

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
REVIEW APPLICATION NO.20 OF 2019
IN
ORIGINAL APPLICATION NO.1137 OF 2018**

DISTRICT : SOLAPUR

Shri Dipak Jotiram Patil,)
Age 44 years, Police Inspector,)
Karkhamb Police Station, Taluka Pandharpur,)
District Solapur and residing at Post Savarde,)
Tehsil Tasgaon, District Sangli, Maharashtra)..Applicant

Versus

1. The Superintendent of Police,)
Solapur (Rural), District Solapur)
2. The Special Inspector of Police,)
Kolhapur Range, Kolhapur, Maharashtra)
3. The Director General of Police, M.S.,)
Shahid Bhagat Singh Road, Colaba, Mumbai)
4. Shri Veeresh Prabhu,)
Additional C.P. (Traffic), Mumbai)..Respondents

Shri Abhijeet Pawar, Advocate holding for
Shri D.B. Khaire – Advocate for the Applicant
Ms. S.P. Manchekar – Chief Presenting Officer for the Respondents

CORAM : Shri P.N. Dixit, Vice-Chairman (A)
DATE : 11th February, 2020

J U D G M E N T

1. Heard Shri Abhijeet Pawar, learned Advocate holding for Shri D.B. Khaire, learned Advocate for the Applicant and Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents.

2. This is a review application to review the judgment and order dated 29.8.2019 passed by this Tribunal in OA No.1137 of 2018 dismissing the OA. The RA has been filed on the following grounds which can be summarized as under:

(i) The OA was dismissed on the ground that the applicant did not avail the forum available to him for filing review application before the Director General of Police.

(ii) The OA was dismissed on merits as well and for not approaching appropriate authority required by law. This Tribunal has erred in dismissing OA on two grounds.

(iii) The Tribunal has erred in dismissing the OA on merits also. The Tribunal should have directed the applicant to approach appropriate forum and granted liberty to withdraw the OA.

(iv) The Tribunal had recorded the statement of the Ld. Advocate that there is no other legal issue involved in the same. In fact the Ld. Advocate had raised various legal issues as under:

“(a) Competency of the Superintendent of Police to suspend an officer of the rank of Assistant Police Inspector.

(b) Non-consideration by the Special IGP of the consequential order of punishment passed by the S.P.

(c) Whether the SP has exceeded his jurisdiction in awarding the punishment.

(d) Whether the SP had rightly appreciated the evidence in the DE.

(f) Non-appreciation of evidence by the Special IGP etc.”

(Quoted from page 5-6 of RA)

Thus the statement of the Ld. Advocate for the applicant has not been recorded properly.

(v) The Tribunal has erred in not discussing all the charges leveled against the applicant in detail.

(vi) The Tribunal has erred in not considering every charge leveled against the applicant in the DE independently.

(vii) The Tribunal has considered the evidence against the applicant in one para and has erred in not discussing evidential value of depositions and documents.

(viii) The Tribunal has erred in holding that the punishment imposed on the applicant cannot be considered as grossly unrelated.

(ix) The Tribunal has erred in holding that the charges against the applicant are proved without stating anything as to how they stand proved.

(x) The finding by the Tribunal that the applicant cannot blame others for the lapses and has to be held liable for the same are totally misconceived and erroneous.

(xi) There is no discussion about the same and the conclusion therefore deserved to be set aside.

(xii) The Tribunal has erred in holding that the applicant has failed to demonstrate any sound reasons for interfering in the impugned order.

3. The applicant has therefore prayed as under:

(a) This Hon'ble Tribunal be pleased to allow the Review Application filed by the Applicant and thereby recall and set aside the judgment and order dated 29.8.2019 passed in the OA No.1137 of 2018 and thereby grant liberty to the applicant to file a Review/Revision Application before the Director General of Police.

(b) This Hon'ble Tribunal be pleased to thereby hear the Review Application on merits in the light of grounds mentioned in the OA and also re-appreciate the evidence led before the DE Officer by the applicant."

(Quoted from page 8 of RA)

4. The respondents have contested the claim made by the applicant and filed affidavit on behalf respondent no.1. The same reads as under:

“3. With reference to paragraph no.3, I say and submit that the order passed by the respondent is perfectly valid and legal. The Respondent has taken the decision after considering the charges leveled and following the requisite procedure.

4. With reference to paragraph no.4, I say and submit that the orders of the Hon'ble Tribunal are very appropriate. The applicant has no proper and legal grounds to seek review of order of the Hon'ble Tribunal. The present review application is not maintainable at all. The applicant has not pointed out any errors of fact or law in the judgment of the Tribunal dated 29.08.2019 in OA No.1137/2018.

5. With reference to paragraph no.2.1, I say and submit that applicant had a reasonable opportunity to file review application before competent authorities, but the applicant did not avail the forum available for filling review and had filed the application directly before the Tribunal. Hence, by way of Review Application, he cannot raise the said objection.

6. With reference to paragraph no.2.2, I say and submit that the Hon'ble Tribunal considered all the legal aspects of the applicant's case and decided the matter on the merits. There is no error in the order of this Hon'ble Tribunal.

7. With reference to paragraph no.2.3, I say and submit that it is observed by the Hon'ble Tribunal that, the learned advocate for the applicant has submitted before this Tribunal (in O.A.No.1137/2018) that he had the forum available to him for filling review application before the Director General Of Police, which he has not availed hence applicant was fully aware of the legal remedies available to him but he had filed an

application before the Tribunal without availing the forum available for filling review, therefore the order made by the Hon'ble Tribunal is correct. There was no prayer to that effect in the original application, therefore there is no error in the order of this Hon'ble Tribunal.

8. *With reference to paragraph no.2.4, I say and submit that it is not correct to say that the Ld. Tribunal has erred in recording the statement of the Advocate for the applicant that there is no other legal issue involved in the same.*

8.1 *It is observed by the Hon'ble Tribunal that the learned advocate for the applicant has submitted before this Tribunal (in O.A.No.1137/ 2018) that there were no legal issues related to the applicant's case. All the issues have been adjudicated on merit in O.A.No.1137/2018. There is no error in the order of this Hon'ble Tribunal, which can be corrected by way of Review.*

9. *With reference to paragraph no.2.5, I say and submit that it is not correct to say that The Ld. Tribunal has erred in not discussing about the charges leveled against the applicant in detail. The Hon'ble Tribunal considered all the legal aspects of the applicant's case and decided the matter on the merits. There is no error in the order of this Hon'ble Tribunal.*

10. *With reference to paragraph no.2.6, I say and submit that it is not correct to say that The Ld. Tribunal has erred in not considering every charge leveled against the applicant in the Departmental Enquiry independently by considering the relevant material produced by the applicant in the proceedings of the Original Application as well as the Departmental Enquiry.*

10.1 *It is submitted that the Hon'ble Tribunal orders only after considering relevant material, documentary evidence presented by the applicant and respondents and considering each and every legal aspects of the case. The*

orders of the Hon'ble Tribunal are appropriate in thee given facts of the case.

11. With reference to paragraph no.2.7, I say and submit that it is not correct to say that the Hon'ble Tribunal has considered the evidence in respect of all charges leveled against applicant in one paragraph and thus erred in not discussing the evidential value of the depositions and documents filed in the Departmental Enquiry.

11.1 In the Departmental Enquiry, all the charges against the applicant are proved. The Hon'ble Tribunal has considered the evidence in respect of all charges leveled against applicant and evidential value of the depositions and documents filed in the Departmental Enquiry. Therefore it is submitted that there is no error in the order of this Hon'ble Tribunal.

12. With reference to paragraph no.2.8, I say and submit that it is not correct to say that The Hon'ble Tribunal has erred in holding that the punishment imposed on the applicant cannot be considered as grossly unrelated.

12.1 In the Departmental Enquiry, all the charges against the applicant are proved. The Hon'ble Tribunal has considered the evidence in respect of all charges leveled against applicant and evidential value of the depositions and documents filed in the Departmental Enquiry and came to the conclusion that the punishment imposed on the applicant cannot be considered as grossly unrelated.

13. With reference to paragraph no.2.9, I say and submit that it is not correct to say that The Hon'ble Tribunal has erred in holding that the charges against applicant are proved without stating anything as to how they stand proved.

13.1 The Hon'ble Tribunal has considered the evidence in respect of all charges leveled against applicant and evidential value of the depositions

and documents filed in the Departmental Enquiry. In the Departmental Enquiry, all the charges against the applicant are proved.

14. With reference to paragraph no.2.10, I say and submit that it is not correct to say that the findings of the Ld. Tribunal that the applicant cannot blame others for the lapses and has to be held liable for the same, are totally misconceived and erroneous.

14.1 It is submitted that the Hon'ble Tribunal has come to the conclusion only after considering all the legal aspects of the applicant's case.

15. With reference to paragraph no.2.11, I say and submit that it is not correct to say that The Hon'ble Tribunal has erred in holding that the applicant has failed to demonstrate any sound reasons for interfering in the impugned order.

15.1 It is submitted that the Hon'ble Tribunal has come to the conclusion only after considering all the legal aspects of the applicant's case, perusal of grounds raised by the applicant in this original application and only after applying its mind.

15.2 I say and submit that on perusal of the Review Application, it is perceived that the Applicant has filed the Review as appeal and not rehearing of the O.A. without pointing out any error apparent on the face of record. It is submitted that same is not within the ambit of Review. Hence deserves no consideration by this Hon'ble Tribunal.

15.3 It is further submitted that the present review application is not maintainable at all. The applicant has not pointed out any errors of fact or law in the judgment of the Tribunal dated 029.08.2019 in OA No.1137/2018. This Review Application is nothing but an attempt to reopen the O.A. No.1137/2018 without bringing on record any other evidence or material which could not have been brought on record while deciding the

O.A.No.1137/2018. Therefore, there is no merit in Review Application and the same deserves to be dismissed with costs.”

(Quoted from page 19-24 of RA)

5. Ld. CPO has relied on the following judgments:

(i) **(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 which read as under:

"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 applies 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.]"

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.”

(ii) **(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."*

6. The Ld. CPO has therefore prayed that the RA may be dismissed.

Observations and findings:

7. I have examined the submissions made by the Ld. Advocate for the applicant as well as Ld. CPO for the respondents.

8. I have carefully considered the judgment and order dated 29.8.2019. The fact that the applicant had option to file review application before the DGP was well known to him and brought to his notice during hearing as well. Even then the Ld. Advocate for the applicant persisted in continuing with the hearing on merits. Accordingly, hearing was conducted and all submissions have been recorded factually. It is further noticed that the DE was conducted by the competent

authority and after charges were proved the punishment was imposed. The Special IG had examined the evidence again and reduced the punishment. Thus the evidence furnished and examined at competent level was found adequate enough to impose punishment on the applicant.

9. After the judgment was delivered by this Tribunal on merits the applicant has filed this review application by way of an afterthought with a view to rehear the matter. 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”, observed the Apex Court (*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.” (*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 I find there is no ground to justify the review application and to concede his prayers in the same.

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

(P.N. Dixit)
Vice-Chairman (A)
11.2.2020

Dictation taken by: S.G. Jawalkar.