

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAMMU BENCH, JAMMU**

Order reserved on 26.08.2020

Order pronounced on 02-01-2020

**HON'BLE DR. BHAGWAN, SAHAI, MEMBER – A
HON'BLE MR. RAKESH SAGAR JAIN, MEMBER – J**

OA No. 062/00032/2020

1. Nuzhat Naseer d/o Nasser Ahmad Bhat r/o Anantnag Pincode:192101
2. Aatifa Farooq d/o Farooq Ahmad Dar r/o Pulwama Pincode:192301.
3. Nahida Majeed d/o Abdul Majeed Zargar r/o pulwama.
4. Irfan Hassan s/o Ghulam Hassan Mir r/o Chadoora, Budgam.
5. Salemah Mehraj d/o Syed Mehraj-ud-Din Andrabi r/o Pulwama.
6. Subahat Khurshid d/o Khurshid Ahmad r/o Kakpora, Pulwama.
7. Humeira Hamid d/o Abdul Hamid Bhat r/o Main Town Pulwama.

..... Applicants

(By Advocate: Mr. M.I.Dar, advocate)

Versus

1. Union Territory of J&K through Financial Commissioner, Health & Medical Education Department, Civil Secretariat, Srinagar/Jammu (Admsecyhealthjk@gmail.com) pincode:190001.
2. Principal/Dean, Government Medical College, Anantnag (Principalgmcanantnag@gmail.com) pincode:192233.

..... Respondents


(By Advocate: Mr. Amit Gupta, AAG)




ORDER

Per Rakesh Sagar Jain, Member (J)


1. Applicants have filed the present Miscellaneous Application seeking recall/modification of order dated 23.06.2020 passed by this Tribunal in the present case.
2. Before proceeding further, it would be profitable to refer to the relevant portions of the aforementioned order dated 23.06.2020 so as to have a better understanding of the facts stated in the OA No. 32/2020 titled Nuzhat Naseer and others v/s Union Territory of J&K and others and the finding on the interim relief rejected on the basis of the said facts of OA as below:

1. **Case of applicants Nuzhat Naseer and others is that applications were invited by Principal, Medical College, Anantnag for engagement on "Academic Arrangement Basis" till the selection/promotion is made in accordance with the rules of recruitment, governing the respective posts, whichever is earlier. Applicants applied and were selected for the post of Junior Staff Nurse in MMBM District Hospital (Associated Hospital, GMC), Anantnag vide appointment notification dated 09.3.2019. It was a specific condition of appointment finding mention in the agreement 'Form A' as well as Notification that the said appointment would get terminated automatically and applicants shall have no claim on the post as soon as the post is filled up by the competent authority under rules.**
 2. **It is the further case of applicants that respondent No. 2 vide order No. 6742-GMCA of 2020 dated 02.05.2020 (Annexure A-1) purportedly on the joining of junior Staff Nurses appointed through Kashmir Services Selection**
- 

Recruitment Board (KSSRB) ordered termination of services of the applicants. As per information received by applicant, till date 80 staff nurses have joined and the rest of the posts are still vacant. It is the case of applicants that as per MCI Guidelines, 141 Junior Staff Nurses posts are required to be filled up and provided to a Medical college but only 80 candidates have been appointed, as such, there is a huge number of posts still vacant. As per the O.A., the applicants aver that it can be safely be averred that against the 7 posts of Junior Staff Nurse held by the applicants, no selection/appointment has been made. Applicants challenge the impugned order on a hosts of grounds as delineated in the O.A. Applicants also seek the interim relief of staying the operation of the impugned order (Annexure A1) and direction to the respondents to allow the applicants to continue against the posts of Junior Staff Nurse against which they were appointed till disposal of the O.A.

3. It has been submitted by the learned counsel for the applicant that the applicants were appointed in terms of SRO 24 dated 10.1.2019 in MMBM District Hospital (Associated Hospital, GMC), Anantnag vide appointment notification dated 09.3.2019 (Annexure A5) but their services have been terminated in violation of rules and regulations as well as SRO 24 of 2019 dated 10.01.2019. It was further argued by learned counsel for applicants that as per MCI guidelines, 141 Junior Staff Nurse are required to filled up and provided to a Medical College but only 80 candidates have been appointed, as such, there are number of posts still vacant and therefore, against the 7 posts held by applicants, no selection/appointments have been made by the respondents and so, the applicants make a case in their favour for issuance of interim relief by directing the
- 

respondents to allow them to continue against the vacant posts.

4. As per, the averments made in the O.A. it emerges that 80 candidates have been appointed and all 80 candidates have joined. So, it seems that the advertisement was for 80 appointments. So far as the appointment notification of 2019 pertaining to the applicants is concerned, it shows that about 62 nurses were appointed. So, the question of requirement of 141 nurses and after appointment of 80 persons, there remaining vacant posts does not carry much weight. It seems that 80 posts were advertised and 80 persons have joined their postings. Apparently, at this stage looking to the material on record, it can be said that the total number of posts of Junior Staff Nurses required by the respondents is 80 and which posts have been filled up under rules.
 5. Applicants say that there are 141 posts required in the hospital. Whether the respondents require 141 posts or lesser number is an internal administrative matter and it is not for the court or tribunal to say as to how many appointments should be made for the functioning of the organization. It is a settled principle of law that this Tribunal cannot direct the Government to make appointments beyond the required requisition. How the hospital is to be administered, how much staff/finance/equipment etc is required falls within the realm of the Administrator of the hospital depending upon the administrative exigencies. Of course, all actions of the State are liable to be challenged if they are in violation of law. It is settled position that it is the sole prerogative of the Government to administer the affairs of the State. The prayer for interim relief was rejected.
- 

3. We may refer to the contents of the present application whereupon, the applicants seek recall/modification of Order dated 23.06.2020 on the following grounds (quoted from the Miscellaneous Application and be not corrected):

“(i) That actually various categories of posts came to be advertised by the J&K Service Selection Board vide Advertisement Notice No.08/2019/001 to 08/2019/005 dated 01/03/2019, whereunder as per Annexure-A to the Advertisement Notice, 105 posts of Junior Staff Nurses meant for Government Medical College, Anantnag in the following breakup were also advertised:-

(1)	OM	=	60
(2)	RBA	=	21
(3)	SC	=	09
(4)	ST	=	10
(5)	ALC	=	03
(6)	OSC	=	02
<u>Total:-</u>		=	<u>105</u>

Copy of the advertisement notice is appended as Annexure (A3).

(ii) That pursuant to the selection made by the J&K SSB against 105 posts of Junior Staff Nurses for Government Medical College, Anantnag, the appointing authority (Respondent Department viz Government Medical College, Anantnag) issued appointment order vide Order No.113-GMCA of 2020 dated 04-04-2020, in terms of which, only 77 candidates were appointed in the following break up:-

(1)	OM	=	46
-----	----	---	----

(2)	RBA	=	16
(3)	SC	=	05
(4)	ST	=	08
(6)	OSC	=	02
<u>Total:-</u>		=	<u>77</u>

Accordingly, out of 105 posts, there were 28 posts left unfilled. Copy of the said appointment order is enclosed hereto as Annexure (A4).

(iii) That some of the selected candidates did not turn up to join, which constrained the respondent department to cancel appointment of 8 candidates in the following breakup:-

(1)	OM	=	04
(2)	RBA	=	01
(4)	ST	=	02
(3)	SC	=	01
<u>Total:-</u>		=	<u>08</u>

While operating the waiting list, the respondent GMC appointed 05 candidates in the following breakup:-

(1)	OM	=	03
(3)	SC	=	02
<u>Total:-</u>		=	<u>05</u>

Testimony to the above position/facts is Order No.174 GMCA of 2020 dated 11-06-2020, copy of which is placed on record and marked as Annexure (A5). Apt to submit that again 03 posts remained unutilized, meaning thereby that; 31 posts of Junior Staff Nurses remained unfilled.

(iv) That it is learnt that the said waiting list candidates have not joined till date. However, even if it is presumed that they may join, still there are 28+03 (31) posts of Junior Staff Nurses available, therefore there was no reason for the respondents to terminate the services of the petitioners herein who are only 07 in number. As such, in order to meet the ends of justice, the Hon'ble Tribunal may pass interim directions in favour of applicants as against respondents/non-applicants.

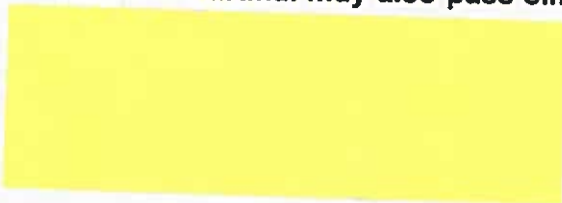
(v) That the Hon'ble Tribunal has been pleased to pass interim direction in an identical matter viz OA No.092/0039/2020 titled Irshad Ahmad Sheikh & Ors Vs. Union Territory of J&K & Anr. concluding paragraph of the said order is reproduced, as under:-

"...10- Looking to the facts projected by the applicants, learned counsel for the respondents shall file counter affidavit within 4 weeks. Thereafter, learned counsel for the applicants shall file the rejoinder affidavit, if any, within 2 weeks. Meanwhile, subject to objections of the respondents, following interim directions is passed:-

If on enquiry of the time limit set by rules and/ or extension of time for joining of the appointed candidates, some posts within the number of posts advertised remain vacant due to the non-joining by the appointed candidates, respondents shall allow the applicants to continue in their respective places of posting till next date of hearing..."

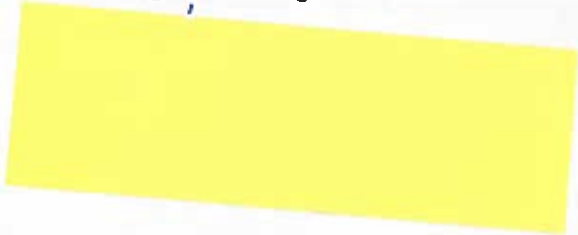
Copy of the order is for ready reference is appended hereto as Annexure (A5).


It is submitted that case on hand has got complete similarity with the abovementioned case/OA titled Irshad Ahmad Sheikh vs. Union Territory of J&K & Anr. as such, the Hon'ble Tribunal may also pass similar interim directions in



this case as well, as the applicants herein are similarly situated/circumstanced.

In view of above, it is most respectfully prayed that order dated 23rd of June, 2020 passed by this Hon'ble Tribunal in the above titled OA may be recalled/modified and respondents be directed to allow the applicants to continue in the respective places of posting and consequently, impugned order may be stayed."

4. On query, learned counsel for applicants was unable to refer to any statutory provision under which the present application has been filed. It be noted that recall of order is not sought on the ground of rectification or fraud.
 5. On the other hand, learned counsel for respondents submitted that recalling the order and rehearing the matter would tantamount to review. It was further argued by learned counsel for respondents that even if the present application is treated as a review application, the scope of review lies in a narrow compass as prescribed under Order XLVII, Rule (1) of CPC and that the applicant is trying to re-argue the matter afresh, as if in appeal, which is not permissible and the remedy of the applicant for setting aside/recall of the order lies elsewhere. Under the garb of present application, the applicant cannot be allowed to get the order of rejection of the interim relief set aside and then re-argue the matter of interim relief which was patently refused by the Tribunal.
 6. We have heard and considered the arguments of learned counsel for the parties and gone through the material on record.
- 

7. The order dated 23.06.2020 rejecting the prayer of applicants for grant of interim relief reveals that the said prayer was rejected on the grounds delineated in the O.A. It be noted that it is the facts found in the pleadings of the parties which form the basis for acceptance or refusal of the case set up by either party.
8. The applicants under the garb of recalling the original order of rejection of interim relief, in effect seek rehearing of the matter akin to power of the Tribunal to review the order dated 23.06.2020 rejecting the prayer for issuance of interim relief. In other words, the applicants seek to recall the original order, rehear the matter and replace the original order by a fresh order which would amount to reviewing the order and that too on the averments made in the Miscellaneous Application and not in the O.A. which is the basic pleading of a party and forms the basis for relief sought by the party.
9. It is settled law that review jurisdiction is available only on the grounds prescribed under Order XLVII Rule 1 of the Code of Civil Procedure, which contains only three grounds –
- (1) ***mistake or error apparent on the face of record;***
 - (2) ***discovery of new and important matter or evidence, which, even after exercise of due diligence, was not within the knowledge of the review petitioner or could not be produced by him at the time when the order sought to be reviewed was passed; and***
 - (3) ***for any other sufficient reason.***
- 

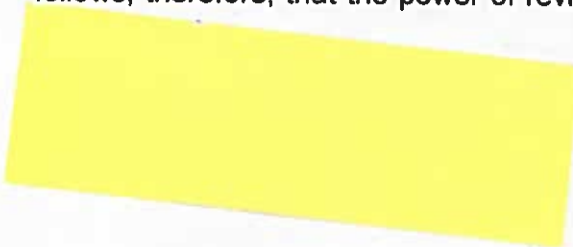
10. The law governing the scope of review has been very succinctly laid down by the Hon'ble Court in:-

A. *Ajit Kumar Rath v. State of Orissa and others*, (1999) 9 SCC 596, a review cannot be claimed or asked for merely for a fresh hearing, or arguments, or correction of an erroneous view taken earlier. That is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it. Any other attempt, except an attempt to correct an apparent error, or an attempt not based on any ground set out in Order 47 of the Code of Civil Procedure, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment.


B. *Union of India v. Tarit Ranjan Das*, 2004 SCC (L&S) 160, the scope for review is rather limited, and it is not permissible for the forum hearing the review application to act as an appellate court in respect of the original order, by a fresh order and rehearing the matter to facilitate a change of opinion on merits.

C. *Inder Chand Jain(Dead) Through Lrs, Vs.Motilal (Dead) Through Lrs*. Reported in (2009) 14 SCC 663, It is beyond any doubt or dispute that the review court does not sit in appeal over its own order. A rehearing of the matter is impermissible in law or pronounced, it should not be altered. It is also trite that exercise of inherent jurisdiction is not invoked for reviewing any order.

11. Review is not appeal in disguised. In *Lily Thomas Vs. Union of India*, It follows, therefore, that the power of review can be exercised for correction of




a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise."

12. Keeping in mind the principles laid down by the Hon'ble Apex Court in the above decisions, it appears that the applicants are trying to re-argue the matter afresh, as if in appeal, which is not permissible. If in the opinion of the applicants, the order passed by the Tribunal is erroneous, the remedy lies elsewhere. Under the garb of recall application, the applicants cannot be allowed to re-argue the matter afresh and that also on the basis of facts in a miscellaneous application and not on the case founded in the basic pleading i.e. the O.A.
 13. The interim relief was rejected on the basis of the facts pleaded in the O.A. Applicants have been unable to show existence of an error apparent on the face of the record i.e. order dated 23.06.2020 based on the pleadings in the O.A, which is sine qua non for reviewing/recalling the order. The applicants have failed to bring out any error apparent on the face of the order. Once an order has been passed by this Tribunal, a review or recall thereof must be subject to the rules of the game and cannot be lightly entertained. A recall or review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or grave error has crept in earlier by judicial fallibility.
 14. As the risk of repetition, it is the basic law that it is the case as pleaded in the O.A., which forms the basis for grant of relief sought by the applicants and
- 

not the facts which are not pleaded in the O.A. For the reasons discussed in the foregoing paragraphs, we are of the opinion that no ground is made by the applicants for setting aside/recalling/reviewing our earlier order, hearing the matter afresh and replacing the original order by a fresh order on the facts pleaded in the O.A. Accordingly, the application being meritless, is dismissed.

No order as to costs.


(Rakesh Sagar Jain)
Member (J)

(Dr.Bhagwan Sahai)
Member (A)

/jk/