

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

MA No.837/2003 in
RA No.250/2002 in -
OA No.2701/2000

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New Delhi this the 9th day of April, 2003.

HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (ADMN)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

1. Commissioner of Police
Delhi Police Headquarters,
I.P. Estate, MSO Building,
New Delhi.
2. Dy. Commissioner of Police,
2nd Bn. DAP Kingsway Camp,
Delhi.
3. Union of India through
its Secretary,
Ministry of Home Affairs,
New Delhi.

-Review Applicants

(By Advocate Shri Vijay Pandita)

-Versus-

1. Dharam Raj,
Roll No.207563,
S/o Shri Surat Singh,
R/o Vill & P.O. Chochi,
Distt. Jhajar, Haryana.
2. Sanjeev Kumar,
Roll No. 231593,
S/o Sh. Jeet Singh,
R/o Vill Chitoli, P.O.,
Bhatiyana Distt. Ghaziabad,
Uttar Pradesh.

-Respondents

(By Advocate Shri Ashwani Bhardwaj)

O R D E R (ORAL)

By Mr. Shanker Raju, Member (J):

This R.A. is directed against an order passed on 5.6.2002 in OA-2701/2000, wherein following directions have been issued:

"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. If found fit, the applicants should be considered for appointment to the post of Constable (Ex) as per the relevant Rules, Instructions and Judicial Pronouncements on the subject. This should be done at the earliest and in any event within two months from the date of receipt of a copy of this order. This would also not call for any fresh notice being issued to anybody as while issuing notice on 26.12.2001, on admission, 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."

2. Respondents in the OA approached the High Court of Delhi in CW No.5839/2002 wherein on the plea of petitioners as to non-consideration of earlier binding precedent by the Tribunal and as the aforesaid contention was not pressed before the Tribunal liberty has been accorded to petitioners therein to file a requisite review application bringing the contentions raised in the review petition. Accordingly, CWP was dismissed on 13.9.2002.

3. Learned counsel for review applicants Sh. Vijay Pandita contended that whereas OAs-278/2001, OA-872/2001, OA-1024/2001 and few others have been dismissed by the Tribunal on the identical facts and questions of law, the Tribunal has failed to appreciate and

consider these judgments which goes against the doctrine of precedent in view of the law laid down by the Apex Court in S.I. Rooplal v. Lt. Governor, JT 1999 (9) SC 597 that it was incumbent upon Tribunal in case of disagreement with earlier decisions of the coordinate Benches to have referred the matter to a larger Bench.

4. Sh. Pandita further contended that mere inclusion in the select panel does not confer an indefeasible right for appointment.

5. One of the contentions is that decision relied upon by the Tribunal is not applicable to the facts and circumstances of the present case and the selection held was to recruit the most deserving candidates based on fair and unbiased process. On merits it is stated that whereas the criteria has not been changed only to rectify the errors crept in formulating the result has been corrected and as those omissions have been rectified no fault can be attributed to the review applicants.

6. It is contended that as the selection carried out by the review applicants has neither been found illegal nor arbitrary the directions issued by the Tribunal are against the law.

7. On the other hand, respondents contested the review and stated that the review petition is an abuse of the process of law as there is neither any error apparent on the face of record nor discovery of new material which

was despite due diligence available to review applicants. Having admitted to re-argue the matter as if in appeal, review is not maintainable.

8. In so far as non-consideration of decisions of coordinate Benches are concerned, it is contended that those have been distinguished and moreover as the decision of the Apex Court is relied upon, doctrine of precedent has not been affected in any manner.

9. We have carefully considered the rival contentions of the parties and perused the material on record. 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.

10. 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 coordinate 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 Coordinate Bench of the tribunal have

overruled, in effect, an earlier judgment of another Coordinate 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 Coordinate 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 Coordinate 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 coordinate 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."

11. 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 coordinate Benches in paragraph 21 of the order taking note of these judgements 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

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decision of the Apex Court holding the filed, which has been relied upon and has the effect of over-ruling the decisions of the coordinate Benches.

12. 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.

13. Apex Court in Meera Bhanja 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."

14. 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 reheard and corrected, but lies only for patent error. We do not consider that this furnishes a suitable

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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."

15. 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."

16. 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.

17. 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.

S. Raju
(Shanker Raju)
Member (J)

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(Govindan S. Tampi)
Member (A)