011. )
- 16) Sou. Netra Vidyadhar Sarfare, )  
Before Marriage )  
Miss Vidya Sakharam Ambre, )  
Aged 45 Yrs, Having Office at )  
Public Health Department, )  
G.T. Hospital Campus, )  
10th Floor, L.T. Marg, )  
Mumbai - 400 001. )  
R/O. D/305, Balaji Aangan, )
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- Belpada, Sector-3, Kharghar, )  
Navi Mumbai - 410 210. )
- 17) Shri Sanjay Balkrushna Kadam, )  
Aged 47 Yrs, Occ. Government )  
Service as Clerk-Cum-Typist, )  
Having Office at Water Resources )  
Department, Mantralaya, )  
Mumbai - 400 032. )  
R/O. Sneha Building, A-wing, )  
Room No.13, Near Poddar )  
Hospital, Dr. Ani Bezant Road )  
Worli, Mumbai - 400 030. )
- 18) Shri Vinayak Shashikant Jakhlekar,) )  
Aged 45 Yrs, Occ. Government )  
Service as Clerk-Cum-Typist, )  
Having Office at Higher & )  
Technical Education Department, )  
Mantralaya, Mumbai - 400 032, )  
R/O. B-1/35, Room No.6, )  
Second Floor, Govt. Colony, )  
Bandra [E], Mumbai - 400 051. )
- 19) Shri Sanjay Damodar kadam, )  
Aged 45 Yrs, Occ. Government )  
Service as Clerk-Cum-Typist, )  
Having Office at Revenue and )  
Forest Department, Mantralaya, )  
Mumbai - 400 032. )  
R/O. 1/03 A, Lovely Home, )  
Ovaripada, Dahisar [E], )  
Mumbai - 400 068. )  
Address For Service of Notice:- )  
As above. )...**Applicant**

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**VERSUS**

- 1) The Chairman/ Secretary, )  
 Maharashtra Public Service )  
 Commission, Having Office at )  
 3<sup>rd</sup> Floor, Bank of India )  
 Building, M.G. Road, Fort, )  
 Mumbai – 400 001. )
- 2) The Chief Secretary, )  
 Government of Maharashtra, )  
 Having Office at Mantralaya, )  
 Mumbai – 400 032. )
- 3) The Principal Secretary, )  
 General Administration )  
 Department, Government of )  
 Maharashtra, having office )  
 at Mantralaya, Mumbai – 400 032. )....**Respondents**

Shri A.V. Bandiwadekar, learned Advocate for the Applicant.

Shri K.B. Bhise, learned Presenting Officer for the Respondents.

**CORAM : Shri Rajiv Agarwal, Vice-Chairman**

**Shri R.B. Malik, Member (J)**

**DATE : 9.03.2016**

**PER : Shri Rajiv Agarwal, Vice-Chairman**

**ORDER**

1. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Shri K.B. Bhise, learned Presenting Officer for the Respondents.


2. This Review Application has been filed by the Applicants seeking recall of our order dated 2.7.2015 in O.A.No.190 of 2011 and to allow that O.A.

3. Learned Counsel for the Applicants argued that the order of this Tribunal dated 2.7.2015 has been passed without considering any of the issues raised from page 72 to 200 of the affidavit of the Applicants in the O.A. The Applicants have produced answer sheets of the Applicants in the examination conducted by the Respondent No.1, Maharashtra Public Service Commission (M.P.S.C.) in the limited Departmental Competitive Examination 2009 held to select eligible Clerk-Typists for appointment as Assistants. Glaring mistakes while assessing the markes sheets were demonstrated. It was pointed out that no uniform approach was adopted by different examiners. Though Moderators are appointed to correct mistakes committed by the Examiners, there was no moderator for Paper no.2 (Part A & B). Learned Counsel for the Applicants argued that various mistakes in the evaluation in respect of various Applicants were placed on record, but this Tribunal didnot take any cognisance of the same. Learned Counsel for the Applicants contended that the Respondent No.1 may be directed to carry out moderation and prepare a fresh merit list.

4. Learned Presenting Officer (P.O.) argued on behalf of the Respondents that the Paper setter sets the marking scheme and inportant points for the relevant questions as a



key for assessing the answer books and no detailed modal answers are prepared. It is used as a guideline by the Examiners/Moderator/ Chief Moderator. For keeping uniformity in assessment work, the procedure of moderation is adopted and if in the moderation, the difference in the marks given by the Examiner and the marks given by the Moderator is more than the limit specified, Chief Moderation is undertaken. Learned P.O. argued that Government Officers were appointed as Examiners/ Moderators/Chief Moderator. It is not possible to change the marks allotted by an examiner, except in accordance with the scheme of moderation. Learned P.O. stated that all the issues raised by the Applicants were considered by this Tribunal while disposing the O.A. The present R.A. is in the nature of an appeal and is not maintainable. The scope of review is quite limited and it is to correct any error of fact or law which stares in the face. Review is not maintainable, if the Applicant is not satisfied with the reasons given by the Tribunal to reject his claim, which appears to be the case here. Learned P.O. stated that for paper no.2 part A, 99 Answer books were moderated, for part B, 68 Answer Books were moderated and for part 3, 13 Answer Book were moderated. Learned P.O. argued that the process of moderation was fully applied and the request of the Applicants for further moderation at this stage cannot be considered.



5. We find that the Applicants have filed this R.A. on the ground that each and every grievance of every Applicant, listed in the O.A. has not been considered by this Tribunal. The details of the facts, which according to the Applicants should have been examined by this Tribunal are given in para 10 of the R.A. It is true that this Tribunal has not commented on each 'so called' mistake in the evaluation pointed out by the Applicants in the O.A. However this aspect of uniformity or lack of it in evaluation of answer books of different candidates has been duly considered by this Tribunal. The Tribunal in paragraph nos. 5,6 and 7 of the order dated 2.7.2015 has taken what is called as a bird-eye view of the case of the Respondents. It was not necessary, nor possible to refer to each and every answer to a question in an answer book to a moderator. From the affidavit in reply in R.A. dated 27.10.2015, it is stated in para 15 that for paper no. 2 part -A 99, Answerbooks were moderated, for Paper 2 part B, 68 Answer books were moderated and for paper II, part 3, 13 Answerbooks were moderated. Considering the total number of candidates, which was 433, it is a fairly high level of moderation. As regards Chief Moderation, it depends on the limit of difference between the marks allotted by the Examiner and the Moderator. This Tribunal in the order dated 2.7.2015 has duly taken note of the methodology of the limited Departmental Competitive Examination which was adopted by the Respondent No.1. It was noted that the nature of competitive examination is different from that of a University

examination. In paragraph no.12 of the order, it was noted that:-

“We taken note of that aspect of the matter only to make a point that the alleged defects in the examination, even if any, was such as to affect all the competitors equally and that is something that we will have take note of especially when there is no must objective material to go by.”

In paragraph no.10 of our judgment, the approach of the judicial forum in such matters has been disussed in the following terms:

“The courts may not be well equipped to judge by their own yardstick the reasons and rationale behind the deciding upon the various stages of such examination and tests and redily interfere with the performance of duties at vrious stages by these bodies, and therefore, even as the courts and the competent judicial forum have the jurisdiction to scrutinise the performance of these constitutional bodies, or in some other case, even as statutory bodies, but the manner of exercising this jurisdiction must in our view be informed more by circums pection than by rushing in just for the asking.”

In paragraph no.15 of the order, we have stated that:-

“15. As far as the various aspect of the examinations in which the Applicants have sought to pick several hates and which have been discussed at the outset like the setting of the question papers and the qualifications of the paper setters, evaluation of the answer books. Evaluation, moderation, super-moderation, etc, we find

that reading the Affidavit-in-reply. Preferring the essential substance thereof, there is every reason to believe that the Respondent No.1 is quite conscious of its constitutional obligation.”

6. It is quite clear that all the issues raised by the Applicants have been considered by us while delivering judgment dated 2.7.2015. Marks obtained by an individual in a particular question could not be considered, as the Respondent No.1 had explained the scheme of moderation to ensure uniformity in the standard of evaluation. A large number of Answerbooks were in fact, sent for moderation, which shows that the system of moderation was effectively used. This Tribunal didnot think it fit to take upon itself the task of evaluating answers given by individuals to various questions.

7. In the case of Ajit Kumar Rath Vs. State of Orissa and others, reported in (1999) 9 SCC 596, Hon'ble S.C. has laid down the parameters of a Review. It is held that power of review available to Tribunal under Section 23(3) of the Administrative Tribunals Act is not absolute and is the same as given to a under Section 114 and order 47 of C.P.C. Hon'ble S.C. has held that:-

“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 acocut 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 earlier, that is to say the power of review can be exercised only for correction of a patent error of law or facts which stares in the face without any elaborate arguments being needed for established it.”

In the present case, all the issues raised by the Applicants were considered by this Tribunal as stated in paragraph no.15 of our order. The scheme of limited Departmental Competitive Examination, its methodology was examined in great detail. The rule of judicial forum was also considered in such situation. It was found that the Respondent No.1 was fully conscious of its constitutional obligations. This Tribunal has already taken a view in this O.A. and if the Applicants are not satisfied, review is not the remedy.

8. The Applicants have failed to point out any error of law or facts in our order dated 2.7.2015 in O.A.No.190 of 2011. This R.A. is, therefore, dismissed with no order as to costs.

Sd/-  
**(R.B. MALIK)**  
**(MEMBER) (J)**

Sd/-  
**(RAJIV AGARWAL)**  
**(VICE-CHAIRMAN)**

**Date : 9.03.2016**

**Place : Mumbai**

**Dictation taken by : SBA**

*D:\savitri\2016\March, 2016\R.A.No.28 of 2015 in O.A.NO.190 of 2011 Vc & MJ.doc*