17

CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

R.A.No.060/00014/2016 in
O.A.NO.060/01063/2014 Date of order: -22.12.2016.

Coram: **Hon'ble Mr. Sanjeev Kaushik, Member (J)**
Hon'ble Mr. Uday Kumar Varma, Member (A).

Dr. Rajasri Bhattacharya .....Review Applicant.

(Dr. Rajasri Bhattacharya, review applicant in person).

Versus

Union of India & Ors.

...Respondents

(By Advocate: Mr. I.S.Sidhu, for respondents no.1 to 11).

O R D E R

Hon'ble Mr. Uday Kumar Varma, Member (A):

Applicant Dr. Rajasri Bhattacharyya has filed the present Review Application for review of our order dated 10.2.2016 in PA No. 060/01063/2014.

2. The review applicant at the end of the review application has pointed out non-consideration of following 11 vital points that are apparent on the face of record and deserve consideration for the review of Tribunal's order dated 10.2.2016. These vital issues are listed below: -

> "5.1 Non-consideration of the fact that the data in the result sheet is not complete as per the record of proceedings of the selection committee.
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> 5.2 Non consideration of the fact that at the first instance the official respondents have supplied unsigned copy of marks award sheet and then signed copy of such sheets were supplied later on only after order of ld. First Appellate Authority was passed. Ld. First Appellate Authority called for an explanation that why the data appeared to be incomplete/altered at the first instance but no explanation is provided by the official respondents at any stage;

5.3 After appointment of the private respondents and before filing OA 1063 of 2014 the CPIO has stated that there is no evidence available against formal publication of the merit list. However, in the written statement to the OA 1063 of 2014 the official respondents have stated that the merit list was published in website and notice board. This issue may kindly be considered with the rule declared by Hon'ble Apex Court in D.Dastagiri case (supra).

5.4 No wait listing is done by the selection committee. However, against 5 advertised posts 5 candidates are recommended who were already started working in the respondent Institute in some capacity. They were selected by evolving cut-off marks in the interview stage. This issue may kindly be considered in the light of provision 6.5.5 read with 6.5.6 of Rules 2001 coupled with the fact that the data of the result sheet is incomplete.

5.5 Eight members have signed the selection committee proceedings excluding the Chairman of such committee. This issue may please be considered with provision 6.4 read with 6.4.1 of Rules 2001.

5.6 In M.P.Public Service Commission case (supra) and in Krushna Chandra Sahu case (supra) there was no written test. So the principles evolved in those cases when also followed in written test based selection process then in those cases Hon'ble Apex Court must be ruling based on some greater principle of justice that is applicable irrespective of written test.

5.7 There is no evidence for consideration of written test and seminar for the purpose of short-listing. This issue may kindly be considered with provision 6.5.2 of Rules, 2011.

5.8 Power is explicitly conferred to RAB for rule making (provision 5.3 of Rules 2001) but such power is not conferred explicitly to selection commi8ttee. This issue may kindly be considered in the light of the law declared by Hon'ble Apex Court in Krushna Chandra (supra) where there was no written test. In this context judicial notice may kindly be taken on similar case laws like Dr. Cyril Johnson (supra) in the interest of justice.

5.9 Basic features of the Constitution of India (like rule of law, judicial review, doctrine of separation of power etc.) along with the matter presented in its Chapter III are greater principles of justice, which may be considered in a wide range of facts and circumstances to curb out injustice.

5.10 That the maximum limit of shorting listing is twice (maximum thrice) as per the judicial pronouncements and not the minimum extent.

5.11 The selection criteria is not known completely to the decision making process (10th ground of the applicant) by

the explicitly mentioned term etc. after the mentioning of criteria as per the proceedings of the selection committee".

3. We have again gone through our order dated 10.2.2016 and find that in Para 11 of order, we have recorded as under: -

"11. The applicant during her arguments that she made in person has raised the following grounds that according to her have vitiated the selection process. These are also more or less, the substance of her O.A. and rejoinder.

i) Constitution of the Selection Committee is illegal;

ii) Selection Committee evolved cut-off marks at interview stage without having any explicit jurisdiction to do so without following the mandatory provision imbibed in Rules, 2001;

iii) Selection Committee evolved other selection parameters without having any explicit jurisdiction to do so;

iv) Screening Committee evolved screening parameters without having any explicit jurisdiction to do so;

v) It appears that the Screening Committee has not considered mandatory provision of short-listing;

vi) Against 5 posts, 37 candidates were short-listed for interview and interview happened in two days;

vii) Merit list is not formally published;

viii) Marks are not assigned under different heads;

ix) It appears that the esteemed members of the Selection Committee are not provided with separate marks award sheet; and

x) It appears that the complete selection parameters is not known to the decision making process".

It may be seen from the above that there is a significant and substantial overlap between the grounds taken in the OA and again in this RA. It is apparent that the grounds raised in this RA are, to a large extent, a re-statement and re-articulation of the same ground. We need to, at the outset, recall that the applicant had appeared in this whole process of selection and she was far behind in the merit as

adjudged by the Selection Committee. Paras 20, 21 & 22 of the order passed in O.A. in this regard are reproduced hereunder:-

> " 20. In passing we will also like to observe that not only the applicant was not recommended for selection as her name did not figure among the top five candidates but it is also evident from the marks sheet of the Selection Committee which is before us that she is far behind in the merit list and does not figure even close to people who have been selected. She has been awarded 62.5% marks, which are almost 15% behind the marks obtained by the last selected candidate. Therefore, the quashing of the selection process, which is the relief that she is claiming, is not going to benefit her at all.
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> 21. An important and significant issue for consideration in this case is whether the applicant after having participated in the selection process and being fully aware of the selection procedure because she herself appeared in the interview, can subsequently challenge the selection process? The law in this regard is almost well settled and a number of citations can be quoted in this regard. However, we will like to confine ourselves to the latest judgment of the jurisdictional High Court in the case of Sangeeta Supehia versus Union of India & Ors. (CWP No.1350/CH/2012) decided on 26.8.2015.
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> 22. Notwithstanding the applicant's argument that she was not aware about the merit list, which was not formally published, or that the number of short-listed candidates against the number of vacancies is excessive, the fact remains that as a highly educated and intelligent person, the applicant was aware of the rules much before the selection process took place. The purported ignorance of facts about the process of selection, about rules and regulations governing the selection before she faced the interview cannot be made the basis to challenge the selection and its process after she could not succeed in the selection process. She cannot make a distinction between her ignorance of process before the interview and knowledge of the process after having failed in the interview and thus challenge the selection. We also wonder if she would have accepted these technical objections had the Selection Committee recommendations gone in her favour?

Coming to the issues raised in this Review Application, it is the contention of the review applicant that there is inconsistency in the documents pertaining to result of the selection process, that it was unsigned first and then signed copy of such sheets were supplied later on. Notwithstanding this apprehension, we do not feel that it is necessary to reconcile the documents because even after reconciliation

the final outcome is not likely to alter. At best, it could become a technical error but not of a nature that vitiates the selection process. The fact of the matter remains that there is no challenge to the marks awarded to different candidates. There is no allegation that any of the Selection Committee members was biased against the applicant. The fact remains that she had participated in the selection process and was adjudged far below in the merit. There is no allegation of a bias against her on part of any member of the Selection Committee. In our view, this technical objection cannot be deemed an overwhelmingly substantial issue that would have affected the eventual outcome of the Selection Committee.

4. She has also raised questions of formal publication of merit list. We have already discussed this issue in Para 32 of our order. The applicant points out the contradictions between the information supplied by the CPIO and the written statement in O.A.No.1063/2014 and argues that this issue should be considered in the light of the judgment in the case of State of Andhra Pradesh & Ors. Versus D.Dastagiri & Ors. (A.I.R. 2003 S.C. Page 2475). Publication of merit list on the website is a verifiable fact and the correct way to deal with it by the applicant is to make a positive statement that the result was not published on the website. This being not the case, it is difficult for us to give credence to this so called contradiction in the statements of CPIO and the written statement filed by the respondents.

5. The applicant has also raised questions about our interpretation of the rulings referred by her in her application as also during oral arguments. We are certainly not bound by the interpretation of the applicant of various judgments and if she does

feel that there has been a substantial and material error in our interpretation, the proper course for her is to seek judicial review of our order dated 10.2.2016. Likewise, we have thoughtfully considered the other grounds raised in the RA but are unable to be persuaded by the rationale behind them to comprehend and therefore accept the errors apparent on the face of record that may have crept in our judgment of 10th February, 2016 and which, in any way, may have led to miscarriage of justice.

6. We would like to reiterate that the order passed by us on 10.2.2016 takes into account all the relevant issues raised by the applicant in O.A and we do not find any error on the face of record that justifies any modification whatsoever in our previous order.

7. Order 47 Rule 1 CPC, 1908 provides that a decision or judgment is open to review only if there is a mistake or an error apparent on the face of the record. An error, which is not self-evident and has to be detected by a long process of reasoning, can hardly be said to be an error apparent on the face of the record justifying a court of law to exercise its power of review. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be 'reheard and corrected'.

8. The Court is well aware of the law laid down by the Hon'ble Apex Court for allowing an R.A. as stated in Civil Appeal No. 1694 of 2006 titled the **State of West Bengal & Ors.** Vs. **Kamal Sengupta & Ors.** decided on 16.6.2008 wherein the Hon'ble Apex Court has laid down the following guidelines:-

> "(i) The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/analogous to the

power of a Civil Court under Section 114 read with Order 47 Rule 1 of CPC.

(ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.
(iii) The expression "any other sufficient reason" appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.

(iv) An error which is not self-evident and which can be discovered by a long process of reasoning cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(f).

(v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.

(vi) A decision/order cannot be reviewed under Section 22(3)(f) on the basis of subsequent decision/judgment of a coordinate or larger bench of the Tribunal or of a superior Court.

(vii) While considering an application for review, the Tribunal must confine its adjudication with reference to material, which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.

(viii) Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the Court/Tribunal earlier."

Even in the case of **Inderchand Jain vs. Motilal** (2009) 14 SCC 663), the Hon'ble Apex Court has clearly held that an application for review would succeed only when the order suffers from an error apparent on the face of the record and permitting the same to continue would lead to failure of justice. It goes without saying that we have not been shown any such inaccuracy that has led to miscarriage of justice.

In **Meera Bhanja Vs. Nirmala Kumari Choudhury, AIR 1995 SC 455**, the Apex Court has held as follows: -

24

"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.

Review Court re-appreciating entire evidence and reversing finding of Appellate Court – Review Court exceeded its jurisdiction –Order liable to be set aside."

Further in the case of **Parsion Devi & Ors. Vs. Sumitri Devi & Ors.** **JT 1997(8) SC 480**, it has been held as follows: -

"An error which is not self evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be 'reheard and corrected'. A review petition, it must be remembered has a limited purpose and cannot be allowed to be 'an appeal in disguise'.

9. In view of above discussion, we find that there is no merit in the review application and the same is accordingly dismissed.

Uday Kumar Varma

(UDAY KUMAR VARMA)
MEMBER (A).

(SANJEEV KAUSHIK)
MEMBER (J)

Dated:- December 22 , 2016.

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