

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL**

**MUMBAI**

**REVIEW APPLICATION NO.17 OF 2022**

**IN**

**ORIGINAL APPLICATION NO.200 OF 2020**

**DISTRICT : RAIGAD**

Shri Maruti Pandurang Jamadar, )  
Age 66 years, Occ. Retired Laboratory Technician, )  
From the office of District Civil Surgeon, Alibag/Raigad )  
R/at Room No.202, 2<sup>nd</sup> Floor, Balaji Complex, )  
Near Marathi School, Talavali Gaon, Post Ghansoli, )  
Navi Mumbai )..Applicant

Versus

1. The State of Maharashtra, )  
Through the Secretary, )  
Public Health Department, )  
Mantralaya, Mumbai 400032 )
2. The Director, Health Services, Mumbai -1 )
3. The Dy. Director, Health Services, )  
Mumbai Division, Thane, Mental Hospital )  
Compound, Thane-4 )..Respondents

Shri M.P. Jamadar – Applicant in person

Shri A.J. Chougule – Presenting Officer for the Respondents

CORAM : Smt. Justice Mridula Bhatkar, Chairperson  
Smt. Medha Gadgil, Member (A)  
RESERVED ON : 29<sup>th</sup> August, 2023  
PRONOUNCED ON: 5<sup>th</sup> September, 2023  
PER : Smt. Medha Gadgil, Member (A)

### **J U D G M E N T**

1. Heard Shri M.P. Jamadar, Applicant-in-person and Shri A.J. Chougule, learned Presenting Officer for the Respondents.
2. This RA is filed for recalling the judgment and order dated 20.7.2022 passed by Division Bench of this Tribunal in OA No.200 of 2020 filed by the applicant. The applicant states that he had only prayed that additional Grade Pay of Rs.400/- should be added in his Grade Pay as per GR dated 30.8.2019 but this Tribunal wrongly mentioned in the judgment that the applicant demanded additional Grade Pay as per GR dated 6.9.2014. The applicant states that he is not demanding additional Grade Pay and he is only demanding additional Grade Pay as per GR dated 31.8.2019, 1.4.2010 and 5.7.2010 which are applicable to him.
3. Ld. PO relies on the affidavit in reply dated 13.3.2023 filed by Dr. Mahaling Shivling Kshirsagar, Administrative Officer, District Civil Hospital, Alibag, District Raigad. He denies the submissions made by the applicant and states as under:

*“3. .... After the completion of 12 years regular services applicant was liable for the Time Bound Promotion hence on 8.8.1995 applicant was granted 1<sup>st</sup> Time Bound Promotion as per the GR dated 8<sup>th</sup> June, 1995 and 20.7.2001. Being graduate in Biochemistry and as he opted for promotional channel he was given higher pay scale of Group B i.e. Rs.6500-200-10500.*

*He accepted the same, at the same time the other Lab. Technicians those who are not possessing the degree of Biochemistry and were appointed on isolated posts they were given the pay scale of Rs.5500-9000. Thus, while in service the applicant was getting Rs.1000/- more than other colleagues who were working on isolated post.*

*Thereafter Applicant was due for 2<sup>nd</sup> Time Bound Promotion on 7.8.2007, but applicant accepted the special promotion channel, therefore he is eligible pay for Biochemist Post. The Biochemist post is Gazetted Officer, Class-II post and applicant is not that much qualified for Class II, as this post is only held by Medical Officer. Therefore the applicant is only eligible for higher pay scale benefit which is permissible time bound promotion i.e. 9300-34800 GP 4400+600.”*

4. Ld. PO further pointed out para 4 of the reply which reads as under:

*“4. .... Hence, Applicant is not entitled to get the benefit of as per the revised 6<sup>th</sup> Pay Commission pay grade 9300-34800 – 4400+400+600 i.e. total grade pay Rs.5400/- as he has opted for promotional channel and he was not eligible for the benefits given to the isolated post. The applicant is retired on superannuation on 31.6.2013.”*

5. We have considered the submissions of both the sides. We had heard the OA at length and the judgment dated 20.7.2022 was delivered after considering all the facts. It is seen that the applicant has not raised any new points. We refer to and rely on the judgment of the Hon'ble Supreme Court reported in **(2009) 10 SCC 464 S. Bagirathi Ammal Vs. Palani Roman Catholic Mission**. The relevant portion of the same reads as under:

*“11) Since we have already narrated the case of both the parties in the paragraphs supra, there is no need to traverse the same once again. Before*

*considering the rival claims made by both the parties, it is useful to refer the provisions under Order XLVII Rule 1 C.P.C. relating to Review.*

*A reading of the above provision makes it clear that Review is permissible (a) from the discovery of new and important matter or evidence which, after the exercise of due diligence could not be produced by the party at the time when the decree was passed; (b) on account of some mistake; (c) where error is apparent on the face of the record or is a palpable wrong; (d) any other sufficient reason. If any of the conditions satisfy, the party may apply for a review of the judgment or order of the Court which passed the decree or order. The provision also makes it clear that 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.*

*12. An error contemplated under the Rule must be such which is apparent on the face of the record and not an error which has to be fished out and searched. In other words, it must be an error of inadvertence. It should be something more than a mere error and it must be one which must be manifest on the face of the record. When does an error cease to be mere error and becomes an error apparent on the face of the record depends upon the materials placed before the Court. If the error is so apparent that without further investigation or enquiry, only one conclusion can be drawn in favour of the appellant, in such circumstances, the review will lie. Under the guise of review, the parties are not entitled re-hearing of the same issue but the issue can be decided just by a perusal of the records and if it is manifest can be set at right by reviewing the order. With this background, let us analyze the impugned judgment of the High Court and find out whether it satisfy any of the tests formulated above.”*

6. We also rely on the judgment of the Hon'ble Supreme Court reported in **(1999) 9 SCC 596 Ajit Kumar Rath Vs. State of Orissa & Ors.** The relevant portion of the same reads as under:

*"29. In Review proceedings, the Tribunal deviated from the principles laid down above which, we must say, is wholly unjustified and exhibits a tendency to re-write a judgment by which the controversy had been finally decided. This, we are constrained to say, is not the scope of Review under Section 22 (3) (f) of the Act which provides as under :*

*"Section 22.*

*(1) .....*

*(2) .....*

*(3) A Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely ---*

*(a) to (e) .....*

*(f) reviewing its decisions;*

*(g) to (i) ....."*

*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 Section 114 read with Order 47 CPC. 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."*

7. There is no legal error noticed which is apparent in the judgment. "Under the guise of review, the parties are not entitled re-hearing of the same issue", as observed in *S. Bagirathi Ammal (supra)*. "Any other attempt .... not based on any ground set out in Order 47 CPC, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment." as observed in *Ajit Kumar Rath (supra)*. As clarified by the Hon'ble Supreme Court in the cases of *S. Bagirathi Ammal (supra)* and *Ajit Kumar Rath (supra)*, no apparent error is noticed in the present judgment. Hence, we find there is no ground to justify the review application and to concede his prayers in the same.

8. For the reasons stated above, Review Application is dismissed. No order as to costs.

**Sd/-**

**(Medha Gadgil)**  
**Member (A)**  
**5.9.2023**

**Sd/-**

**(Mridula Bhatkar, J.)**  
**Chairperson**  
**5.9.2023**

Dictation taken by: S.G. Jawalkar.