

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
REVIEW APPLICATION NO. 31/2019 IN
ORIGINAL APPLICATION NO. 799/2011 WITH
CIVIL APPLICATION NO. 312/2006 (D.B.)

Rajendra Sitaram Jambhulkar,
Aged 50 years, Occ. Service,
R/o S.R.P.F., Camp, Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Secretary,
Department of Home,
Mantralaya, Mumbai-32.
- 2) The Commandant,
State Reserve Police Force,
Group-XIII, State Reserve Police Force,
Hingna Road, Nagpur.
- 3) Inspector General of Police (Special),
State Reserve Police Force,
S.R.P.F. Camp, Hingna Road, Nagpur.
- 4) Rupdas Jayram Sonwane,
Aged Major, Occ. Police Inspector C.R.P.F.,
Gat No. 6, Dhule,
Tq. & Dist. Dhule.

Respondents

Shri R.V.Shiralkar, Id. Advocate for the applicant.

Shri H.K.Pande, Id. P.O. for the respondents.

**Coram :- Hon'ble Shri Shree Bhagwan, Vice-Chairman &
Hon'ble Shri M.A.Lovekar, Member (J).**

JUDGMENT

Judgment is reserved on 16th Mar., 2023.

Judgment is pronounced on 21st Mar., 2023.

(Per:-Member (J))

Heard Shri R.V.Shiralkar, learned counsel for the applicant and Shri H.K.Pande, learned P.O. for the Respondents.

2. By this original application the applicant is seeking review of judgment dated 23.09.2019 in O.A. No. 799/2011 whereby the O.A. as well as C.A. No. 312/2016 were dismissed.

3. Shri Shiralkar, Id. Counsel for the applicant submitted that while delivering the judgment under review this Tribunal did not consider pleading of the applicant in paras 4.5 and 4.13 of the O.A. and this flaw needs to be rectified by recalling the judgment and order under review and deciding it afresh after considering entire pleading of the applicant.

4. Para 4.5 of the O.A. contains averments based on (Annexures- A-7, A-8 and A-5). Annexure-A-7 is seniority list for the year of S.R.P.F., Group-XII, Hingoli, Camp Jalna in which respondent no. 4 stood at Sr. No. 395. In this para it is pleaded that on 28.06.2002, on request, respondent no. 4 was transferred to Group-III, S.R.P.F., Jalna from his earlier post and on 29.06.2002 he was transferred to Group-III, S.R.P.F., Nagpur along with the applicant. Circular at A-8 lays down that those transferred on request, in the case of officiating Head Constables

and Police Constables, the order of enlistment should be the basis and they should be placed below all the Constables of that District enlisted during the particular year. A-A-5 is order of transfer from Group-III S.R.P.F., Jalna to Group-XIII S.R.P.F., Nagpur and in this list the applicant is shown at Sr. No. 26 and respondent no. 4 is shown at Sr. No. 57.

5. In para no. 4.13 of the O.A. there are averments based on contents of various representations made by the applicant which are collectively marked A-A-14. In one of these representations (at P. 61) the applicant stated his grievance as follows:-

“मी मुळचा गट क्रमांक ३ चा कर्मचारी असून गट क्रमांक १२ चे कर्मचारी त्यांचे विनंती वरून रा.रा.पो.बल गट क्रमांक ३ मध्ये आले. आणि कंपनी सोबत रा.रा.पो.बल गट क्रमांक १३ ला आले. आणि कंपनी वर्ग होऊन रा.रा.पो.गट क्रमांक १३ येथे आली. परंतु मी मुळ रा.रा.पो.गट क्रमांक ३ चा कर्मचारी असून सुध्दा आणि कंपनी सोबतच आलो तरी मला गट क्रमांक १२ चे कर्मचारी यांचे मागे जेष्ठते मध्ये ठेवण्यात आले आणि मला पदोन्नती सुध्दा उशीरा देण्यात आली.”

6. Paras 4, 5 & 7 of the Judgment under review which read as under, partly deal with what is pleaded in para 4.5 of the O.A.:-

“4. *It is contended that policy decision was taken by Government of Maharashtra to transfer one Company of S.R.P.F., Group-III, Jalna to S.R.P.F., Group-XIII, Nagpur, in consequence of this decision one Company of S.R.P.F., Jalna was transferred to S.R.P.F., Group-XIII, Nagpur vide order*

dated 29/06/2002. As a result of the transfer of the Company the service of the applicant was transferred to the establishment of S.R.P.F., Group-XIII, Nagpur.

5. *It is submitted that as per the general transfer order by which the Company was transferred, the applicant's name was at Sr. No. 26 and respondent no.4's name was at Sr. No. 57.*

6. *It is submitted by the applicant that as per the service rules, the Armed Constables after services of three years were eligible for promotion on the post of Assistant Section Commander (Police Naik Constable), the Assistant Section Commander and the Constables with minimum services of seven years were eligible for the promotion as Commander (Hawaldar).*

7. *According to the applicant, the respondent no. 4 was initially appointed in S.R.P.F., Group-XII, Hingoli Camp, Jalna as Police Constable on 25/09/1997. It is contended that in the seniority list at Annexure-A-7 of S.R.P.F., Group-XII, Hingoli Camp, Jalna, name of respondent no. 4 is at Sr. No. 395. It is case of the applicant that respondent no. 4 applied for transfer on request and accordingly the respondent no. 4 was transferred from Hingoli Camp to Group-III, S.R.P.F., Jalna. On*

the basis of this it is submitted that the respondent no.4 became junior to the applicant in Group III S.R.P.F. Jalna.”

7. As mentioned earlier, in para 4.13 there is reference to various representations made by the applicant.

8. It is the contention of the applicant that on account of non consideration of paras 4.5 and 4.13 the judgment under review needs to be recalled so that the O.A. can be decided afresh by considering entire pleading of the applicant.

9. We have stated above that the judgment under review partly deals with what is pleaded in para 4.5 of the O.A.. While delivering the judgment grievance of the applicant in toto was considered. Hence, want of reference to what is pleaded in para 4.13, in the judgment under review will be of no consequence.

10. The applicant has relied on **Board of Control for Cricket, India and Another Vs. Netaji Cricket Club and Ors. AIR 2005 Supreme Court 592**. In this case it is held:-

“Section 114 of the Code empowers a court to review its order if the conditions precedents laid down therein are satisfied. The substantive provision of law does not prescribe any limitation on the power of the court except those which are expressly provided in Section 114 of the Code in terms whereof

it is empowered to make such order as it thinks fit. Order 47, Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason. Thus, a mistake on the part of the court which would include a mistake in the nature of the undertaking may also call for a review of the order. An application for review would also be maintainable if there exists sufficient reason therefor. What would constitute sufficient reason would depend on the facts and circumstances of the case. The words 'sufficient reason' in Order 47, Rule 1 of the Code are wide enough to include a misconception of fact or law by a court or even an Advocate. An application for review may be necessitated by way of invoking the doctrine "actus curiae neminem gravabit"."

11. These observations will not help the applicant. None of the grounds stated in the judgment of Hon'ble Supreme Court to exercise powers of review is made out. It is the contention of the applicant that in exercise of powers of review the judgment under review be recalled.

This proposition does not fall within the four corners of Order 47/Section 114, C.P.C. Powers of review cannot be equated with appellate powers. For all these reasons, **the Review Application is dismissed with no order as to costs.**

(M.A.Lovekar)
Member(J)

aps

Dated - 21/03/2023

(Shree Bhagwan)
Vice Chairman

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Vice Chairman
& Hon'ble Member (J).

Judgment signed : 21/03/2023.
on and pronounced on

Uploaded on : 23/03/2023.