Central Administrative Tribunal
Principal Bench: New Delhi

RA No.111/2016
MA No.1781/2016
in
OA No.1717/2014

Reserved on: 09.08.2016
Pronounced on:19.08.2016

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Dr. B.K. Sinha, Member (A)

Madhu Kumari, W/Head Cosnt.(Exe.)
PIS No.28020121
D/o Sh. Surjeet Singh
R/o D-4, PCR Building,
Amba Bagh Police Colony,
Sarai Rohilla, New Delhi
Presently posted at
PS Paharganj Police Circle,
New Delhi. …Review applicant

(By Advocate: Shri S.C. Sagar)

Versus

1. The Commissioner of Police,
   PHQ, MSO Building,
   New Delhi.

2. Staff Selection Commission
   Through Secretary,
   Block No.12, CGO Complex,
   Lodhi Road, New Delhi. …Respondents

(By Advocate: Ms. Sriparna Chatterjee for Ms. Rashmi Chopra)

O R D E R

By Hon'ble Dr. B.K. Sinha, Member (A):

MA No.1781/2016

1. For the reasons stated in the Miscellaneous Application seeking condonation of delay, the same stands allowed.

RA No.111/2016

2. The instant Review Application has been filed by the applicant seeking review of the Tribunal's order dated 02.02.2016 passed in OA No.1717/2014.

3. The applicant – Head Constable (Exe.) in Delhi Police is aggrieved by the action of the respondents in not giving the relaxed standard applicable to Delhi Police departmental candidates in the Physical Endurance Test (PET) for Northern Region for Sub Inspector Examination, 2013 held on 20.09.2013. It is the case of the applicant that a total number of 155 vacancies of W/Sub Inspectors (Exe.) [77 UR, 42 OBC, 24 SC and 12 ST] were advertised. The applicant after clearing 800 meters race was allowed to appear in 100 meters race and thereafter a single chance of long jump. She was then asked to leave the area and the result card showed her as 'not qualified' in 100 meters race.

4. This Tribunal had gone into the contentions of the rival parties and proceeded to reject the claim of the applicant vide its order under review where in para 12 the Tribunal held that her stand that she had qualified the 100 meters race was falsified with her own stand that she was not given relaxation in 100 meters race. Had she qualified the 100 meters race, there would have been no occasion for her to

raise the plea that she had not been granted such relaxation. This Tribunal further took note of the fact that the selection had been finalized in 2013 and no appeal came to be preferred [**Devendra Kumar Singh v. Govt. of NCT of Dehli & Anr.** (OA o.2686/2012) decided on 23.12.2014]. Accordingly, the Tribunal dismissed the OA of the applicant.

5. The applicant has now raised the ground in the instant review application that the PET even had not been conducted in its true sequence i.e. (a) 100 meters race in 18 seconds, (b) 800 meters race in 4 minutes; (c) long jump: 2.7 meters (9feet) in 3 chances and (d) high jump: 0.9 meters (3 feet) in 3 chances. There was no clause or precedent prescribed either in the advertisement or in rule 14(a) of Delhi Police (Appointment & Recruitment) Rules, 1980 that the sequence of the events of PET shall be at full discretion of the Respondents to ask the candidate to undergo at their wish of whichever event to undergo first.

6. It is the case of the applicant that she had been asked to appear in 800 meters race which she had qualified. She took part in 100 meters race and subsequent event of long jump. The applicant submits that had she not qualified the 100 meters race, how she was permitted to take part in the next event of long jump. Further, the entire PET had been video recorded but this Tribunal did not ask for the Video

recording to be produced thereby causing irreparable loss to her. The applicant has also submitted that the advertisement had been made on 16.03.2013 while relaxation of physical standard had been changed by means of a corrigendum dated 09.04.2013 which is against the well accepted principle that the selection process cannot be changed midway. Besides, the applicant has further adopted the ground that she had questioned the factual matrix but the decision of the Tribunal has not taken note of those facts. The applicant further submitted that could not prefer an appeal because the PET result copy dated 29.10.2013 prepared by BSF remarks that "the decision of the appellate authority will be final. No appeal will be entertained against the findings of the appellate authority." However, her representation dated 21.04.2014 was as good as an appeal. No time frame had been provided for filing such a representation/appeal. There is no mention of this material fact in the assailed order of the Tribunal.

7. We have carefully considered the review application. What is permitted in review and what is not permitted have been laid down in detail in a number of decisions of the Hon'ble Supreme Court. For the sake of convenience, we would like to cite two of them. In ***State of West Bengal and***

Others versus Kamal Sengupta and Another [2008 (8) SCC 612], the Hon'ble Supreme Court held as under:-

> *"35. The principles which can be culled out from the above noted judgments are :*
>
> *(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."*

8. In another landmark decision in case of ***Kamlesh Verma versus Mayawati & Ors.***[2013 (8) SCC 320], the Hon'ble Supreme Court has laid down conditions when the

review will not be maintainable, relevant portion whereof is being extracted hereunder for better elucidation:-

> *"20.2. When the review will not be maintainable:-*
>
> *(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.*
>
> *(ii) Minor mistakes of inconsequential import.*
>
> *(iii) Review proceedings cannot be equated with the original hearing of the case.*
>
> *(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its .soundness or results in miscarriage of justice.*
>
> *(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.*
>
> *(vi) The mere possibility of two views on the subject cannot be a ground for review.*
>
> *(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.*
>
> *(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.*
>
> *(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived."*

9. We find that the review applicant is agitating some of the arguments which have already been taken note of in the order under review e.g. argument pertaining to next test being allowed to the applicant after 100 meters race and video not being produced. It is apparent from the tone and tenor of the applicant that the entire matter has been sought to be re-argued. We do not find any material fact which has been newly discovered and the presence of which at the time of arguments could have changed the decision in one way or the other. As per the two decisions, referred to above, review

application cannot be allowed to become a disguised appeal. These points could have been good points in case of an appeal but certainly not in review.

10. In the facts and circumstances of the case, we do not find any merit in the instant RA and the same is accordingly dismissed.

(Dr. B.K. Sinha)
Member (A)

(V. Ajay Kumar)
Member (J)

/AhujA/