

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

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RA No.117/2005
MA No.1036/2005
and
CP No.339/2005
in
OA No.1098/2004

New Delhi: this the 20th day of October, 2006

HON'BLE MR.JUSTICE B.PANIGRAHI, CHAIRMAN
HON'BLE MRS. CHITRA CHOPRA, MEMBER (A)

Shri Rajender Kumar,
S/o Shri Chandu Lal,
R/o Village Khawaspur,
Distt. Gurgaon,
Haryana.

..... Applicant

(By Advocate: Shri Ajay Veer Singh, proxy for Sh. Arvind Singh)

Versus

1. Dr.K.K.Paul, IPS
Commissioner of Police
Police Headquarters,
I.P.Estate,
New Delhi.
2. Sh. Dinesh Bhatt, IPS
Dy.Commissioner of Police
II BN., DAP, Kingsway Camp
Through
DCP Headquarters, PHQ, I.P.Estate
New Delhi.

.....Respondents.

(By Advocate: Shri Harvir Singh)

ORDER

Hon'ble Mrs. Chitra Chopra, Member (A)

This Review Application has been filed under Section
22(3)(f) of the Administrative Tribunals Act, 1985.

2. The applicant had filed OA No.1098/2004 where he had prayed for quashing the order dated 03.06.2003 passed by the respondents by which the candidature of the applicant was cancelled by Respondent No.2 and order dated 16.10.2003 passed by Respondent No.1 by which the appeal/representation preferred against the first order dated 03.06.2003 respectively was rejected and he further sought direction of the respondents to provide employment to the applicant with effect from his provisional selection for the post of Constable (Executive) in Delhi Police held in the year 2002 against Roll No.422055 with all consequential benefits.

3. The Tribunal, by its order dated 24.12.2004, disposed off the case by a common order involving 20 applications, the question involved in all the applications being identical. The applications were allowed and the impugned orders were quashed. It was directed that the respondents should, unless there are some other material available, act in accordance with the law preferably within three months of receipt of the certified copy of the order in the OA.

4. It has been submitted by learned counsel, Shri Harvir Singh, that this review application is being filed to the limited extent that since certain material facts could not have been brought before the Tribunal, as the OA No.1098/2004 was disposed off by a common order along with 19 OAs and the facts in the present OA No.1098/2004 ***Rajender Kumar Vs. Union of India & Others*** are different.

5. Undisputedly, the applicant has not filed any case before the Hon'ble High Court, and rather preferred to file an application for review of the judgment dated 24.12.2004.

6. In the review application, it has been, inter-alia, stated that the character and antecedents of applicant Rajender Kumar were got verified from the authority concerned, which revealed that he was involved in criminal case FIR No.45 under Section 147/149/323/452/506/354 IPC, PS, Farrukh Nagar (Haryana), which was pending trial in the Competent Court. Attestation Form filled up by the applicant on 13.12.2002 revealed that the applicant has concealed the facts of his involvement in the above said criminal case in the relevant column of the Attestation Form, despite clear instructions given at the top of the form giving any kind of false information or concealing any facts will be treated as disqualification. Though a case FIR No. 45 dated 14.05.2002 was filed against the applicant, but he did not give any information to the Department at any stage of the selection process.

7. Since he had concealed the facts of his involvement in the criminal case and tried to seek appointment in Delhi Police by adopting deceitful means, he was issued show cause notice vide office memorandum dated 03.04.2003 proposing cancellation of his candidature for the post of Constable (Exe.) in Delhi Police. In response to show cause notice, he submitted his reply dated 17.4.2003, which was considered by respondent no.2, viz. DCP and found not convincing and his candidature was cancelled for the reason that applicant had concealed the facts of his involvement in the criminal case. Later on, the above said criminal

case was decided by the Competent Court vide its judgment dated 25.3.2003 and applicant along with others were acquitted from the charge.

8. It has been submitted by the learned counsel, Shri Harvir Singh, that review in the present case is sought because there is a material difference to the extent that the applicant did not disclose the fact of his involvement in the criminal case as well as non-disclosure of involvement in criminal case which amounted to suppression of material fact, irrespective of the fact that the applicant was acquitted of criminal charge at a later stage. It is not the case of the applicant that he revealed/disclosed the involvement in criminal case and his appointment was subject to acquittal/conviction in a criminal case. Therefore, the law on the question of disclosure/suppression of material fact is clear and has not been reversed to the advantage of the applicant. Because the present OA has been allowed, which will have the effect of rendering the instructions as infructuous and meaningless i.e. the very existence of Column in the Application Form as well as in Attestation Form meant for disclosing/declaring of involvement in any criminal case becomes irrelevant, whereas the instructions were not under challenge.

9. In the counter affidavit filed on behalf of the respondent Rajender Kumar, learned counsel Shri G.S.Rana, has strongly refuted the grounds of the review application which is also not maintainable on the grounds of delay, as it was not filed within a period of 30 days, as required under Rule 17 of the Central Administrative Tribunal (Procedure) Rules, 1987. Learned counsel

has further contended that the right of review is not a right of appeal and the right of review is possible only on limited grounds. He has cited the ruling of Hon'ble Supreme Court in the matter of K. Ajit Babu vs. Union of India, 1997(3)SCT639(SC): (1997)(6)(SCC473 wherein the Apex Court has considered the power of Tribunal to exercise review under Rule 17 of the Central Administrative Tribunal (Procedure) Rules, 1987 and held as under:

".....The right of review is not a right of appeal where all questions decided are open to challenge. The right of review is possible only on limited grounds, mentioned in Order 47 of the Code of Civil Procedure. Although, strictly speaking Order 47 of the Code of Civil Procedure may not be applicable to the Tribunals but the principles contained therein surely have to be extended. Otherwise, there being no limitation on the power of review it would be an appeal and there would be no certainty of finality of a decision. Besides that, the right of review is available if such an application is filed within the period of limitation. The decision given by the Tribunal, unless reviewed or appealed against, attains finality. If such a power to review is permitted, no decision is final, as the decision would be subject to review at any time at the instance of the party feeling adversely affected by the said decision. A party in whose favour a decision has been given cannot monitor the case for all times to come. Public policy demands that there should be an end to law suits and if the view of the Tribunal is accepted the proceedings in a case will never come to an end. We, therefore, find that a right of review is available to the aggrieved persons on restricted ground mentioned in Order 47 of the Code of Civil Procedure if filed within the period of limitation."

10. Learned counsel has further submitted that the power of the Tribunal for condonation of delay under Section 21 of the Act *ibid* is applicable only to the applications filed under Section 19 but the same cannot be made applicable to the review sought under Section 22(3)(f) of the Act *ibid*. Sub-section (1) of Section 22 of the Act *ibid* puts an embargo on exercise of such power of the

Tribunal. In reply to the grounds A and C of the review applications, he has submitted that the Tribunal has already held in OA-758/1995 (Joginder Singh Vs Union of India & Ors.) that mere lodging of an FIR does not amount to a pending case. However, in so many cases Hon'ble Supreme Court has held that in cases in which the Govt. Servants were terminated due to involvement in criminal cases, they were reinstated after their acquittal from those criminal cases.

11. Instead of implementation of the order dated 24.12.2004 within a time limit of three months, learned counsel for the respondent has finally submitted that the applicants have filed the present RA which is undoubtedly barred by time and they are also liable for contempt proceedings.

12. We have heard the pleadings of learned counsel for both the parties. During the course of arguments, learned counsel, Shri Harvir Singh, appearing on behalf of review applicant has placed reliance on (2001) 8 Supreme Court Cases 537 ***K.L.Nandakumaran Nair Vs. K.I. Philip and Others***. However, we find that this ruling does not support the issue in the present OA.

13. Learned counsel appearing for the respondent has brought to notice that all the points raised in the review application had been submitted in the main OA and have been taken care while passing of the final order dated 24.12.2004. After careful perusal of the order dated 24.12.2004, which was a common order passed by this Tribunal vide which bunch of 20 applications, involving identical question, were disposed off, it is abundantly clear from

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the order that the issue in question has been dealt with very exhaustively and after elaborating on all relevant aspects. We also find that the order has been arrived at after extensive and careful consideration of the facts and circumstances of the case and various decisions of Apex Court. In this view of the matter, we find no reason, whatsoever, to consider review/modification of the order dated 24.12.2004. In arriving at this conclusion also, we place reliance on a recent judgment of the Hon'ble Supreme Court in the case of ***Union of India vs. Tarit Ranjan Dass***, reported in 2004(1) (SC) (SLJ) 160 wherein it has been held that the scope of review is very limited. The Tribunal cannot enhance the power of review to that of appellate jurisdiction. Relevant portion of the judgment is re-produced hereunder:

“13.The Tribunal passed the impugned order by reviewing the earlier order. A bare reading of the two orders shows that the order in review application was in complete variation and disregard of the earlier order and the strong as well as sound reasons contained therein whereby the original application was rejected. The scope for review is rather limited and it is not permissible for the forum hearing the review application to act as an appellate authority in respect of the original order by a fresh order and rehearing of the matter to facilitate a change of opinion on merits. The Tribunal seems to have transgressed its jurisdiction in dealing with the review petition as if it was hearing an original application. This aspect has also not been noticed by the High Court.”

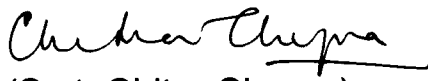
14. Since the original order is based on sound and valid reason and after careful consideration of all the facts and circumstances of the case, there is hardly any scope to interfere with the same.

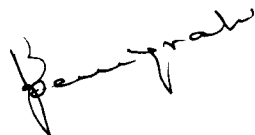
15. Accordingly, review application is dismissed. No order as to costs.

16. CCP No.339/2005 has also been filed by the applicant Shri Rajender Kumar for non-implementation of Tribunal order dated

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24.12.2004 passed in OA No.1098/2004. In view of the fact that the review petition is dismissed, respondents are directed to effect compliance of the original order dated 24.12.2004 within a period of two months. With this, the contempt petition also stands disposed off and the notices to respondents in the CCP are discharged.


(Smt. Chitra Chopra)
Member (A)


(B. Panigrahi)
Chairman

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