

**Central Administrative Tribunal
Principal Bench**

**RA No.211/2015
OA No.556/2015
MA No.2697/2015
(Clubbed with OA No.703/2014)**

New Delhi, this the 7th day of September, 2016

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. V. N. Gaur, Member (A)**

1. Mrs. Ravita Rathee
w/o H. C. Bhartiya
H. No.52,
Village Mangesh Pur,
Delhi 110 039.
2. Naveen
S/o Sh. Satya Birsing
H. No.208,
Main Road, Mangesh Pur,
Delhi 110 039.Applicants.

(By Advocate : Shri Randhir Kumar)

Versus

1. Govt. of NCT of Delhi
Through its Chief Secretary
Delhi Secretariat, IP Estate,
New Delhi.
2. Delhi Subordinate Services Selection Board,
Through its Chairman
Govt. of NCT of Delhi,
F-18, Karkardooma Institutional Area,
Delhi-92.
3. South Delhi Municipal Corporation
Through its Commissioner
9th Floor, Civic Centre,
Minto Road,
New Delhi-2. Respondents.

(By Advocate : Shri R. K. Jain and Shri Amit Anand)

: O R D E R (ORAL) :

Justice Permod Kohli, Chairman :

This Review Application is directed against the judgment dated 27.05.2015 passed in OA No.703/2014 and batch matters whereby the OAs challenging the selection process for the post of Teacher (Primary)

were dismissed, upholding the validity of the selection process. The concluding part of the judgment reads as under:-

“33. Being bound by the view taken by the Hon’ble High Court (ibid), we cannot interfere with the act of the respondents to not award grace marks to every candidate and deduct the total marks by two. In view of the abovementioned, we are not inclined to grant the relief sought in these Original Applications. The same are accordingly dismissed.

34. Nevertheless, if the respondents, on their own, find that the standard of question paper was weird or difficult in any manner, the Board in its wisdom may consider giving age relaxation to such candidates who would be over age in the next selection. No costs.”

2. In the present RA, the grounds urged seeking review of the impugned judgment are (i) while disposing of the OA, the Tribunal lost sight of the vital issue, that is, whether a creature of the statue can act in excess of its jurisdiction; (ii) entire selection process is vitiated by adopting arbitrary changes in the criteria, examination, pattern, selection mode without any cogent reason; (iii) for 6500 vacancies for the post of Teacher (Primary) only 2700 candidates have been declared qualified provisionally by adopting the arbitrary criteria, i.e., relaxing the minimum qualifying marks by the Board to 40% for General Category candidates, 35% for OBC and 30% for SC/ST candidates, instead of 45% for General Category candidates and 35% for reserved category candidates, originally prescribed in the advertisement; (iv) the question paper being out of syllabus, the examination should have been struck down and (v) two questions were wrong and the candidates should be awarded two additional marks, rather than reducing two marks proportionally from the qualifying marks in respect to all the candidates.

3. All these issues do not relate to the error apparent on the face of record. As a matter of fact, all these issues relate to the merits of the judgment. Admittedly, no new facts have been brought before the Tribunal in the present RA, nor any such ground has been made out

which may permit the Tribunal to exercise the review jurisdiction in terms of Order XLVII Rule 1 of Code of Civil Procedure, read with Rule 17 of the CAT (Procedure) Rules, 1987.

4. It is well settled proposition of law that the Court/Tribunal while exercising the power of review cannot sit as a Court of Appeal to re-examine and re-appreciate the judgment subject matter of review. It is only within the prescribed parameters as laid down under Order XLVII Rule 1 of Code of Civil Procedure that the review is permissible.

5. Shri Randhir Kumar, learned counsel for the applicant relied upon a judgment of the Apex court in ***Board of Control for Cricket in India and Another vs. Netaji Cricket Club and Others*** reported in (2005) 4 SCC 741, wherein in paras 88 & 89, Hon'ble Supreme Court has observed as under:-

“88. We are, furthermore, of the opinion that the jurisdiction of the High Court in entertaining a review application cannot be said to be *ex facie* bad in law. Section 114 of the Code empowers a court to review its order if the conditions precedent laid down therein are satisfied. The substantive provision of law does not prescribe any limitation on the power of the court except those which are expressly provided in Section 114 of the Code in terms whereof it is empowered to make such order as it thinks fit.

89. Order 47 Rule 1 of the Code provides for filing an application for review. Such an application for review would be maintainable not only upon discovery of a new and important piece of evidence or when there exists an error apparent on the face of the record but also if the same is necessitated on account of some mistake or for any other sufficient reason.”

The proposition propounded by Hon'ble the Supreme Court cannot be disputed. The Hon'ble Supreme Court has laid down the scope of review jurisdiction.

6. Learned counsel for the applicant has further relied upon some other judgments, not different than the proposition which has been laid down by the highest Court of the Land. We fail to understand how these judgments can come to the rescue of the applicants when the grounds in

the review application are so general in nature and primarily seek to challenge the judgment on its merit which is impermissible in exercise of the review jurisdiction.

7. The Hon'ble Supreme Court in **State of West Bengal v. Kamal Sengupta** reported in (2008) 8 SCC 612 has held as under:-

“18. Since the Tribunal’s power to review its order/decision is akin to that of the civil court, statutorily enumerated and judicially recognised limitations on the civil court’s power to review the judgment/decision would also apply to the Tribunal’s power under Section 22 (3) (f) of the Act. In other words, a tribunal established under the Act is entitled to review its order/decision only if either on the grounds enumerated in Order 47 Rule 1 are available. This would necessarily mean that a tribunal can review its order/decision on the discovery of new or important matter or evidence which the applicant could not produce at the time of initial decision despite exercise of due diligence, or the same was not within his knowledge or if it is shown that the order sought to be reviewed suffers from some mistake or error apparent on the face of the record or there exists some other reason, which, in the opinion of the Tribunal, is sufficient for reviewing the earlier order/decision.”

8. In view of the law laid down, we do not find any scope for exercising review jurisdiction. Review Application deserves dismissal. Ordered accordingly.

(V. N. Gaur)
Member (A)

(Justice Permod Kohli)
Chairman

/pj/