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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

R.A. NO.249/2002 IN O.A. NO.2499/2000

NEW DELHI THIS 19th DAY OF MAY 2003

HON'BLE SHRI KULDEEP SINGH, MEMBER (J)
HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Commissioner of Police, Delhi Police
and 2 others : Petitioners

(By Shri Vijaya Pandita Advocate)

VERSUS

Swaran Singh and 8 Others: Respondents
(By Shri Sachin Chauhan, Advocate)

ORDER

BY HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

R.A. No. 249/2002 has been filed by the respondents in the Original application No.2499/2000 seeking recall and review of the order passed by the Tribunal on 5.6.2002.

2. O.A. No. 2499/2000 was filed by Swaran Singh and 8 other applicants assailing their non - selection to Delhi Police in spite of their having qualified themselves in written test as well as in the interview. The above OA has been disposed of on 5.6.2002 with the following directions:

> " 18. Relevant papers produced for our perusal makes it clear that the applicants have lost out/been disqualified only on account of the change in the criterion adopted by the respondents as marks obtained by them have not changed though the cut off mark has been revised upward in the case of general and ST candidates. However, there is no explanation as to how in the same circumstances, these who were disqualified earlier have now entered the list of qualified candidates. Obviously there are factors which more than meet the eyes.
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> 19. The respondents could not have changed the criterion for selection two months, after the selection process has been completed and results announced on account of their feeling that certain errors and omissions had crept in the selection process to the detriment of applicants, unless and until it is proved that the applicants were in any way responsible for any of the mistakes or misrepresentation, which alone would have vitiated the selection process. It is not the case of the respondents that any of the applicants in this case had misrepresented facts to gain any undue

advantage in the selection. That being the case, the action of the respondents in denying them the call for medical examination was patiently illegal and unjust. The Tribunal, therefore, have perforce to interfere in this matter and render justice.

20. Our decision is also fully fortified by the decision of the Hon'ble Supreme Court dated 31.10.2001 in the case of Maharashtra State Road Transport Corporation and Others Vs. Rajendra Bhimrao Mandve and others [2002(1)ATJ541] wherein the Hon'ble Apex Court has observed as below:

> "it has been repeatedly held by this Court that the games of the rules meaning thereby , that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced."

21. Our attention also have been drawn to one or two decisions of the Principal Bench of this Tribunal, in the selection where the Tribunal had declined to interfere in the matter. These, however, can be distinguished. In OA 278/2001 filed by Surinder Singh and decided on 9.4.2000, the applicant had lost out primarily on account of working out of the vacancies for OBC category. Persons of the same category with higher marks had to be accommodated and the applicant with lower marks had to be deleted. In fact in the category of OBC the cut-off marks had remained the same both before and after the rectification process and the applicant failure was only on account of getting lower marks. The same is not the case in the present OA. Similarly in OA 884/2001 decided on 22.1.2002 the applicant an ex army candidate was disqualified as it was found that he was not a graduate but he was given extra marks treating him to be a graduate on the basis of a certificate produced by him. This case also is distinguishable from the OA presently before us. On the other hand, we have before us the decision of the Principal Bench of this Tribunal in OA 1445/1999 decided on 4.10.1999 where denial of promotion to the applicant on the basis of mistake committed by the Departments, was set aside and benefit granted to the applicant. We are of the view that in the circumstances of the case the applicants in this OA should also gain.

22. We are also aware of the principle highlighted by the learned counsel fo the respondents that empanelment of a candidate perse does not give him a right for appointment, as pointed out by the Hon'ble Supreme Court in Rani Laxmibai Kshetriya Gramin Bank Vs. Chand Behari Kapoor and Others (supra ). The same is the finding of the Hon'ble Supreme Court in the case of Shankarsan Dash Vs. UOI & Ors (1991(3)SCC 47). However, the circumstances of the applicants in this OA are not the same as the parties concerned in the above two decisions. Here what is under challenge is not the non issue of appointment to those placed in the select panel but the same is directed against the action of the respondents in alerting the criterion for selection after the selection process was complete, to shut out the applicants who have been selected earlier to bring

in others. Therefore, the rationale in the above two decisions cannot hurt the cause of the applicants in this OA.

23. In the result, the OA succeeds and is accordingly allowed. The respondents are directed to treat the applicants, as having cleared the recruitment test in full and send them for medical examination along with others and if found fit, depute them for training as Constable (Ex.). This should be done at the contest and in any event within 2 months from the date of receipt of of copy of this order. This would not call for any fresh notice being issued to anybody as while issuing notice on 14.12.2001 for admission itself, the Tribunal had directed that all the appointments to be made to the post of Constable (Ex.) in the second phase of recruitment shall be subject to the further orders being passed while disposing the OA. No costs."

Respondents in the OA approached the Hon'ble Delhi High Court in CWP 6295/2002 on the grounds that the Tribunal had failed to take into consideration the earlier binding precedents. The Hon'ble High Court held as below:-

"From the judgement impugned, it does not appear that the aforementioned contentions had been pressed before the Ld. Tribunal. We, therefore, are of the opinion that interest of justice will be sub served if the petitioners file a requisite review application before the Ld. Tribunal bringing the contentions raised in the writ petition to it notice."

Hence this R.A.

3. Heard S/Shri Vijaya Pandita and Sachin Chauhan counsel for the applicant/petitioners and respondents respectively.

4. The main plank argued by Shri Vijaya Pandita appearing on behalf of the review applicants is that the Tribunal had, while disposing the above OA, not considered certain other orders passed by other benches of the Tribunal declining to interfere in the selection process and therefore it was incumbent on the part of the Tribunal in case of disagreement with earlier decisions of the

co-ordinate benches to have the matter referred to the larger bench. He further stated that the mere inclusion of any individual's name in the select panel does not confer any indefeasible right for appointment . Further according to him the decision relied upon by the Tribunal was not applicable to the facts and circumstances of the case and that the selection held was to recruit the best of the candidates, based on a fair and unbiased process. The attempt of the Government was to ensure that no error crept in the selection and their action had ben taken in pursuance of the said objet the review applicant could not at all have been faulted . To a specific query from the Court, the learned counsel for the review applicant responded that though cut off marks had been changed marginally, it cannot be treated as any change in the criterion.

5. Opposing the above Shri Sachin Chauhan learned counsel stated that the limited purpose for which the filing of the review had been permitted by the High Court, was to bring to the attention of the Tribunal details of other cases, decided by the Co-ordinate benches of the Tribunal and the said permission could not have been used for re-arguing the matter on merits which the Review Applicant was attempting to do. This clearly fell outside the scope of review as provided for in AT Act, 1985. The Review Application was not at all maintainable, according to Sh. Chauhan.

6. We have carefully considered the matter. The Tribunal had allowed the above OA as it found that the respondents (present applicants) had modified the criterion for selection, after the selection was over and results were announced , which could not have been done. Disturbing the

already finalised selection process, to facilitate the adoption of a different standard or benchmark vitiated the proceedings and hence the Tribunal's interference. We are fully aware of the settled position in law, in the cases of Rani Laxmibai Kshetriya Gramin Bank Vs Chand Behari Kapoor & Other [1998 (Vol.7) SCC 469] and Sankarshan Das Vs UOI & Others [1991 (3)SCC 47] that mere empanelment does not vest any indefeasible right for appointment and that the applicant has to avail turn. But here the issue is different and the Selection process has got vitiated on account of the change in criterion and the Tribunal had correctly interfered in the respondent's action and allowed the OA.

7. The scope of review lies in a narrow compass. As per Section 22 (3) (f) of the Administrative Tribunals Act, 1985 read with Order 47, Rules (1) and (2) of CPC review is maintainable when there is an error apparent on the face of the record or on discovery of new and important material which even after exercise of due diligence was not within the knowledge of persons seeking review.

8. In the conspectus of the above we have perused the reasons, as directed by the High Court, giving liberty to the review applicants to press the contention of non-consideration of decisions of the co-ordinate Benches where identical matters have been dismissed holding the selection as legal and within rules is concerned, and in the light of the decision of the Apex Court in S.I. Rooplal's case (supra) wherein the following observations have been made:

"12. At the outset, we must express our serious dissatisfaction in regard to the manner in which a co-ordinate Bench of the tribunal have overruled, in effect, an earlier judgment of another co-ordinate Bench of the same tribunal. This is opposed to all principles of judicial discipline. If at all, the subsequent Bench of the tribunal was of the opinion that the earlier view taken by the co-ordinate Bench of the same tribunal was incorrect, it ought to have referred the matter to a larger Bench so that the difference of opinion between the two co-ordinate Benches on the same point could have been avoided. It is not as if the latter Bench was unaware of the judgment of the earlier Bench but knowingly it proceeded to disagree with the said judgment against all known rules of precedents. Precedents which enunciate rules of law form the foundation of administration of justice under our system. This is a fundamental principle which every Presiding Officer of a Judicial Forum ought to know, for consistency in interpretation of law alone can lead to public confidence in our judicial system. This Court has laid down time and again precedent law must be followed by all concerned; deviation from the same should be only on a procedure known to law. A subordinate court is bound by the enunciation of law made by the superior courts. A co-ordinate Bench of a Court cannot pronounce judgement contrary to declaration of law made by another Bench. It can only refer it to a larger Bench if it disagrees with the earlier pronouncement."

9. From the perusal of the order passed by this court we find that this contention of respondents, i.e, review applicants as to several decisions of the co-ordinate Benches in paragraph 21 of the order had taken note of these judgements and the same have been distinguished, However, placing reliance on the decision of the Apex Court in Maharashtra State Road Transport Corporation and others v. Rajendra Bhimrao Mandve and Others, 2002 (1) ATJ 541. the decision of the Apex Court holding that criteria for selection cannot be altered in the middle or after the selection process has commenced, which is a binding precedent on us under Article 141 of the Constitution of India, OA has been allowed. The contention of review

applicants that the matter should have been referred to a larger Bench cannot be sustained in the wake of the decision of the Apex Court holding the field, which has been relied upon and has the effect of over-ruling the decisions of the co-ordinate Benches.

10. Moreover, learned counsel for review applicants attempts to re-argue the matter and re-agitated the issues which have already been agitated and dealt with by this court. He, however, has failed to point out any error apparent on the face of the record.

11. Apex Court in Meera Bhania v. Nirmala Kumari Choudhury, AIR 1995 SC 455 has held that "Error apparent on face of record means an error which strikes one on mere looking at record and would not require any long drawn process of reasoning on points where there may conceivably be two opinions."

12. Apex Court Thungabhadra Industries Ltd. v. The Government of Andhra Pradesh, AIR 1964 SC 1372 held that the crucial date for determining whether or not the terms of O.XLVII R.1 (1), C.P.C., are satisfied is the date when the application for review is filed. If on that date no appeal has been filed, it is competent for the court hearing the petition for review to dispose of the application on the merits notwithstanding the pendency of the appeal, subject only to this, that if before the application for review is finally decided the appeal itself has been disposed of, the jurisdiction of the court hearing the review petition would come to an end. A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected, but lies only for patent error. We do not

consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out.

13. The Apex Court in Chandra Kanta & Anr. v. Sheik Habib, AIR 1975 SC 1500 observed "A review of a judgement is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. A mere repetition through different counsel of old and overruled arguments, a second trip over ineffectually covered ground or minor mistake of inconsequential import are obviously insufficient."

14. We have carefully considered the other contentions of review applicants and find that all their contentions have been taken into consideration. It is a settled position of law that if the finding of the court is erroneous or is contrary to law the remedy lies not in review but by way of an appeal.

15. Accordingly, for the foregoing reasons as the present RA is beyond the ambit of Section 22 (3) (f) of the Administrative Tribunals Act of 1985 read with Order 47, Rule (1) and (2) of CPC, the same is dismissed. This would not however, come in the way of the Review Applicant, to deal with any individual case wherein the selection was interfered with on the basis of reasons, other than change

of criterion or on account of any mischief perpetrated by the applicant himself , but only after putting the concerned individual on notice. Subject to the above , RA being without any merit is dismissed.

(Govindan S. Tampi)
Member (A)

(Kuldeep Singh)
Member (J)

Patwal/