IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

REVIEW APPLICATION NO.9 OF 2019

IN

ORIGINAL APPLICATION NO.913 OF 2018

1.	The State of Maharashtra,	)
	Through the Secretary, Finance Department,	)
	Mantralaya, Mumbai	)
2.	The Commissioner,	)
	Sales Tax, Vikrikar Bhavan, Mazgaon,	)
	Mumbai 400010	)..Applicants (Ori. Respondents)

Versus

Shri Avinash Raghunath Patil,	)
Occ. Retired Deputy Commissioner of Sales Tax,	)
BKC, Bandra (East),	)
R/at Flat No.303, A Wing, Bhoomi Elegant,	)
Thakur Complex, Kandivali (E), Mumbai	)..Respondent (Ori. Applicant)

Miss S.P. Manchekar – Chief Presenting Officer for Applicants-original Respondents

Shri K.R. Jagdale – Advocate for Respondent-original Applicant

CORAM : Shri P.N. Dixit, Vice-Chairman (A)
Shri A.P. Kurhekar, Member (J)
DATE : 10th October, 2019
PER : Shri A.P. Kurhekar, Member (J)

J U D G M E N T

1. Heard Miss S.P. Manchekar, learned Chief Presenting Officer for Applicants-original Respondents and Shri K.R. Jagdale, learned Advocate for Respondent-original Applicant.

2. Applicants-original respondents have filed the present Review Application (RA) under Order 47 Rule 1 of the Code of Civil Procedure (CPC) read with Rule 18 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988 for review of the judgment and order dated 17.6.2019 passed by this Tribunal in OA No.913 of 2018. Following is the relevant part of the order passed by this Tribunal.

> *"3. It is the contention of the applicant that the charge sheet was served in the year 2006 and he retired in the year 2006. It is also submitted that the Enquiry Officer has exonerated the applicant and considering this aspect, the Respondents should not be permitted to proceed with the Departmental Enquiry.*
>
> *4. We do not see any merit in the contention of the applicant for the reason that the enquiry is completed as per the Rules applicable and the Disciplinary Authority is empowered by law to disagree with the view formed by the Enquiry Officer. Under the circumstances, interference is not permissible.*

5. However, considering the fact that the matter is old and it is lingering for completion of enquiry, therefore, it is suitable to issue certain directions in the matter. Hence, the following order.

O R D E R

The Disciplinary Authority shall give hearing to the applicant and decide the enquiry within three months from the date of this order. The applicant is directed to appear before the Disciplinary Authority and cooperate. No order as to costs."

(Quoted from page 8-9 of RA)

3. Now the RA is filed contending that the opportunity of hearing which was directed to be given by the Tribunal in the order dated 17.6.2019 is already given to the original applicant and matter is at the fag end of passing final order with the concurrence of MPSC. The original respondents therefore contend that the order passed this Tribunal on 17.6.2019 for giving hearing to the original applicant needs to be modified as all those stages required to be followed under MCS (Discipline & Appeal) Rules, 1979 are already complied with.

4. Ld. CPO has pointed out that all the stages required to be complied with i.e. issuance of first notice, second notice are already complied with and now the matter is pending with the MPSC for concurrence about the proposed punishment. Ld. CPO therefore submits that in such situation the direction given by this Tribunal in the order dated 17.6.2019 which seems to have been given under misconception needs to be corrected. She therefore submits that there being error apparent on the face of record, review application deserves to be allowed.

5. Per contra Ld. Advocate for the respondent-original applicant submits that the Tribunal passed the order on hearing counsel at length

and there is no error apparent on the face of record or any other reason as contemplated in Order 47 of CPC so as to maintain review application.

6. It is very much clear from the order passed by this Tribunal, para 4 and 5 in particular, that the OA was filed challenging second show cause notice given by the disciplinary authority about the proposed punishment. In the present matter the enquiry officer has exonerated the original applicant but disciplinary authority disagreed with the report of enquiry officer and had issued notice with tentative reasons. It is in that context in para 4 this Tribunal held that the disciplinary authority is empowered in law to disagree with the view formed by the enquiry officer and therefore interference is not permissible. However, while passing operative order the Tribunal had directed to give hearing to the original applicant and to decide the matter within three months.

7. There is no denying that on receipt of enquiry officer's report, the disciplinary authority has given show cause notice along with tentative reasons and also furnished copy of enquiry report. The original applicant has furnished his explanation to the same. The original respondents have considered the reply submitted by the original applicant and with the concurrence of GAD formed opinion to impose punishment of recovery of Rs.2,50,000/- as well as 40% permanent reduction from the monthly pension. Again the second show cause notice was given to the applicant on 21.8.2017 about his proposed punishment and he was called upon to submit his explanation within 15 days. The applicant had also submitted his explanation to the second show cause notice. Thereafter the disciplinary authority forwarded the proposal to the MPSC for concurrence to the proposed punishment.

8. As such it is explicit that the stages required to be followed under MCS (Discipline & Appeal) Rules are already followed and the matter was

at the fag end of issuance of order from MPSC. This being the situation, it is quite apparent that the directions given by this Tribunal by order dated 17.6.2019 to give opportunity of hearing to the applicant was passed under impression that those stages were not followed by the original respondents though in fact all these stages were already observed by the respondents and there was no requirement of giving hearing again. As such there is apparent error on the face of record and it needs to be corrected by exercising powers under Order 47 of CPC. Order 47 of CPC reads as under:

> *"1. Application for review of judgment. – (1) Any person considering himself aggrieved,-*
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> *(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,*
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> *(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 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."*

9. Shri K.R. Jagdale, learned Advocate for the respondent-original applicant sought to place reliance on decision of the Hon'ble Supreme Court in **(1997) 8 SCC 715, Parison Devi Vs. Sumitri Devi**, wherein it

was observed that, if an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC. In so far as this judgment is concerned, there could be no dispute about the legal proposition. However, in present case as stated above there is clear apparent error on the face of record and the hearing of review does not require long debate or process of reasoning. Therefore this authority is of little assistance to him. Secondly, he further referred to **2002 SCC (L&S) 188, O.K. Bhardwaj Vs. Union of India & Ors.** The principle underlying in the authority is that even in case of minor penalty opportunity of hearing is required to be given. This proposition of law cannot be disputed. However, in present case as observed above opportunities of hearing were already given and second show cause notice was already issued to the applicant. Therefore this authority is also of no assistance to him.

10. In present case on receipt of report of enquiry officer the disciplinary authority proposed to disagree with the findings of the enquiry officer and recorded his tentative reasons and issued show cause notice to the original applicant along with report of the enquiry officer as admissible under Rule 9(2) of MCS (Discipline & Appeal) Rules, 1979. Thereafter applicant has submitted explanation which has already been considered by the original respondents and has decided to inflict punishment of reduction in pension and recovery from pensionary benefits. Again second show cause notice was given on 21.8.2017 to which the applicant has already submitted his reply. After considering reply original respondents referred the matter to MPSC for its concurrence to the proposed punishment. As such even notice on the point of proposed punishment is also given.

11. In view of above we have no hesitation to sum up that there is apparent error on the face of record while passing the order under review and it squarely falls within the parameters of Order 47 Rule 1 of CPC. We must make it clear that all the observations made in this order are restricted to the consideration of review and we have not expressed any opinion on the merit of the proposed punishment order.

12. For the aforesaid reasons in our opinion the Review Application deserves to be allowed and the operative part of the order needs to be substituted. Following order be substituted in place of operative order.

> "The disciplinary authority shall pass final order in accordance with MCS (Discipline & Appeal) Rules, 1979 within two months from today."

13. RA is allowed accordingly.

(A.P. Kurhekar)
Member (J)
10.10.2019

(P.N. Dixit)
Vice-Chairman (A)
10.10.2019

Dictation taken by: S.G. Jawalkar.

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