

**Central Administrative Tribunal
Principal Bench, New Delhi.**

**RA-317/2015 in
OA-3034/2013**

Reserved on : 21.03.2017
Pronounced on : 24.03.2017

Hon'ble Mr. Shekhar Agarwal, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

Ms. Nazneen Khan,
D/o Sh. Kifayat Khan,
W/o Sh. Khalid Nadeem Khan,
R/o G-76/3, Shaheen Bagh,
AFE-II, New Delhi-110025.

... Applicant

(By Advocate : Sh. S.C. Sagar)

Versus

1. Govt. of NCT of Delhi
Asaf Ali Road, Civil Line,
New Delhi,
(Through its Chief Secretary).

2. Delhi Subordinate Services Selection Board,
FC-18, Institutional Area,
Karkardooma, Delhi-110092
Through its Chairman.

... Respondents

(By Advocate : Ms. Asiya for Ms. Rashmi Chopra)

ORDER

Hon'ble Mr. Shekhar Agarwal, Member (A)

This review application has been filed for review of our order dated 28.07.2015, the operative part of which reads as follows:

"10. The distinguishing feature in the present case from the one in OA No. 2765/2013 (supra) is that the applicants in the said Original Application could approach the Tribunal well in advance and using the equitable tool to administer the justice, the Tribunal could pass an apt Order. In the present case, where the applicants could approach us after the date of the examination, similar view cannot be taken. Such view if taken now will open infinite flood gate for litigation. In the facts and circumstances of the case, particularly the fact that the applicants could approach the Tribunal only when the examination had already taken place, we are not inclined to interfere in the matter.

11. The Original Application is accordingly dismissed. No costs."

2. The review applicant had first challenged this order before Hon'ble High Court of Delhi vide Writ Petition No. 10736/15. However the same was withdrawn with liberty to file a review application. This is evident from the order dated 23.11.2015 of Hon'ble High Court of Delhi which reads as follows:

“Learned counsel for the petitioner at the outset submits that he wishes to file a review petition before the Central Administrative Tribunal.

Mr. Satyakam, learned counsel for the respondent enters appearance on an advance copy.

It is agreed by both the parties that in case the review is filed within two weeks from today, the plea of limitation will not be raised by the respondent. Leave is also granted to place additional documents on record before the Tribunal. This court has not expressed its opinion on the merits of the case.

Present writ petition and all applications stand disposed of.

Dasti, as prayed.”

In view of the directions of Hon'ble High Court, delay in filing the review was condoned. The respondents have filed an affidavit opposing the review application.

3. We have considered the various grounds mentioned in the review application. The review applicant has mentioned that the respondents had wrongly rejected her candidature by stating that she was not qualified for the above post. She had submitted a representation before commencement of the written examination with full information regarding her candidature in which she had also submitted that she had not been able to download her admit card from the website. The respondents however did not attend to her grievance. The review applicant has gone on to state that she had passed Class 10th with 68.3% marks, Class 12th with 55.4% marks and BA with 50.7% marks. She also had Diploma in Elementary Teacher Education. She has also done a certified computer course from Meera Bai Polytechnic Institute, Maharani Bagh, New Delhi. However, all these facts were ignored by the respondents and her

candidature was rejected. She has submitted that contrary to the law laid down by the Apex Court in the case of Kaluram Sitaram Vs. Dominion of India, AIR 1954 Bombay 50, the respondents dealt with the citizen on technicalities and not as an honest person. She further submitted that this Tribunal did not take into account the fact that the applicant was 35 years old and because of the fault of the respondents had become overage for taking this examination.

4. We have considered the aforesaid submissions. We are of the opinion that the review applicant has not been able to indicate any error in the judgment apparent on the face of the record warranting invocation of review jurisdiction. In fact, through this review application, the review applicant is only trying to reargue the matter. Our finding in this case was that the applicants had approached the Tribunal after conduct of the examination in question and at that stage no relief could be given to them. If the applicant is aggrieved of this finding, then appropriate remedy for her would be to approach higher judicial forum. Clearly, this is beyond the scope of review application to question the findings arrived at by the Tribunal.

5. While considering the scope of review, Hon'ble Supreme Court in the case of **Aribam Tuleswar Sharma Vs. Aribam Pishak Sharma**, (1979) 4 SCC 389 referred to an earlier decision in the case of **Shivdeo singh Vs. State of Punjab**, AIR 1963 SC 1909 and observed as under:-

“It is true as observed by this Court in **Shivdeo Singh v. State of Punjab**, AIR 1963 SC 1909, there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which is inherent in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the record is found; it may also be exercised on any analogous ground. But, it may not be exercised on the

ground that the decision was erroneous on merits. That would be the province of a Court of appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all matters or errors committed by the Subordinate Court."

5.1 Similarly in the case of **Ajit Kumar Rath Vs. State of Orissa and Others**, AIR 2000 SC 85 the Apex Court reiterated that power of review vested in the Tribunal is similar to the one conferred upon a Civil Court and held:-

"The provisions extracted above indicate that the power of review available to the Tribunal is the same as has been given to a court under Section 114 read with Order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application on account of some mistake or error apparent on the face of the record or for any other sufficient reason. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier, that is to say, the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it. **It may be pointed out that the expression "any other sufficient reason" used in Order 47 Rule 1 means a reason sufficiently in the rule.**

Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment."

[Emphasis added]

5.2 In the case of **Gopal Singh Vs. State Cadre Forest Officers' Assn. and Others** [2007 (9) SCC 369], the Apex Court held that after rejecting the original application filed by the appellant, there was no justification for the Tribunal to review its order and allow the revision of the appellant. Some of the observations made in that judgment are extracted below:-

"The learned counsel for the State also pointed out that there was no necessity whatsoever on the part of the Tribunal to review its own judgment. Even after the microscopic examination of the judgment of the Tribunal we could not find a single reason in the whole judgment as to how the review was justified and for what reasons. No apparent error on the face of the record was pointed, nor was it discussed. Thereby the Tribunal sat as an appellate authority over its own judgment. This was completely impermissible and we agree with the High Court (Justice Sinha) that the Tribunal has traveled out of its jurisdiction to write a second

order in the name of reviewing its own judgment. In fact the learned counsel for the appellant did not address us on this very vital aspect."

6. In view of the above, we find no merit in this review application and dismiss the same.

(Raj Vir Sharma)
Member (J)

(Shekhar Agarwal)
Member (A)

/ns/