

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
REVIEW APPLICATION NO.8 OF 2018
IN
ORIGINAL APPLICATION NO.468 OF 2017**

DISTRICT : PUNE

Smt. Sairandhri Vilas Bhagat,)
Additional Superintendent of Police (Retired),)
58 years, R/at Yash Orchid Building, Flat No.03,)
S.No.14/15/1/1A/2, Anandnagar, Wadgaon Bk.,)
Pune 411041)..Applicant

Versus

1. The State of Maharashtra,)
Through Additional Chief Secretary,)
Home Department, Mantralaya, Mumbai 32)
2. The Director General of Police,)
Shahid Bhagat Singh Road, Mumbai 400001)
3. The Additional Director General of Police (CID),)
M.S., Pashan, Pune 411028)
4. The Accountant General-I,)
101, Maharshi Karve Road, Old CEO Building,)
Mumbai 400020)..Respondents

Shri A.R. Joshi – Advocate for the Applicant

Smt. Archana B.K. – Presenting Officer for the Respondents

CORAM : Shri P.N. Dixit, Member (A)

RESERVED ON : 6th December, 2018

PRONOUNCED ON : 11th December, 2018

J U D G M E N T

1. Heard Shri A.R. Joshi, learned Advocate for the Applicant and Smt. Archana B.K., learned Presenting Officer for the Respondents.

2. This Review Application is filed by the applicant seeking review of the order dated 14.2.2018 passed by this Tribunal in OA No.468 of 2017. According to the applicant there is an error of law on the face of record resulting in grave miscarriage of justice (para 2 page 3 of the order). The applicant contends, 'with a view to get her pension papers processed early she consented for recovery on 29.3.2017', two days prior to her superannuation.

3. According to the applicant, recovery from the retired employees including Group A and Group B officers and employees who are due to retire within one year of the order of recovery should not be made.

4. In this connection the learned counsel for the applicant has relied on the judgment and order dated 13.6.2017 passed by this Tribunal in OA No.820 of 2016 (Shri Dilip M. Diwane Vs. The State of Maharashtra & Ors.) and High Court of Punjab and Haryana and Others Versus Jagdev Singh, Civil Appeal No.3500 of 2006 decided on 29.7.2016 stating that if undertaking is given prior to opting for revised pay scale, then recovery is allowed of higher pay. He contends, 'in the present case the consent was

given 7 days prior to the applicant's retirement'. According to him this consent was under duress and, therefore, this consent is not undertaking for recovery of excess pay.

5. The applicant has, therefore, prayed that the impugned order should be recalled with direction to refund the amount recovered from applicant's terminal benefits.

6. Respondents have rebutted the arguments and claims made by the applicant through affidavit. The relevant portion in the same reads as under:

*"4.
There is no error of law on the face of record and no miscarriage of justice. Therefore, there is no reason to Review and/or recall of impugned order of the Hon'ble Tribunal. Further applicant has not specifically mentioned about error in the order passed by the Hon'ble Tribunal."*

(Quoted from page 16 of RA)

7. The affidavit further mentions:

"5.1 The applicant was issued notice on 23.3.2017 for the excess salary of Rs.2,88,449/- for the period of 2004 to 2016. Respondent has given copy of salary fixation letter to applicant dated 5.1.2017 and intimation letter given to the applicant regarding excess payment and order directing the recovery be made by the concerned authority on 23.1.2017.

(Quoted from page 16-17 of RA)

8. The respondents reject the claim of the applicant that the consent given by the applicant was under duress with a view to get the pension papers processed early. During hearing the Ld. PO argued that the applicant wrote the letter of retracting the consent to recover after 3

months of retirement. According to her this was afterthought with a view to mislead the Tribunal.

9. The Respondents contend, in the present case undertaking has been given for recovery of excess payment and the applicant belongs to Class I service. The respondents in their affidavit point out that in December, 2016, the Pay Verification Unit observed that recovery is warranted as excess payment has been made. Intimation about excess payment was made to her on 23.1.2017 and the applicant submitted the consent letter on 29.3.2017 after due application of mind stating that she is not interested in making repayments in installments. Ld. PO reiterated that the judgments cited by the Ld. counsel including one in High Court of Punjab & Haryana and Others Versus Jagdev Singh (supra) have been carefully considered by the Tribunal in the earlier order.

10. The respondents have further attached details of the payments received by the applicant, which reads as under:

Sr. No.	Description	Token No./ Date	Pramanak No./ Date
1	Gratuity Fund letter annexed as Exhibit R-8 (after deduction of excess amount) (4,63,800/- Total GF sanctioned -2,88,449/- deducted amount 1,75,351/- Total received)	43965 29.8.17	525 7.9.2017
2	GPF letter annexed herewith as Exhibit R-9	50955 19.9.17	701 16.9.17
3	Group Insurance Scheme letter annexed herewith as Exhibit R-10	56798 6.10.17	72 11.10.17
4	Leave Encashment letter annexed herewith as Exhibit R-11	2707 18.4.17	407 19.4.17
	Total amount received by the applicant		Rs.24,65,940/-
	Plus Monthly Pension letter annexed herewith as Exhibit R-12		Rs.15,460 p.m. (which is basic only)

(Quoted from page 21 of RA)

11. As the above table shows the applicant is in receipt of Rs.24,65,940/- besides monthly pension of Rs.15,460/- and the recovered amount is Rs. 2,88,449. The respondents have, therefore, mentioned that the RA is devoid of any merits and needs to be dismissed.

12. The issues, therefore, for consideration are:

- (i) Whether there is any new or important matter of evidence which was not considered at the time of initial judgment in the OA under challenge?
- (ii) Whether the earlier order suffers from some mistake or error?

Discussion and findings:

13. Perusal of the RA reveals that all facts and judgments relied upon by the Ld. Advocate for the applicant were cited in the O.A. These were carefully examined in the judgment. The relevant portion of the order dated 14.2.2018 reads as under:

“11. After hearing both the sides it is observed that the applicant belongs to Class I service. The judgment of Hon’ble Supreme Court in Rafiq Masih (supra) cited by the Ld. Advocate for the applicant does not apply in this case as the applicant in the present case belongs to Class I service. The law of limitation cited also has no reference as the Pay Verification Unit has come to conclusion about the excess payment in December, 2016 and thereafter the applicant has been intimated immediately. The Ld. Advocate for the applicant insisted that applicant is not interested in making repayment even in installments.”

(Quoted from page 14 of RA)

14. As far as the power of review by the Tribunal is concerned, it is pertinent to refer to the judgment by the Hon'ble Supreme Court in State of West Bengal & Ors. Vs. Kamal Sengupta & Anr., (2008) 8 SCC 612. The relevant portion is as under:

“18. Since the Tribunal’s power to review its order/decision is akin to that of the Civil Court, statutorily enumerated and judicially recognized limitations on Civil Court’s power of review the judgment/decision would also apply to the Tribunal’s power under Section 22(3)(f) of the Act. In other words, a Tribunal established under the Act is entitled to review its order/decision only if either of the grounds enumerated in Order 47 Rule 1 is available. This would necessarily mean that a Tribunal can review its order/decision on the discovery of new or important matter or evidence which the applicant could not produce at the time of initial decision despite exercise of due diligence, or the same was not within his knowledge or if it is shown that the order sought to be reviewed suffers from some mistake or error apparent on the face of the record or there exists some other reason, which, in the opinion of the Tribunal, is sufficient for reviewing the earlier order/decision.

35. *The principles which can be culled out from the above noted judgments are:*

(i) The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/analogous to the power of a Civil Court under Section 114 read with Order 47 Rule 1 of CPC.

(ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.

(iii) The expression “any other sufficient reason” appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.

(iv) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(f).

(v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.

(vi) *A decision/order cannot be reviewed under Section 22(3)(f) on the basis of subsequent decision/judgment of a coordinate or larger bench of the Tribunal or of a superior Court.*

(vii) *While considering an application for review, the Tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.*

(viii) *Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the Court/Tribunal earlier.”*

15. It is noticed that the applicant in the present case has not demonstrated any new fact which was not mentioned or considered earlier. Thus the reply to the first issue under consideration is negative as there is no new or important matter of evidence in the Review Application which was not considered at the time of initial judgment in the O.A.

16. Whether the officers of Class I services should be excluded from recovery of the excess payment needs to be examined in the context of equity. The relevant issue therefore is whether recovery of excess amount of Rs.2,88,449/- is really iniquitous or harsh or arbitrary to such an extent as would far outweigh the equitable balance of the employer's right to recover. In this connection the observations made by the Hon'ble Supreme Court in State of Punjab & Ors. Vs. Rafiq Masih (White Washer) etc. Civil Appeal No.11527 of 2014 decided 18.12.2014 are significant. The same are as under:

“7. Having examined a number of judgments rendered by this Court, we are of the view, that orders passed by the employer seeking recovery of monetary benefits wrongly extended to employees, can only be interfered with, in cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employer's right to

recover. In other words, interference would be called for, only in such cases where, it would be iniquitous to recover the payment made.”

17. As clarified by the respondents, the applicant has been paid Rs.24,65,940/- as terminal benefits besides monthly pension of Rs.15,460/-. Out of this a recovery of Rs.2,88,449/- cannot be considered as iniquitous or harsh. Therefore, the Advocate of the applicant does not succeed in establishing any error of law in the judgment and order dated 14.2.2018 passed by this Tribunal in OA No.468 of 2017. Available record does not indicate that the undertaking given by the applicant was under duress. In fact the letter of retracting the consent given by the applicant after 3 months appears to be from her dreamed desire rather than based on any factual position.

18. The Review application is without any merits and deserves to be dismissed. R.A. is, therefore, dismissed without costs.

Sd/-
(P.N. Dixit)
Member (A)
11.12.2018

Dictation taken by: S.G. Jawalkar.