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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

R.A. No. 312/1994
in
O.A. No. 2003/1991

New Delhi this the 26th day of September, 1995.

Hon'ble Shri A.V. Haridasan, Vice Chairman (J)

Hon'ble Shri B.K. Singh, Member (A)

Shri Kuldip Singh,
Ex. Constable No. 659/SW,
S/o Shri Rattan Singh,
Village & PO Sohti,
Sonapat Dist, Haryana

Applicant

(By Advocate: Shri Shankar Raju)

- Vs
1. Delhi Administration through its
Chief Secretary, Old Secretariat,
Delhi.
 2. The Commissioner of Police,
Police Hqrs, I.P. Estate,
New Delhi.

Respondents

(By Advocate: Mrs. Avnish Ahlawat)

O R D E R

Hon'ble Shri A.V. Haridasan, Vice Chairman (J)

The applicant in the O.A. has filed this Review Application for a review of the Order passed in O.A. on 22.8.1994. The O.A. was filed against the Order of the Additional Deputy Commissioner of Police, dated 26.9.1990 dismissing him from service and the appellate order dated 31.10.1990 of the Additional Commissioner of Police rejecting his appeal and another order dated 15.5.1991 of the Additional Commissioner of Police refusing to review the Order. When the O.A. came up for final hearing, only two points were pressed by the counsel of the applicant. One point was that the disciplinary authority should have issued a show cause notice to the applicant before inflicting the major penalty on him and the second point was that the Additional Commissioner of Police who passed the impugned order being an authority subordinate in rank to the appointing authority, the impugned order being

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violated of the provisions contained in under Article 311 of the Constitution was unsustainable. By order dated 26.8.1994, the Bench rejected both these contentions and dismiss the application. In the R.A. the review applicant relied on two grounds:

1. that the matter required to be reconsidered since new facts become available to the petitioner and the same was made available after the judgement was deliverd; and
2. on the ground that there is an error apparent on the face of the records.

It is averred in the Review Application and also argued by the learned counsel of the petitioner that the observation in para 5 of the judgement that the question whether the impugned order is bad as the same was issued by an authority subordinate in rank to his appointing authority had not been raised in this O.A. is opposed to the observation in paragraph 4 wherein it was mentioned as follows:

"Two, the additional Deputy Commissioner of Police who passed the impugned order of punishment (Annexure A-1) being subordinate in rank to his appointing authority, the Commandant that the impugned order being violative of the provision contained in Article 311 of the Constitution is unsustainable".

This according to the learned counsel is an error apparent on the face of the record requiring a review of the order. We do not find any merit in this argument at all. The question whether the Additional Deputy Commissioner of Police was inflicted on the applicant the penalty of dismissal from service was incompet to do so as he was subordinate in rank of his appointing authority was not raised in the O.A. at all. In paragraph 4 of the judgement sought to be reviewed, we only stated what argument was

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raised. It has also been stated in the judgement that in view of the fact the question whether the Additional Deputy Commissioner of Police who issued the impugned order at Annexure I was competent or not to issue the order and whether he was subordinate to the appointing authority of the petitioner or not have not been raised, it was not open for the applicant to argue this question. Therefore, the ground that the order suffers from an error apparent on the face of the record as two observations are mutually contradicted is incorrect and appears to have been raised only on account of a misreading of the judgement. The next point that certain new materials have come to light which was not there at the time when the case was argued and that this also requires a review of the order also does not arise in this case. Any material, document or evidence is to be adduced only for substantiating the pleadings. If there is no pleadings on a question of fact, no evidence can be adduced because the purpose of adducing the evidence is to substantiate the pleadings. As already stated by us the question whether the question of Additional Deputy Commissioner of Police was subordinate to the Commandant who appointed the applicant is a question of fact which has not been raised in the O.A. The impugned order was not challenged on the ground that the same was issued by an authority who is not competent to do so. Therefore, in the absence of any pleading on a question of a fact the evidence even if the same was adduced at the time when the application was heard would not have made the order different. Further what new fact ^{has} become available to the petitioner which ^{is} was made available ^{before} ~~after~~ the judgement was delivered has not been clearly mentioned in the Review

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Application. Even if it is assumed that some materials have become available to the applicant after the order was pronounced unless it is shown that the same could not have been produced by the applicant even in spite of exercise of due diligence, the applicant will not be entitled to seek a review of the Order. Therefore, there is absolutely no merit in this contention also.

1. The R.A. refers to a judgement in the case of one Shri Attar Singh delivered by the Principal Bench of the Tribunal on 10.4.1992 wherein it was held that the Additional DCP is subordinate to Commandant. The learned counsel for the Review Petitioner argued that as the said judgement has been noted by the Bench, even if a different view the bench could not agree without referring the question to the Hon'ble Chairman for constituting of a larger Bench to coinclusively decide the issue. We have not held that the view of the Coordinate Bench in Shri Attar Singh's case was not correct nor have we taken any contrary view in this case. We have only stated in the judgement that there was nothing reliable to hold that the DPC was subordinate to the Commandant. Therefore, there was no impropriety in dismissing the application in spite of the judgement in Shri Attar Singh's case being noted by the Bench because there was no pleading in the O.A. that the applicant's case and that of Shri Attar Singh were identical on facts and in nature and the order in this O.A. suffers from an infirmity for want of competence in the authority who issued it. As the question whether the Additional Deputy Commissioner of Police who issued the impugned order in the O.A. was subordinate in rank to the appointing authority of

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the applicant or not being a pure question of fact and as the question was not raised in the pleadings of the O.A., it was not permissible for the applicant to argue that the impugned order was incompetent for that reason. In paragraph of of the order sought to be reviewed, we have made the following observation:

"Coming to the next argument, first of all this question has not been raised in the O.A. Whether the authority who issued the impugned order of dismissal is subordinate to the appointing authority or not is as a matter of fact subordinate to the authority who appointed the applicant or not is a question of fact. Unless the question of fact is pleaded and established, it is not permissible to argue this point".


After saying so we further consider the question and then held that there was no reliable material to come to the conclusion that Additional Deputy Commissioner of Police is subordinate in rank to the Commandant. Even if the observation in the latter part of paragraph 5 of the judgement is taken to be incorrect, the order does not suffer from any error apparent on the face of the record nor does it deserve any review as there is nothing to indicate that there is any circumstance under which a review is called for. The arguments that the Bench had departed from the tradition in referring the question to a larger Bench if it was not ^{in agreement} with the view taken by a Coordinate Bench does not really arise from the order sought to be reviewed because we have not stated that the facts in Shri Attar Singh's case and the case on hand was identical. It could not have been stated whether the facts in these two cases are identical or not for want of pleading to that effect in the O.A. In Shri Attar Singh's case the order of dismissal from service was challenged on the ground that the Additional Deputy Commissioner of Police was issued the impugned order was subordinate in rank to the Command who appointed him while in this case no such plea was (Contd.)

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raised. Therefore, applying the judgement in Shri Attar Singh's case to the case on hand did not arise. That is why we say that arguments that the Bench has deviated from the tradition has no basis at all.

3. In the light of what is stated above, we do not find any merit in the Review Application and therefore we dismiss the same leaving the parties to bear their costs.



(B.K.Singh)
Member (A)



(A.V. Haridasan)
Vice Chairman (J)

Mittal