

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**REVIEW APPLICATION NO. 05 OF 2024 IN  
ORIGINAL APPLICATION NO.952 OF 2023**

**DISTRICT: THANE  
SUBJECT: TRANSFER**

Mrs. Sheetal Satyajee Nagre	)	
Age 45 years, Occ. Service	)	
Working as Dietician	)	
At Civil Hospital, Thane	)	
Dharmveer Nagar, Thane (West)	)	<b>)... Applicant</b>
		<b>Orig. Respondent No.4</b>

**Versus**

1)	Mrs. Gayatri Thonge Patil	)	
	Age 42 years, Occ. Service	)	
	R/at: Tarangan, Purva B-404	)	
	Wayle Nagar, Khadakpada,	)	
	Kalyan (West)	)	<b>)Original Applicant</b>
2)	The State of Maharashtra	)	
	Through the Secretary,	)	
	Public Health Department	)	
	Mantralaya, Mumbai	)	
3)	The Director of Health	)	
	Maharashtra State, Pune	)	
	Arogya Seva Sanchanalay,	)	
	Central Building, 1 <sup>st</sup> Floor, Pune	)	
4)	The Deputy Director of Health,	)	
	Mumbai Division, Thane,	)	
	Regional Mental Hospital Compound,	)	
	Thane (West)	)	
5)	Mrs. Priya Sunil Gurav	)	
	Age 45, Occ: Service, Regional Mental Hospital,	)	
	Dharmveer Nagar, Thane (West)	)	<b>)... Respondents</b>

**Shri Kishor R. Jagdale, learned Advocate for the Applicant.**

**Smt. Archana B. Kololgi, learned Presenting Officer for the Respondents.**

**Shri A.A. Devkhile, learned Advocate for Respondent No.1.**

**CORAM : DEBASHISH CHAKRABARTY, MEMBER (A)**

**DATE : 28.08.2024.**

**JUDGMENT**

1. The Applicant in R.A. No. 05/2024 and Respondent No.4 in O.A. No. 952/2023 has sought review & recall of 'Judgment' dated 26.04.2024 in O.A. No. 952/2023 by invoking provisions of 'Section 22(3)(f)' of 'The Administrative Tribunal Act 1985'.

2. The Applicant in R.A. No. 05/2024 and Respondent No.4 in O.A. No. 952/2023 has sought review & recall of 'Judgment' dated 26.04.2024 in O.A. No. 952/2023 on grounds that Applicant had challenged 'Transfer Orders' dated 30.06.2023 of 'Deputy Director of Health Services, Mumbai Division, Thane' in respect of 'Respondent No.4' and Respondent No.5 to posts of 'Dietician' in (a) 'District Civil Hospital, Thane' and (b) 'Regional Mental Hospital, Thane'.

3. The contents of 'Para 4 (b)' of R.A. No.05/2024 in O.A. No. 952/2023 is necessary to reproduce as issue relating to 'Miscarriage of Justice' has been raised by contending that 'Judgment' dated 26.04.2024 in O.A. No. 952/2023 could not have been passed under 'Section 19(1)' of 'The Administrative Tribunal Act 1985'. The Applicant in R.A. No. 05/2024 and Respondent No.4 in O.A. No. 952/2023 has claimed that challenge by Applicant in O.A. No. 952/2023 was in respect of transfers of 'Respondent No.4' and Respondent No.5 to posts of 'Dietician' in (a) 'District Civil Hospital, Thane' and (b) 'Regional Mental Hospital, Thane' which could have only been raised in 'PIL' and therefore

it was necessary to dismiss O.A. No. 952/2023. The contents of 'Para 4 (b)' of R.A. No.05/2024 in O.A. No. 952/2023 reads as follows:-

*“That therefore, the original Applicant had remedy at the most approach before this Hon’ble Tribunal to seek direction against the Government respondent on her representations dated 01.07.2023 and 04.07.2023. However, original Applicant has chosen to challenge the transfer order of the present Applicant which amounts to Public Interest Litigation before this Hon’ble Tribunal by way of above said O.A. No. 952/2023 which is not permissible in the eyes of law. About maintainability of the O.A. it is submitted that in such cases like issue in the above O.A. a writ of quo warranto is only remedy before Hon’ble High Court, there are series of decisions of Hon’ble Supreme Court laying down the principles to be followed. Therefore considering this position of law the above said O.A. was required to be dismissed by this Hon’ble Tribunal. Thus, considering this legal grounds the O.A. filed by the original Applicant ought to have been dismissed and order of this Hon’ble Tribunal dated 26.04.2024 is required to be modified/set aside to that extent. That non consideration of legal aspect is glaring mistake in the judgment of this Hon’ble Tribunal”.*

4. The Applicant in R.A. No. 05/2024 and Respondent No.4 in O.A. No. 952/2023 has also cited few other grounds such as not taking note of the fact that only 20% transfers could have been done from amongst '9 Posts' of 'Dietician' under jurisdiction of 'Deputy Director Health Services, Mumbai Division, Thane' and that restriction placed on re-transfer again to same post as mentioned in 'Policy Guidelines' under GAD GR dated 09.04.2018 do not apply to '9 Posts' of 'Dietician' which are required to be considered as 'Isolated Posts'.

5. The Applicant in R.A. No. 05/2024 and Respondent No.4 in O.A. No. 952/2023 has not highlighted any mistake or error apparent on face of 'Judgment' dated 26.04.2024 in O.A. No. 952/2023, or discovery of any new and important matter or evidence which could not be brought on record before 'Judgment' dated 26.04.2024 in O.A. No. 952/2023, was delivered; so as to justify how R.A. No. 05/2024 in O.A. No. 952/2023 would be maintainable under 'Section 22(3)(f)' of 'The Administrative Tribunal Act 1985'.

6. The Applicant in R.A. No. 05/2024 and Respondent No.4 in O.A. No. 952/2023 has failed to acknowledge the fact that she was duly represented by her learned Advocate all through the hearing of O.A. No.952/2023. The Applicant in R.A. No. 05/2024 and 'Respondent No.4' in O.A. No.952/2023 also had an option of 'Appearance-in-Person' during hearing of O.A. No. 952/2023.

7. The Applicant in R.A. No. 05/2024 and Respondent No.4 in O.A. No. 952/2023 thus had adequate opportunity to substantiate all her claims by submitting relevant documents alongwith 'Affidavit-in-Reply' filed on 11.01.2024 and present cogent arguments on points of law through her learned Advocate or even by making 'Appearance-in-Person' during course of hearing of O.A. No. 952/2023 instead of now filing R.A. No.05/2024 in O.A. No. 952/2023.

8. The Applicant in R.A. No. 05/2024 and Respondent No.4 in O.A. No. 952/2023 therefore was not only heard at length but averments made during hearing by learned Advocate on her behalf as well as affirmation done by way of 'Affidavit-in-Reply' filed on 11.01.2024 have been diligently considered and appropriately included in 'Judgment' dated 26.04.2024 in O.A. No. 952/2023.

9. The provisions of 'Section 19(1)' of 'The Administrative Tribunals Act 2005' when made as applicable to any 'Order' cannot be understood as being limited to only that 'Order' which relates to Applicant. Such an 'Order' could even be any 'General Order' or 'Special Order' which are applicable to certain class of 'Government Servants'. The scope of 'Section 19(1)' of 'The Administrative Tribunals Act, 1985' is both expansive and inclusive as is evident from 'Explanation'. The provisions of 'Section 19(1)' are reproduced below:-

*19. Applications to Tribunals – (1) Subject to the other provisions of this Act, a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance.*

*Explanation – For the purposes of this Sub-section “Order” means an order made –*

*(a) by the Government or a local or other authority within the territory of India or under the control of the Government of India or by any corporation (or society) owned or controlled by the Government; or*

*(b) by an officer, committee or other body or agency of the Government or a local or other authority or corporation (or society) referred to in clause (a).*

The meaning of ‘Order’ as per ‘Explanation’ beneath ‘Section 19(1)’ of ‘The Administrative Tribunal Act, 1985’ is by no means suggestive of an ‘Order’ which must feature the name of an Applicant or is made applicable only to such an Applicant. The ‘Policy Guidelines’ which are framed by way of (a) Government Resolutions & (b) Government Circulars are made applicable to all ‘Government Servants’ but are subsequently challenged either individually or collectively by aggrieved Applicants.

10. The Applicant in O.A. No. 952/2023 in the elucidated context had appropriately challenged ‘Transfer Orders’ dated 30.06.2023 of Respondent No.4 in O.A. No. 952/2023 and Applicant in R.A. No. 05/2024 and Respondent No.5 in O.A. No. 952/2023 to posts of ‘Dietician’ in (a) ‘District Civil Hospital, Thane’ & (b) ‘Regional Mental Hospital, Thane’ as these were much within scope of any ‘Order’ under ‘Section 19(1)’ of ‘The Administrative Tribunals Act, 1985’.

11. The Applicant in O.A. No. 952/2023 had sought specific relief under ‘Para 9(a)’ by challenging ‘Transfer Orders’ dated 30.06.2023 of ‘Deputy Director of Health Services, Mumbai Division, Thane’ in respect of Applicant in R.A. No. 05/2024 and ‘Respondent No.4’ in O.A. No. 952/2023 and Respondent No.5 in O.A. No. 952/2023 to posts of ‘Dietician’ in (a) ‘District Civil Hospital, Thane’ and (b) ‘Regional Mental Hospital, Thane’. The contents of ‘Para9(a)’ of O.A. No. 952/2023 reads as follows:-

*“Para 9(a) This Hon’ble Tribunal may be pleased to issue direction to quash and set the impugned order dated 30.06.2023*

*as far as Respondent No.4 and 5 are concerned and direct the Respondent to give transfer to the Applicant at District General Hospital which was vacant by general transfer order dated 13.06.2023 which she is legally entitled to”.*

12. The grounds sought to be relied upon by Applicant in R.A. No. 05/2024 and Respondent No.4 in O.A. No. 952/2023 that ‘Judgment’ dated 26.04.2024 in O.A. No. 952/2023 had resulted in ‘Miscarriage of Justice’ for reasons explained above stand out rightly rejected but what it is imperative to observe here is that Applicant in R.A. No.05/2024 and Respondent No.4 in O.A. No.952/2024 has made covert attempt to scuttle delivery of justice which becomes amplified when these grounds cited for filing of R.A. No. 05/2024 in O.A. No. 952/2023 are visualized against backdrop of definitive findings recorded in ‘Judgment’ dated 26.04.2024 in O.A. No. 952/2023 as to how Applicant in R.A. No. 05/2024 and Respondent No. 4 in O.A. No. 952/2023 and Respondent No.5 in O.A. No. 952/2023 in tandem between themselves had managed to hold on to posts of ‘Dieticians’ in (a) District Civil Hospital, Thane & (b) Regional Mental Hospital, Thane for unusually long periods of time by ‘Gaming the System’. The official demeanour of Applicant in R.A. No. 05/2024 and Respondent No. 4 in O.A. No. 952/2023 and Respondent No.5 in O.A. No. 952/2023; stands out as an exceptional instances of making mockery of the law with reference to ‘Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005’.

13. The main objective behind ‘Power of Review’ is to enable ‘Courts of Law’ to correct errors apparent in their ‘Judgments’. If the ‘Judgments’ were delivered on the basis of certain facts and circumstances but subsequently it is detected that there had been some mistake or error apparent on the face of record or certain new and important evidence have been discovered after passage of any ‘Judgment’, then ‘Application of Review’ made by aggrieved litigants can be entertained by ‘Courts of Law’. As per the maxim *‘functus officio’*; once ‘Judgment’ is pronounced

by 'Courts of Law'; it cannot be altered even by same 'Courts of Law'. However, the 'Power of Review' is an exception to this, under which 'Judgments' can be reviewed but only by same 'Courts of Law'. The equity principle of 'Writ of Error' is the source of 'Power of Review' wherein an error made is allowed to be rectified as it is to be believed that an error caused due to human failing cannot be allowed to defeat justice. Nonetheless, 'Power of Review' must be exercised in restrictive sense by 'Courts of Law'.

**14. The Hon'ble Supreme Court of India in Judgment dated 25.01.1979 in Aribam Tuleshwar Sharma Vs Aribam Pishak Sharma and Ors.** has concisely laid down few basic principles which must govern decisions regarding review of 'Judgments' passed by 'Courts of Law'. The relevant observations are reproduced below:-

*"But, there are definitive limits to the exercise of Power of Review. The Power of Review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of Appeal. A power of review is not to be confused with Appellate Power which may enable an Appellate Court to correct all manner of errors committed by the Subordinate Court".*

**15. The Hon'ble Supreme Court of India in Judgment dated 21.12.1979 Northern India Caterers (India) Ltd. Vs Governor of Delhi** has relied on catena of its earlier judgments to elucidate specific circumstances which may justify review of 'Judgments' passed by 'Courts of Law'. The consolidated observations are mentioned below:-

*"It is well settled that a party is not entitled to seek a review of a judgment delivered by this Court merely for the purpose of a rehearing and a fresh decision of the case. The normal principle is that a judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so. **Sajjan Singh v. State of Rajasthan [1965] 1 S.C.R. 933, 948.** For instance, if the attention of the*

*Court is not drawn to a material statutory provision during the original hearing, the Court will review its judgment. **G. L. Gupta v. D. N. Mehta [1971] 3 S.C.R. 748, 760** The Court may also reopen its judgment if a manifest wrong has been done and it is necessary to pass an order to do full and effective justice. **O.N. Mahindroo v. Distt. Judge Delhi & Anr. [1971] 2 S.C.R. 11, 27.** The finality of the judgment delivered by the Court will not be reconsidered except where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility." **Chandra Kanta v. Sheikh Habib, [1975] 3 SCR 933.**"*

16. The case of Applicant in R.A No. 05/2024 and Respondent No.4 in O.A. No. 952/2023 for comprehensive reasons elaborated above and upon in depth assessment made against set of principles enunciated in 'Judgments' of Hon'ble Supreme Court of India is found to be without any merit. Hence R.A. No.05/2024 in O.A. No. 952/2023 stands dismissed but with observations that Applicant could well choose to exercise the discretionary right to move an 'Appellate Court' against 'Judgment' dated 26.04.2024 in O.A. No. 952/2023.

### **ORDER**

- (i) The R.A. No.05/2024 in O.A. No. 952/2023 is Dismissed.
- (ii) No Order as to Costs.

**Sd/-**  
**(Debashish Chakrabarty)**  
**Member (A)**

Place: Mumbai  
Date: 28.08.2024  
Dictation taken by: A.G. Rajeshirke.

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