

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

**REVIEW APPLICATION NO.28 OF 2022
IN
ORIGINAL APPLICATION NO.616 OF 2022**

**Sub : Interest on delayed
payment
DISTRICT: Mumbai**

Shri Pradeep Purushottam Pimparkhede,)
C/404, ORCHID Suberbia Building, New Link)
Road, Kandivali (W), Mumbai 400 067.).... **Applicant**

Versus

- 1) The Add. Home Secretary & Deputy Secretary)
Home Department, Mantralaya, Mumbai.
- 2) Dy. Secretary, Finance Department, Mantralaya,)
Mumbai.)
- 3) The State Govt. Maharashtra.)....**Respondents**

Shri Pradeep Pimparkhede, the Applicant in person.

Smt. Archana B. K., learned Presenting Officer for the Respondents.

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

DATE : 17.04.2023.

JUDGMENT

1. The Applicant has filed this application to review the order passed by the Tribunal on 25.11.2022 in O.A.No.616/2022.
2. Heard the Applicant in person and Smt. Archana B. K., learned Presenting Officer for the Respondents.

3. The Applicant had filed O.A.No.616/2022 claiming interest on the amount of pay and allowances of suspension period and belated payment of ACPS benefit *inter-alia* contending that Respondents made payment quite belatedly and, therefore, entitled to interest. The O.A. was allowed partly. Insofar as interest on payment of suspension period is concerned, the Tribunal recorded findings that Applicant's suspension period was regularised by order dated 10.05.2016 and in terms of it, the Applicant was paid difference of pay and allowances on 10.10.2016 i.e. within six weeks from the date of order dated 10.05.2016. Therefore, the claim for interest on suspension allowance was rejected. As regard amount of ACPS benefit, the Tribunal recorded findings that he was granted benefit of ACPS on 21.11.2016 and amount was paid to him on 28.06.2017. In terms of G.R. dated 22.11.1994 referred by the Applicant, the amount was required to be paid within six weeks but paid after seven months and seven days delay. The Tribunal, therefore, directed the Respondents to pay interest on belated payment of ACPS benefit from 21.05.2016 to 28.06.2017 by order dated 25.11.2022.

4. Now the Applicant has filed R.A. *inter-alia* contending that there was delay on the part of Government to pass an order of regularization of suspension period and, therefore, the findings recorded by the Tribunal that Applicant was not entitled to interest on the amount of pay and allowances of suspension period is incorrect. Now, the question is whether this could be the ground to review the order passed by the Tribunal on 25.11.2022.

5. There is no dispute about the factual aspect that the Applicant was suspended on 28.11.2003 in view of registration of crime by ACB. He was convicted by Sessions Court on 22.12.2010 and consequent to it, he was removed from service by order dated 12.08.2011. Being aggrieved by conviction, he has filed the Appeal before the Hon'ble High Court which was allowed on 22.11.2013 and he came to be acquitted from charges levelled against in ACB case. Before the decision of

criminal appeal, the Applicant attained superannuation on 30.09.2013. Later, the Government by order dated 10.05.2016, regularized the period of suspension and treated as duty period for pay and allowances and other consequential service benefits. It is in terms of order dated 10.05.2016, the difference of pay and allowances deducting subsistence allowance already paid to the Applicant was paid on 20.10.2016 in terms of G.R. dated 22.11.1994 as referred by the Applicant. The pay and allowances were required to be paid within six months otherwise there would be liability of interest.

6. Now, in R.A. the Applicant in person sought to contend that though it was not a case of filing Special Leave Petition (SLP) before the Hon'ble Supreme Court against his acquittal, the Government took three years period for closing the file for no appeal and, therefore, is entitled to interest. Thus, according to him, If the Government had decided the issue of regularization of suspension period earlier, he would have received the amount much earlier. It is on this line of submission, the Applicant contends that Respondents are liable to pay interest.

7. The perusal of record reveals that the Government was considering to file SLP before the Hon'ble Supreme Court against the order of acquittal and there was correspondence between the Home Department and Law and Judiciary Department. It appears that Additional Public Prosecutor, High Court Appellate Side, Mumbai by order dated 29.05.2014 asked the Director of Prosecutor to take appropriate decision about challenging the acquittal by filing SLP before the Hon'ble Supreme Court. The Director of Prosecution by order dated 06.06.2014 opined that it is not a fit case for appeal but asked the Home Department to take appropriate decision. Thereafter, the Home Department consulted the Government Advocate Shri Katneshwarkar for filing SLP before the Hon'ble Supreme Court. However, Advocate Shri Katneshwarkar by his letter dated 30.06.2015 informed to Home Department that though he drafted the SLP but opined that there is no point in filing SLP and there

is also delay in the matter. Ultimately, the Law and Judiciary Department withdrew its proposal for filing SLP. It is thereafter only, necessary steps were taken for regularization of suspension period and accordingly by order dated 10.05.2016, the period of suspension was regularized as duty period and difference was paid on 20.10.2016. Likewise, the benefit of ACPS was granted by order dated 21.11.2016 which was paid to him on 28.06.2017.

8. It is thus obvious that after the final decision for not filing appeal was taken by the Government further steps were taken to regularize the period of suspension. True, the Government took near about three years period in finalizing the issue of challenging the acquittal, the fact remains that right to receive pay and allowances of suspension period accrued to the Applicant on 10.05.2016 i.e. the date when the Government regularized the period of suspension. Till the decision about treatment to suspension period, the Applicant would not have claimed pay and allowances of suspension period as a vested right. As such, the cause of action to receive the amount accrued on 10.05.2016 and in six months difference in allowances were actually paid. Likewise, the right to received the amount of ACPS benefit accrued on 21.11.2016 and it was paid on 28.06.2017. I do not see any such administrative lapses on the part of respondents to justify the claim of interest.

9. As such, I see no such apparent error on the face of record to review the order passed by the Tribunal on 25.11.2022. The Tribunal has already considered all these aspects while deciding the O.A. and no case is made out to invoke the powers of review as contemplated under Order 47, Rule 1 of CPC. If the decision is erroneous then remedy is to challenge the same before higher forum and no case is made to review the order.

10. 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.”

11. 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.

12. 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.

13. The totality of the aforesaid discussion leads me sum up that Review Application is devoid of merit and 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: 17.04.2023

Dictation taken by: V.S. Mane

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