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**Central Administrative Tribunal
Principal Bench**

RA 282/2004

In

OA 2736/2001

New Delhi this the 11th day of April, 2008

**Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Shri Shailendra Pandey, Member (A)**

Yashpal Singh,
Ex. Const. No.1421/SW,
(now 6203/DAP),
S/o Shri Jai Prakash,
PO: Hapur, PS: Haphipur,
District Ghaziabad (U.P.).

-Applicant.

(By Advocate: Shri Arun Bhardwaj)

-V E R S U S -

1. Govt. of N.C.T. of Delhi,
Through its Chief Secretary,
Delhi Secretariat, I.P. Estate,
New Delhi.
2. Commissioner of Police,
Delhi Police Headquarters,
M.S.O. Building, I.P. Estate,
New Delhi-110 002.
3. The Addl. Commissioner of Police,
Armed Police, New Police Lines,
Kingsway Camp, Delhi-110 009.
4. The Deputy Commissioner of Police,
1st BN. DAP, New Police Lines,
Kingsway Camp, Delhi 110 009.

-Respondents.

(By Advocate: Shri Ajesh Luthra)

O R D E R

Shri Shanker Raju, Member (J)

On liberty to consider the RA on merit, the following order has
been passed by the High Court of Delhi in WP(C) No. 2749/2007 on
16.11.2007: -

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"Having regard to the fact that petitioner had challenged the order passed in the OA by preferring Writ Petition and further that the said Writ Petition remains pending in this court before it was disposed of vide order dated 06-01-2004, in exercise of our powers under Section 226 of the Constitution, we condone the delay in filing the review application. Consequently, the impugned order passed in this review petition, is set aside and the matter is returned back to the Tribunal to decide the review application on its own merits. We may, however, make it clear that this order would not mean that Tribunal is directed to consider on its merits the vires of Rule 16(3) of the Delhi Police (Punishment and Appeal) Rules, 1980. Order implies that the review petition will have to be considered by the Tribunal in accordance with law."

2. In pursuance thereof, learned counsel of the applicant assails Tribunal's order dated 4.2.2003 on the ground that there is an error apparent on the face of the record insofar as the conclusion of the Tribunal as to a fact finding inquiry not being a preliminary inquiry is concerned, it is stated that it is no more res integra that any inquiry held within the purview of Rule 15 of Delhi Police (Punishment & Appeal) Rules, 1980 is to be treated as a preliminary inquiry. Accordingly, non-accord of approval by the Additional Commissioner of Police, whereas cognizable offence has been made out by the applicant in his relation with public and in discharge of duties, vitiates the inquiry and consequent punishment.
3. Learned counsel would further contend that if the fact finding inquiry is not to be considered as a preliminary inquiry then the statement recorded in such an inquiry is not permissible under Rule 16(iii) of the Rules, as these statements have not been recorded either in judicial inquiry investigation or in trial.
4. It is also stated that the applicant was proceeded ex parte, yet on examination of one of the important witnesses, namely,



Shahabuddin Khan, on 30.4.2007 when the applicant was to transfer to 3rd battalion, there was no due service of the notice upon the applicant, which is established not only by the inquiry report but also by the order passed by the disciplinary and appellate authority, and thus a right to cross-examine the witness has been denied to the applicant. It is stated that the testimony of this witness was relied upon by the inquiry officer in violation of principles of natural justice. It is stated that the aforesaid has not been considered by the Tribunal.

5. Learned counsel has further stated that non-examination of one Mohd. Irshad and taking into consideration his earlier recorded statement when no efforts have been made to call his presence, the above statements are not admissible as per Rule 16(iii) of the Rules.

6. It is in this conspectus stated that the aforesaid points raised by the applicant in his OA have not been considered by the Tribunal.

7. On the other hand, respondents' counsel vehemently opposed the contention and stated that re-agitation of the grounds already considered by the Tribunal with change of the counsel does not fall within the scope and ambit of power of review laid down under Section 22 (3) (f) of the Administrative Tribunals Act, 1985 as well as Order XLVII, Rules (1) of Code of Civil Procedure. It is stated that insofar as challenge to Rule 16(iii) is concerned, having not taken the issue in the OA, this cannot be substituted by way of review, as the liberty accorded was in accordance with the law.

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8. Learned counsel has cited a plethora of decisions to contend that another view taken by the court is no good ground of review and as re-agitation is impermissible, the ground that one has not been able to forcefully argue the matter and now issue being raised are impermissible, as grounds for review and also contends that introduction of new points and no error on the fact and as the decision is not erroneous, a long process to deduct such an error is the role in the appellate jurisdiction, which are as under:

- (i) Chairman Vs. Venkataswami, AIR (2003) SC 444
- (ii) Hari Nagar Sugar Mills Vs. State of Bihar, 2006(1) SCC 509
- (iii) Hari Dass Vs. Usha Rani, 2006(4) SCC 78
- (iv) Orissa Hydra Power Corpn. Ltd. Vs. Santwant Singh Gill, 2006(9) SCC 663
- (v) Parison Devi Vs. Sumitri Devi, 1997(8) SCC 715

9. It is also stated that the records have been produced before the Tribunal and on perusal and being satisfied with the decision rendered is not liable to be interfered in review.

10. On careful consideration of the rival contentions of the parties, we are of the considered view that a review will not be permissible on the ground that the material was not produced, as ruled by the Apex Court in **Government of T.N. & Ors. Vs. M.Ananchyu Asari & Ors.**, 2005 SCC (L&S) 258.

11. Review is also not permissible on the ground of re-agitation of the issue, as ruled by the Apex Court in **Lily Thomas etc. Vs. Union of India & Ors.**, 2000(6) SCC 224 and also in **Subhash Vs. State of Maharashtra & Anr.**, 2002 (1) SCC SLJ 28.

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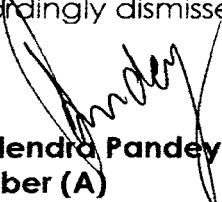
12. The Apex Court ruled that Tribunal cannot sit over its own judgement as an appellate authority in **Gopal Singh Vs. State Cadre Forest Officers' Association**, 2007(9) SCC 369.

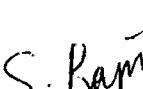
13. Insofar as liberty to assail the vires of Rule 16(iii) of the Rules, though the High Court of Delhi in its order (supra) given liberty to the applicant to consider on merit the vires of Rule 16(iii) but it has to be considered in accordance with the law. As the vires of the aforesaid rule has not been challenged by the applicant in the OA, he cannot now add a prayer to the OA by way of review. This is not the scope and ambit of powers of review contained in rule (supra).

14. As regards the record, though record has been perused earlier, yet on re-perusal of the record produced by the respondents, as ex parte was ordered on 23.4.1997, Rule 18 of the Delhi Police Rules ibid debars re-examination of witnesses or the accord of an opportunity. Moreover, erroneously in law cannot be a ground for review. The case of no evidence, violation of Rule 15(2) and admissibility of Rule 16(iii) on being raised once considered and finding recorded thereupon is not liable to be interfered with.

15. If the contention of the applicant is accepted, we shall be exercising appellate jurisdiction over the decision of the Co-ordinate Bench, which is not permissible in law.

16. In the result, for the foregoing reasons, RA lacks merit and is accordingly dismissed. No costs.


(Shailendra Pandey)
Member (A)


(Shanker Raju)
Member (J)