

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

**REVIEW APPLICATION NO.04 OF 2021
IN
ORIGINAL APPLICATION NO.323 OF 2019
WITH
REVIEW APPLICATION NO.05 OF 2021
IN
ORIGINAL APPLICATION NO.321 OF 2019
WITH
WITH REVIEW APPLICATION NO.06 OF 2021
IN
ORIGINAL APPLICATION NO.322 OF 2019**

DISTRICT: MUMBAI

**REVIEW APPLICATION NO.04 OF 2021
IN
ORIGINAL APPLICATION NO.323 OF 2019**

Shri Ashok Tukaram Rajam, Age 60 years,)
R/at B24/203, Saraf Chaudhari Nagar, Thakur)
Complex, Kandivali (E), Mumbai.).... **Applicant**

Versus

- 1) The State of Maharashtra, through the)
Secretary, Home Department, Mantralaya)
Mumbai.
- 2) The Commissioner of Police, near Crawford)
Market, D. N. Road, Mumbai 400 001.)....**Respondents**

**REVIEW APPLICATION NO.05 OF 2021
IN
ORIGINAL APPLICATION NO.321 OF 2019**

Shri Sudhir Arjun Koyande, Age 58 years,)
R/at 3/1, Worli Police Camp, Sir. Pochkhanwala)
Road, Worli, Mumbai 30.).... **Applicant**

Versus

- 1) The State of Maharashtra, through the)
Secretary, Home Department, Mantralaya)
Mumbai.
- 2) The Commissioner of Police, near Crawford)
Market, D. N. Road, Mumbai 400 001.)....**Respondents**

**REVIEW APPLICATION NO.06 OF 2021
IN
ORIGINAL APPLICATION NO.322 OF 2019**

Shri Madhukar Y. Raorane, Age 60 years,)
R/at C/204, 2nd floor, Amit CHS, Yashodhan)
Nagar, Thane (W) 400606.).... **Applicant**

Versus

- 1) The State of Maharashtra, through the)
Secretary, Home Department, Mantralaya)
Mumbai.
- 2) The Commissioner of Police, near Crawford)
Market, D. N. Road, Mumbai 400 001.)....**Respondents**

Shri K. R. Jagdale, the Applicant in person.

Smt. Archana B. K., learned Presenting Officer for the Respondents.

CORAM : Shri A.P. Kurhekar, Member (J)

DATE : 07.07.2023

JUDGMENT

1. The Applicants have filed these Review Applications to review of the order passed by the Tribunal on 25.02.2021 in O.A.No.321/2019 to 323/2019 rejecting the claim of the Applicants for deemed date of promotion invoking Section 22(3)(f) of the Administrative Tribunal Act, 1985 read with Order 47 of Rule 1 of CPC.

2. The Applicants have filed O.A.No.321 to 323/2019 claiming deemed date of promotion w.e.f. 02.02.1988 i.e. the date of promotion given to their junior Shri Parab for the post of Police Head Constable and challenged communication whereby their representation for deemed date of promotion was rejected. The Tribunal decided the O.A. on merit and dismissed the O.A. with reasoned judgment. The impugned communication rejecting their claim found legal.

3. Heard Shri K.R. Jagdale, learned Counsel for the Applicants and Smt. Archana B. K. learned Presenting Officer for the Respondents.

4. At the very outset, it needs to be clarified that this R.A. is filed invoking Order 47 Rule 1 of CPC and the Applicants have to satisfy that the grounds mentioned in Order 47 of Rule 1 in CPC are attracted.

5. Shri K.R. Jagdale, learned Counsel for the Applicants all that sought to contend that Shri Parab was not continued in armed force since he was in between transferred from Armed Force to Unarmed Force. He tried to contend that the Tribunal recorded findings that Shri Ramakant Parab was in Armed Force and was continued in Armed Force but fact that he was in between transferred from Armed Force to Unarmed Force was not brought on record in O.A.

6. At this juncture, it would be apposite to see the reasonings and discussion made by the Tribunal in Para Nos.7, 8, 9 and 10 of the order which is under review. Para Nos.7 to 10 are as under :-

"7. True, in terms of Government decision and Circular dated 27.11.1989, the Respondent No.2 was required to take steps for amalgamation of Armed Force and Unarmed Force. However, admittedly, it was not materialized till 2010. It is only in 2010, the common gradation list was prepared wherein on the basis of date of joining, the seniority was considered and in the said common gradation list of 2010, the Applicants' names were at Serial Nos.138, 529 and 1094 respectively. Whereas, the name of Shri Ramakant Parab is at Serial No.1223. However, this was the position reflected in gradation list of 2010. However, till amalgamation of Armed Force and Unarmed Force and preparation of common

seniority list, the promotions were continued on the basis of independent seniority list for Armed Force and Unarmed Force. In other words, when Shri Ramakant Parab was promoted in 1988, there was no amalgamation of Armed Force and Unarmed Force. As such, so long as there was no amalgamation of Armed Force and Unarmed Force and finality to the common seniority list, which involved consideration of seniority of thousands of Police Personnel, the promotion on the basis of independent seniority list could not have been stalled, and therefore, promotions were given on the basis of independent seniority list of Armed Force in which promotion to the post of Head Constable was given to Shri Ramakant Parab on 02.02.1988 considering his seniority in the said list. As such, when the promotions were done on the basis of seniority list, the Applicants cannot be said to have any kind of vested right to claim deemed date of promotion on the basis of date of promotion granted to Shri Ramakant Parab, who was admittedly promoted on the basis of independent seniority list of Armed Force. As stated above, there is no denying that after initial appointment, the Applicants in O.A.Nos.321 & 322/2019 got transferred to Unarmed Force for which separate seniority list was maintained. Whereas, the Applicant in O.A.No.323/2019 was in Unarmed Force since inception. As such, their seniority list was separate, and therefore, they got promotion later as compared to the promotion granted to Shri Ramakant Parab, who was in Armed Force since inception.

8. True, in terms of Rule 4 of 'Rules of 1982', the seniority is ordinarily be determined on the length of continuous service in the cadre. However, in the present case, admittedly, independent seniority lists were maintained for Armed Force and Unarmed Force. It is nowhere the case of the Applicants that they were forcibly sent to Unarmed Force. Thus, when the Applicants consciously joined Unarmed Force for which promotions were to be made only on the basis of seniority list of Unarmed Force, they cannot be equated with promotions of Police Personnel in Armed Force where promotions were done independently on the basis of seniority of Armed Force.

9. Material to note that the Applicants did not raise any objection or grievance when Shri Ramakant Parab was promoted to the post of Head Constable on 02.02.1988. Neither they raised any grievance when they were promoted to the post of Head Constable later in 2000 and 2001. Indeed, thereafter also, they were promoted to the post of ASI as well as PSI and stand retired as shown in the Chart. It is only at the verge of retirement, they made representations which were turned down by the impugned orders.

10. Needless to mention, a person aggrieved by supersession must approach the Court at earliest opportunity. However, the Applicants remained silent for years together and only at the verge of retirement, they are raising grievance of deemed date of promotion, which is clearly stale claim. In such situation, if the Applicants' claim is accepted, it would have much ramification and may affect hundreds of Police Personnel, who are already promoted and stands retired and it may open floodgate of litigation. Suffice to say, the grievance regarding promotion cannot be given new lease of life of any point of time. As such, considering from this angle also, the claim is quite belated and not sustainable. Even after publication of common gradation list in 2010, the Applicants did not take any steps for deemed date of promotion and they remained silent for years together."

7. The perusal of judgment rendered by the Tribunal clearly reveals that the Tribunal has considered seniority list for Armed Force and Unarmed Force maintained separately and it is on the basis of seniority, Shri Parab under Armed Force was given promotion to the post of Head Constable on 02.02.1988. True, later in 2005, he was transferred from Armed Force to Unarmed Force maintained separately and posted at Paydhuni Police Station as stated in review and then again, he was transferred back from Paydhuni Police Station to Armed Force.

8. Here material question is when Shri Parab was promoted to the post of Head Constable on 02.02.1988, he was in Armed Police. As such, his subsequent transfer in 2005 from Armed Police to Unarmed Police have no consequence much less to claim deemed date of promotion by the Applicants on the basis of promotion given to Shri Parab on 02.02.1988. There was separate seniority list for Armed Police and Unarmed Police and initiation of service of Shri Parab by order dated 05.03.1980 was in Armed Force. Later, in 2010 common gradation list was prepared on the basis of date of joining and seniority was considered as per common gradation list of 2010. In common gradation list, the Applicants were at Sr. Nos. 138, 529, 1094 respectively. Whereas, Shri Parab was at Sr.No.1223. However, that was the position reflected in gradation list of 2010. But till amalgamation of Armed Force and Unarmed Force and preparation of common seniority list, the

promotions were continued on the basis of independent seniority list for Armed Force and Unarmed Force. Thus, when Shri Parab was promoted in 1988, there was no amalgamation of Armed Force and Unarmed Force. Whereas, Applicants in O.A.Nos.321/2019 and 323/2019 after their appointment in Armed Force were transferred to Unarmed Force and for them separate seniority list was maintained. Whereas Shri Parab was in Armed Force since joining of service and it is in 2005 only, he was transferred to Armed Force to Unarmed Force in between he got promotion to the post of Head Constable on 02.02.1988 while he was serving in Armed Force.

9. Thus, the Tribunal has considered the claim of Applicant viz-a-viz promotion to Shri Parab and no such new material is now tendered in review which could not have been tendered in O.A. after the exercise of due diligence. As such, there is no such error apparent on the face of record to review the order passed by the Tribunal.

10. The Tribunal further noted that it is in 2017, the Applicants raised grievance for deemed date of promotion pointing out promotion to Shri Parab but not raised any such grievance within reasonable time after promotion was given to Shri Parab on 02.02.1988. The Applicant in O.A.321/2019 stands retired on 30.04.2019. Whereas, Applicant in O.A.322/2019 and 323/2019 stands retired on 31.05.2016 and 30.10.2016 respectively, The Tribunal, therefore, held that no such claim for deemed date of promotion could be entertained at such belated stage. The Tribunal further observed that after publication of common gradation list in 2010, the Applicants remained silent for years together and, therefore, no such claim for deemed date of promotion could be entertained after retirement.

11. The scope of review in Order 47, Rule 1 of CPC is very limited. At this juncture, it would be apposite to reproduce Order 47 of CPC, which is as follows :-

“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 applied for the review.”

12. Needless to mention that the review proceedings have to be strictly confined to the ambit and scope of Order 47, Rule 1 of CPC. The review is by no means an appeal in disguise whereby the matter is re-heard. True, under Order 47, Rule 1 of CPC, the Judgment may be opened to review, if there is mistake or error apparent on the face of record. An error which is not self-evident and has to be detected by the process of reasoning can hardly be said to be an error apparent on the face of record justifying the Court to exercise its powers of review. In exercise of jurisdiction under Order 47 of CPC, it is not permissible that the matter to be re-heard and erroneous view to be corrected. Suffice to say, it must be remembered that the Review Petition cannot be allowed as an appeal in disguise. There is clear distinction between an erroneous decision and error apparent on the face of record. Erroneous decision can be corrected by the higher forum in appeal in Writ Jurisdiction,

whereas error apparent on the face of record can be corrected by exercise of review jurisdiction. This is fairly settled legal position.

13. At this juncture, it would be apposite to refer the decision of Hon'ble Supreme Court ***Parsion Devi & Ors. Vs. Sumitri Devi & Ors. (1997) 8 SCC 715***, wherein it has been held that if an error is not self-evident and detection thereof requires longer debate and process of reasoning, it cannot be treated as error apparent on the face of record for the purpose of Order 47 under Rule 1 of CPC. In other words, the order or decision or Judgment cannot be corrected merely because its erroneous view in law or on the ground that the different view could have been taken on account of fact or law, as the Court could not sit in appeal over its own Judgment. Similar view was again reiterated by Hon'ble Supreme Court in ***AIR 2000 SC 1650 (Lily Thomas Vs. Union of India)*** where it has been held that the power of review can be exercised for correction of mistake only and not to substitute a view. Such powers can be exercised within limits of statute dealing with the exercise of power and review cannot be treated an appeal in disguise. The mere possibility of two views on the subject is not ground for review.

14. Suffice to say, there is no such apparent error on the face of record nor there is discovery of new material which was not within the knowledge of the Applicants and no case is made out to review the order passed by the Tribunal. The Review Application is devoid of merit and is liable to be dismissed. Hence, the following order:-

ORDER

Review Application are dismissed with no order as to costs.

**Sd/-
(A.P. Kurhekar)
Member (J)**

Place: Mumbai

Date: 07.07.2023

Dictation taken by: V.S. Mane

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