CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

RA 59/2017 in
OA 712/2015
MA 626/2017

Reserved on: 22.11.2017
Pronounced on: 04.05.2018

Hon'ble Mrs. Jasmine Ahmed, Member (J)
Hon'ble Mr. Uday Kumar Varma, Member (A)

Kiran
D/o Shri Mahadev Rao
R/o Flat No.194, First Floor,
Pocket – 8, Sector-22,
Rohini,
New Delhi-110085 ….Applicant

(Through Dr. Vijendra Mahndiyan, Advocate)

Versus

1. Delhi Subordinate Services Selection Board,
FC-18, Institutional Area, Karkardooma
Delhi-110302
Through its Secretary / Chairman

2. Govt. of NCT of Delhi through,
The Principal Secretary,
Department of Health & Family Welfare,
Government of NCT of Delhi,
Delhi Secretariat, I.P. Estate,
New Delhi …. Respondents

(Through Ms. Rashmi Chopra, Advocate)

ORDER

Mrs. Jasmine Ahmed, Member (J)

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

with Rule 17 of the Central Administrative Tribunal (Procedure) Rules to review the judgment passed in OA 712/2015.

2. It is seen that the applicant has reiterated the arguments which she advanced while deciding the OA. The judgment relied upon by the learned counsel for the applicant in OA 3481/2015, **Sh. Dinesh Mahawar** Vs. **Govt. of NCT of Delhi and anr.** was categorically meant for the applicants/ aspirants who were from Delhi. In para 2 of the judgment, while referring to the cases in **Pooja Verma** Vs. **UOI & Ors.** (OA-3555/2012 decided on 19.02.2014) and **Nisha Lakra & Anr.** Vs. **GNCTD & Ors.** decided on 05.01.2012, it was recorded that while deciding these OAs, the Tribunal had placed reliance on the judgment of the Hon'ble High Court of Delhi in Writ Petition No.9114/2008 titled **Rashmi Dharas and ors**. Vs. **GNCTD and ors.**, para 25 whereof reads as follows:

> "25. Thus, it is manifest that if we ignore the 6 months training period from the course of GNM in case of Delhi candidates, then they had completed their course in September/October, 2007 and had received W.P. (C) No. 9114/08 Page 23 of 32 their marksheets for final year on 21.12.2007. therefore, if there is no other fallacy in their candidature, then Delhi candidates were eligible as on the cut off dated of 21.1.2008. To deprive Delhi candidates due to non completion of six months training when already candidates for other states were found eligible even in the absence of six months training will certainly result in causing a hostile discrimination viz-aviz Delhi candidates. Therefore, they succeed in their claim made herein."

3. Here in this case, the applicant has done Nursing and Midwifery course from Haryana Nurses Registration Council, Chandigarh. Therefore, the facts of the case are apparently distinguishable from the

case cited. In **Sh. Dinesh Mahawar** (supra), the issue was mainly about the training and internship while in the case in hand, the issue is of cut-off date. It is settled proposition of law in various judgments of the Hon'ble Apex Court that the cut-off date has to be adhered for all purposes. While deciding OA, the Tribunal has taken into consideration various cases cited by the learned counsel for the applicant at the time of arguments. At that point of time, the learned counsel for the applicant failed to rely upon the judgment now being relied upon by him. Thus in the garb of review, it is nothing but an attempt to reargue the matter on merits, which is not within the scope of RA.

4. The learned counsel for the respondents has relied upon the judgment of the Hon'ble Apex Court in **Rakesh Kumar Sharma** Vs. **Govt. of NCT of Delhi and ors.**, C.A. No.6116/2013, where it was held as follows:

> "Service – Termination of service – Whether order passed terminating services of Appellant for not possessing requisite eligibility as on last date of submission of applications was sustainable or not – Held, in instant case, it was considered that Appellant did not possess requisite qualification on last date of submission of application though he applied representing that he possessed the qualification – Letter of offer of appointment was issued to him which was provisional and conditional subject to verification of educational qualification, eligibility, character verification etc – Clause 11 of letter of offer of appointment made it clear that in case character was not certified or he did not possess qualification, services would be terminated – Appeal dismissed."

5. Heard the rival contentions of the parties and perused the record.

6. The law has been settled by the Hon'ble Apex Court regarding scope of review application before the Tribunal, specifically in **Kamlesh Verma Vs. Mayawati and Others,** (2013) 8 SCC 320, wherein the Hon'ble Supreme Court has laid down the following contours with regard to maintainability, or otherwise, of review petition:

> "20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:
>
> 20.1 When the review will be maintainable:
>
> i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;
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> ii) Mistake or error apparent on the face of the record;
>
> iii) Any other sufficient reason.
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> The words "any other sufficient reason" have been interpreted in Chhajju Ram v. Neki (AIR 1922 PC 122) and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius (AIR 1954 SC 526) to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in Union of India vs. Sandur Manganese & Iron Ores Ltd. (2013 (8) SCC 337).
>
> 20.2 When the review will not be maintainable:
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> 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."

Further, in **State of West Bengal and others Vs. Kamal Sengupta and another**, (2008) 8 SCC 612, the Hon'ble Supreme court scanned various earlier judgments and summarized the principles laid down therein which read thus:

"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 CPC.

(ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 CPC.

(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."

7. This RA simply being an attempt to reargue the matter and reiteration of facts mentioned in OA, which already stand decided, is found to be devoid of merit. It is, therefore, dismissed. No costs.

(Uday Kumar Varma)
Member (A)

(Jasmine Ahmed)
Member (J)

/dkm/