

MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

REVIEW APPLICATION NO.01/2015

in

ORIGINAL APPLICATION NO.196/2004.

Prakash Kisanrao Wandeshkar,
Aged about years,
Occ : Service,
R/o Sawantwadi, Ranpise Nagar,
Akola.

Applicant.

Versus

- 1) The State of Maharashtra
through its Secretary,
Department of Irrigation,
Mantralaya, Mumbai-32.
- 2) The Chief Engineer,
Irrigation Department, Nagpur Zone,
Sinchan Seva Bhavan, Civil Lines,
Nagpur.
- 3) The Superintending Engineer,
Akola Irrigation Circle, Akola.
- 4) The Executive Engineer,
Akola Irrigation Division, Akola.
- 5) The Sub-Divisional Engineer,
Irrigation Sub-Division, Borgaon Manju,
Distt. Akola.

Respondents

Shri D.M. Kakani, Advocate for the applicant.
Shri A.P. Sadavarte, P.O. for the respondents.

Coram:- B. Majumdar, Vice-Chairman and'
R.B. Malik, Member (J)

Dated: - 29th April 2016.

Order

Per: Member (J)

The applicant, a Junior Engineer in Irrigation Department having initially got promotion as Sub-Divisional Engineer, was required to bring O.A. No. 196/2004 because that order of promotion was stayed. This Bench, speaking through the Hon'ble Vice-Chairman relying upon this Tribunal's earlier common order in O.A. Nos. 166, 167 and 168 of 1998 (Kiran Onkar Kharat V/s State of Maharashtra and three others dated 30.10.2014) was pleased to reject the said O.A. The applicant seeks to get that order reviewed.

2. We have perused the record and proceedings of this Review Application (R.A.) alongwith copies of the disposed of O.A. and heard Mr. D.M. Kakani, the learned counsel for the applicant and Mr. A.P. Sadavarte, the learned P.O. for the respondents.

3. We must address ourselves to the following two issues:

(i) Whether in the facts and circumstances, the Review Application needs to be entertained ?

(ii) If yes, whether there is merit in the said Review Application ?

Our findings on both the issues are in the affirmative for the reasons to follow.



4. The applicant holds a degree of B.E. He came to be appointed as Junior Engineer on 1.1.21989. By an order dated 17.2.2003, he was granted deemed date of Sectional Engineer on 1.4.1995. This Tribunal, as already mentioned above by order of 30.10.2014 speaking through the Hon'ble Vice-Chairman took note of a number of G.Rs and the rules framed under the proviso to Article 309 of the Constitution of India. On 24.3.2003, the Government issued an order of promotion of degree holder Assistant Engineers, Grade-II as Sub-Divisional Engineers in Maharashtra Engineering Service, Group-A subject to certain conditions. Including the applicant, 12 officers were the beneficiaries thereof.

5. The order of this Tribunal which is being sought to be reviewed would show that the respondents heavily relied upon the common order made by this Tribunal on 9.6.1998 in three O.As 166 to 168 of 1998 which were also dismissed. It appears quite clearly that the order which is the subject matter of this review drew heavily thereupon.

6. However, that order of 1998 was carried to the Hon'ble High Court by way of W.P. Nos. 2521, 2522 and 2523 of 1998 **(Narayan Kashinath Shinde V/s State of Maharashtra and three others)** and two other petitioners Anil Charandas Rathod and Kiran



Onkar Kharat. These three petitioners were this Tribunal's original applicants who suffered an adverse order.

7. The Hon'ble High Court by a common judgment of 9.2.2014 held *inter alia* that the Tribunal having once ruled upon the limitation aspect of the matter against the petitioners ought not to have rendered findings on merit. The O.As were, therefore, remitted to this Tribunal for hearing and fresh disposal in accordance with law and in the light of observations of the Hon'ble High Court.

8. Thereafter, these three O.As were heard by this Bench. By a common order of 27.8.2015 which was after the dismissal of the O.A on 30.10.2014 where against this Review Application arose. By the said order dated 27.8.2015 this Tribunal held that the applicants there just like the present applicant having been appointed as Graduate Junior Engineer in 1989 were deprived of the benefit of Rule 8 of the 1997 Rules, the G.R. of 1.3.2000 and Rule 3 of 2009 amended rules for the only reason that they were not appointed on *ad hoc* basis as Assistant Engineers and they did not take part in limited oral examination held by MPSC. This course of action was held to be discriminatory and the said O.As came to be disposed of with a direction to the respondents to consider the case of the said applicants for appointment as Assistant Engineer, Grade-II on the same basis and principles and similar appointment granted to non

graduate Junior Engineers who acquired a degree or equivalent in service in terms of the G.Rs and rules mentioned therein. It was further directed that on being so appointed as Assistant Engineers, Grade-II seniority of the applicants would be fixed accordingly with all consequential and monetary benefits.

9. A subsequent development is not only crucial but almost decisive of the main issue herein and that needs to be adverted to. The above referred common order of this Tribunal was challenged by the State by way of W.P. No. 1146/2016 (**State of Maharashtra through Principal Secretary, Irrigation Department and others V/s Kiran Onkar Kharat and others**). The Division Bench of the Hon'ble Bombay High Court at its Nagpur Bench decided the said writ petition by common order of 6.4.2016. The Hon'ble High Court was pleased to allow the writ petition partly. It quite clearly appears that the order of this Tribunal was substantially affirmed. The final paragraph of that judgment of the Hon'ble High Court in fact needs to be fully quoted herein below:

“For the reasons aforesaid the writ petition is partly allowed. The order of the Tribunal is hereby modified. The part of the order directing the petitioners to consider the cases of the respondents for appointment on the post of Assistant Engineer, Grade-II from the date of their initial appointment in terms of the G.R. and the Recruitment Rules stands confirmed. The part of the order directing

the petitioners to grant seniority and other consequential to the eligible respondents from the date of their appointment as Assistant Engineer, Grade-II stands confirmed. The eligible respondents would not be entitled to the arrears of monetary benefits from the date of their appointment till the O.As were filed. It is needless to state that the monetary benefits would be payable to the eligible respondents from the date of filing of the O.As. The petitioners should immediately take steps to permit the respondents to appear at the examination conducted by the M.P.S.C. and pass appropriate orders in the matter of appointment of the eligible respondents as Assistant Engineer, Grade-II from the date of their initial appointment at the earliest.

Order accordingly. No costs.”


10. The above discussion would, therefore, make it quite clear that the *terra firma* of the order sought to be reviewed hereby was the 1998 common order of this Tribunal which was set aside by the Hon'ble High Court on 9.12.2014 and the matter was remanded. The said O.A. was decided before the order of the Hon'ble High Court above referred to. Thereafter, post remand this Tribunal by its order dated 27.8.2015 allowed those O.As. The applicant herein is similarly placed as the applicant therein and he, therefore, invoked this Tribunal's review jurisdiction. There are profuse quotations from the orders above referred to and literally it is the case of the applicant that on the present set of facts Review Application lies and, therefore, the



order of 30.10.2014 should be recalled and fresh hearing be given to the applicant.

11. The discussion hereinabove must have made it clear that left alone with the merit of the matter, the disposed of O.A. would have been fully governed by the judgment of the Hon'ble High Court in W.P. No. 1146/2016 dated 6.4.2016. The final paragraph thereof has already been fully extracted hereinabove. Although, the applicant may have asked for fresh hearing without specifying as to which proceedings he wants fresh hearing in respect of. But let us presume that he wanted fresh hearing of the O.A. In our opinion, if we hold that the subject matter hereof falls within the review jurisdiction, then the order of 30.10.2014 will have to be recalled and the O.A. will have to be allowed, because nobody can make any improvement on the case once the Hon'ble High Court has been pleased to decide the matter which was on identical facts and to which identical legal principles would apply.

12. The learned P.O., in stoutly opposing the Review Application told us that the grounds on which the review is sought are not legally available to be invoked for review. According to the learned P.O., this Tribunal must have decided the matter earlier in view of the position such as it then obtained and, therefore, the



remedy available to the applicant is to challenge that order before the Hon'ble High Court.

13. Now be it noted quite clearly that we are deeply conscious of the legal position that the Review Applications cannot be entertained routinely and just for the asking. However, it is not as if this Tribunal completely lacks powers of review. The existence of powers is undisputed, although manner of exercising the said power is equally important.

14. Section 22 (3) (f) of the Administrative Tribunals Act, 1985 lays down *inter alia* that the Administrative Tribunal for the purposes of discharging its function under the Act would have the same powers of review, its decision as are vested in a Civil Court under the Code of Civil Procedure, 1908. Section 114 r/w Order 47 of the C.P.C. are procedural provisions regarding review. Section 114 of the C.P.C., provides for review by the aggrieved party provided he had not preferred an appeal or if no appeal was provided. Now it is trite that no appeal lies to the Hon'ble High Court from the determinations by this Tribunal and recourse to the remedy is by way of writ petitions under Article 227 of the Constitution of India. Order 47 of the C.P.C. further amplifies the procedure and *inter alia* lays down that the review would lie upon discovery of new and important matters or evidence outside the knowledge of the party earlier or which could not be

produced at the time the matter was decided or on account of some mistake or error apparent on the face of the record and significantly or “for any other sufficient reasons”.

15. Therefore, if there is an error apparent on the face of record or if for any other reason, it is found that the review lies, then the Tribunal will be duty bound not to duck under the jurisdiction.

16. Now the above discussion must have made it clear that the 1998 judgment whereupon the earlier order on this O.A. was passed, was set aside by the Hon'ble High Court. That order was obviously based on the 1998 order and in fact the Tribunal could not have shown anything else in accordance with the judicial propriety and also the rule of precedents to the extent they can be made applicable to this Tribunal. Therefore, once that legal and factual position underwent a substantial change by the order of this Tribunal post remand, the applicant herein who is exactly similarly placed as those applicants, can certainly not be turned out on the ground that his Review Application cannot be entertained. Simplest of the tests would be to ask a question as to whether as of today legal position such as it obtains after the recent order of the Hon'ble High Court, the para 3 of which has been fully quoted above, the applicant could still be left suffering when compared with his counter-parts in those O.As. That in fact would be classic instance of impermissible discrimination. In our

view, therefore, this matter would squarely fall within, "any other sufficient reason" aspect of the Order 47 of the C.P.C. No doubt and we must repeat the review cannot be common place order because the doctrine of *functus officio* cannot be in light humour given a go-bye, but then if within the purview of law, review is found not only maintainable but necessary to be allowed as is the case here, then it would be unsustainable were the Tribunal to refuse to entertain and even allow the Review Application. We, therefore, unhesitatingly reject the contention to the contrary made by the learned P.O. We hold that this application for review is fully maintainable and not only that but once having recalled the order of 30.10.2014 made by this very Bench. Relief granted to the applicant in the three 1998 O.As on 27.8.2015 will have to be granted to this applicant as well and now as a matter of fact, the O.A. will have to be decided exactly in terms of the order of the Hon'ble High Court in W.P. No. 1146/2016 dated 6.4.2016.

17. Application for review is, therefore, allowed. The order dated 30.10.2014 made by this Tribunal in O.A. No.196/2004 stands hereby recalled and substituted by the directions to the respondents to consider the case of the applicant for appointment on the post of Assistant Engineer, Grade-II from the date of his initial appointment in terms of the G.R. and Recruitment Rules. It is further directed that the applicant be granted seniority and other consequential

benefits if found eligible from the date of his appointment as Assistant Engineer, Grade-II. The applicant shall, however not be entitled to the arrears of monetary benefits from the date of appointment till the O.A. was filed. He shall, however, be entitled to the monetary benefits from the date of filing the O.A. The respondents should immediately take steps to permit the applicant to appear at the examination conducted by MPSC and pass appropriate orders in the matter of appointment of the applicant as Assistant Engineer, Grade-II from the date of his initial appointment within four months from today.

18. No order as to costs of Review Application.

sd/-

(R.B. Malik)
Member (J)

sd/-

(B.Majumdar)
Vice-Chairman

pdg