CENTRAL ADMINISTRATIVE TRIBUNAL

CHANDIGARH BENCH

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M.A.NO.060/0304/2019
and
REVIEW APPLICATION NO.060/00008/2019
IN
ORIGINAL APPLICATION N0.060/00420/2016

Chandigarh, this the 18th day of February, 2019

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CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MS. AJANTA DAYALAN, MEMBER (A)

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Paramjit Singh son of Sh. Kuldeep Singh, (SC category) resident of Kalewali, Tehsil Kharar, District Mohali, Punjab.

Applicant

Versus

1. Union of India, Ministry of Home Affairs, Govt. of India, New Delhi, through its Secretary.

2. Chandigarh Administration, Chandigarh, through Home Secretary. 3. Inspector General of Police, Union Territory, Chandigarh Police Head quarters, Additional Deluxe building, Sector 9-D, Chandigarh.

4. The Chairman (PET cum Selection Committee), W/Deputy Inspector General of Police, UT Police Head quarter, Sector 9, Union Territory, Chandigarh.

5. Senior Superintendent of Police, UT, Chandigarh Police Head quarters, Additional Deluxe building, Sector 9-D, Chandigarh.

6. Sh. Rajinder P.Upadhyay, IPS, Inspector General of Police, UT, Chandigarh.

7. Mandeep Singh son of Sh. Rajinder Singh c/o Deputy Superintendent of Police(Training), RTC, Police Lines, Sector 26, Chandigarh. … Respondents

ORDER (By circulation)
SANJEEV KAUSHIK, MEMBER (J)

1. The claim of the applicant in the Original Application for quashing of the order dated 26.2.2016 (Annexure A-1), whereby he had been declared as fail, in the event of race, for appointment to the post of ASI and for conduct of test through an independent agency, was dismissed by passing a detailed speaking order, which is reproduced as under :-

> "15. A conjunctive perusal of the pleadings makes it more than clear that earlier the applicant had approached this Tribunal by filing O.A.No.611/PB/2013 but in that case had never claimed grant of relaxation in terms of Rule 12.15 of the Punjab Police Rules. That O.A. was disposed of, considering the peculiar facts of the case that applicant was a scheduled caste candidate and had left his earlier job, with a direction to the respondents to allow him to appear in PET once again and if qualifies, his appointment as ASI may be revived as per original letter dated 14.10.2011. A perusal of the order dated 13.11.2014 passed by this Tribunal makes it clear that there was no prayer for grant of any relaxation. The only prayer was to afford him two remaining chances in Long race. Even in the Review Application filed by the applicant, he did not succeed and he was directed to appear in test on 4th September, 2015. Upon this, a representation was made by the applicant for grant of four weeks time to enable him to prepare for the indicated test and that he be given some relaxation by invoking Rule 12.15. By accepting his request, the respondents granted him four weeks time to appear for PET on 5.10.2015. Even when the applicant appeared for re-test on 5.10.2015, he did not raise any alarm and he participated in PET without there being any protest by taking a calculated chance, and having failed, he cannot be allowed to raise the plea that the criteria adopted was wrong. It has been vehemently argued that his test was intentionally fixed for 5.10.2015 whereas it was changed on 6.10.2015 (the very next day itself), which has prejudiced case of the applicant. However, applicant has conveniently forgotten that test was fixed for 4.9.2015 and it was on his request that he was granted four weeks time to prepare for the test and it was conducted on 5.10.2015. So he cannot be granted any benefit of criteria prepared or modified on 6.10.2015, more so when same would apply to vacancies subsequently and it cannot be applied retrospectively to earlier vacancies, which would be governed by old criteria. The respondents have explained that they have followed the criteria of old vacancy, old rules and as such we do not find any fault in the action taken by them.
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> 16. Be that as it, it is settled proposition of law that once a candidate appeared in the examination without there being any protest, and later on having remained unsuccessful, he or she cannot be allowed to raise a finger with regard to criteria being illegal, which was open to him before appearing in test, as has been held by the Hon'ble Apex Court in the case of Madan Lal (supra). The Hon'ble Apex Court again in the case of Dhananjay Malik & Ors. versus State of Uttaranchal & Ors. (2008(3) S.L.R. Page 792) has also thrashed the issue as under:-

> "It is not disputed that the writ petitioners-respondents herein participated in the process of selection knowing full well that the educational qualification was clearly indicated in the advertisement itself as B.P.E. or graduate with diploma in physical education. Having unsuccessfully participated in the process of selection without any demur they are stopped from challenging the selection criterion inter alia that the advertisement and selection with regard to requisite educational qualifications were contrary to the rules".

17. We would be failing in our duty if we do not consider the judgments cited by the applicant, as noticed herein above. Perusal of the judgments will show that the same do not help the applicant because the applicant claims relaxation and relaxed criteria but the fact of the matter is that in the indicated case, the Court had found that a whole lot of category of Ex-servicemen was being prejudiced due to criteria of physical standard applied cross the board. The relaxation cannot be granted in favour of a single individual. Secondly, there is no provision in the relevant Instructions containing criteria for grant of any relaxation. In any case, in a particular case, where it is so required, relaxation of even educational qualification(s) may be permissible, provided that the rules empower the authority to relax such eligibility in general, or with regard to an individual case or class of cases of undue hardship. However, the said power should be exercised for justifiable reasons and it must not be exercised arbitrarily, only to favour an individual. The power to relax the recruitment rules or any other rule made by the State Government/Authority is conferred upon the Government/Authority to meet any emergent situation where injustice might have been caused or, is likely to be caused to any person or class of persons or, where the working of the said rules might have become impossible, as held in a number of cases, like State of Haryana v. Subhash Chandra Marwah & Ors., AIR 1973 SC 2216; J.C. Yadav v. State of Haryana, AIR 1990 SC 857; and Ashok Kumar Uppal & Ors. v. State of J & K & Ors., AIR 1998 SC 2812.

18. Besides, even the plea of the respondents, with regard to resjudicata, is also found to be meritorious. Undisputedly, the applicant could have raised the plea of relaxation in standard earlier, which he has not done and he has accepted the order dated 13.11.2014 of this Tribunal, having not challenged before the High Court. Thus, he cannot be allowed to raise same very plea again and again, thus, this petition deserves to be dismissed on res-judicata as well as constructive res-judicata.

19. The applicant has alleged malafide against the authorities time and again in the pleadings but none of the officers of respondent department has been impleaded as a party. Thus, the allegations leveled by applicant do not inspire any confidence, at all. Law is well settled that in order to level plea of mala fide a person against whom mala fide is pleaded must be impleaded by name. In the case of State of Bihar Vs. P.P. Sharma, 1992 Supp (1) SCC 222 it has been held that the person against whom mala fides or bias was imputed should be impleaded as a party respondent to the proceedings and given an opportunity to meet those allegations. In his/her absence no enquiry into those allegations would be made. Otherwise it itself is violative of the principles of natural justice as it amounts to condemning a person without an opportunity. Similarly, in J.N. Banavalikar Vs. Municipal Corporation of Delhi, AIR 1996 Supreme Court 326, it has been held that the person who allegedly passed mala fide order in order to favour such junior doctor, any contention of mala fide action in fact i.e. malice in fact should not be countenanced by the Court. Again, in, A.I.S.B. Officers Federation and others Vs. Union of India and others JT

> 1996 (8) S.C. 550, Hon'ble Apex Court has said where a person, who has passed the order and against whom the plea of mala fide has been taken has not been impleaded, the petitioner cannot be allowed to raise the allegations of mala fide. Similarly, in Federation of Railway Officers Association Vs. Union of India, AIR 2003 Supreme Court 1344 it has been held that the allegations regarding mala fides cannot be vaguely made and it must be specified and clear. In this context, the concerned Minister who is stated to be involved in the formation of new Zone at Hazipur is not made a party who can meet the allegations." In these circumstances, the allegations leveled by the applicant cannot be enquired into at all. 19. In the wake of the above discussion on facts and law, the applicant has no case.
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> 19. Accordingly, the OA is found to be bereft of any merit and is dismissed accordingly. No costs."

2. The applicant has filed this R.A. for review of order aforesaid. Along therewith, he has also filed an M.A. for condonation of delay, on the ground that number of matrimonial litigation is going on between applicant and his wife. He is suffering from mental agony and torture from his wife and he has to regularly attend those disputes. Due to stress, he failed to file the R.A. in time. To say the least, these are no grounds, at all, much less cogent one to condone the delay in filing the Review Application and as such M.A. is dismissed.

3. The applicant has filed the instant R.A. on the pleas that he had taken a specific plea in the O.A. that against the time of 5.30 Minutes, he was granted lesser time to compete in the race, which was not even specifically denied by respondents in terms of Order 8, Rule 3 and 5 CPC and as such his plea has to be accepted as true on the face and O.A. is required to be allowed. It is argued that though actual time should be 6 minutes / 10 minutes for a candidate over 35 years of age. Apparently, the pleas stand rejected on the ground of res-judicata and estoppel, as such relief was not claimed in earlier lis became attained finality. His plea of malafide allegation has also been rejected by the Court. Thus, to

say that any error has crept in the order under review is based in insinuation only.

4. It is now well settled principle of law that the scope for review is rather limited, and it is not permissible for the forum hearing the review application to act as an Appellate Authority, in respect of the original order by a fresh and re-hearing of the matter, to facilitate a change of opinion on merits. The reliance in this regard can be placed on the judgments of the Hon'ble Supreme Court in cases of **PARSION DEVI AND OTHERS VS. SUMITRI DEVI AND OTHERS** (1997) 8 SCC 715, **AJIT KUMAR RATH VS. STATE OF ORISSA** (1999) 9 SCC 596, **UNION OF INDIA VS. TARIT RANJAN DAS** (2003) 11 SCC 658 and **GOPAL SINGH VS. STATE CADRE FOREST OFFICERS' ASSOCIATION & OTHERS** (2007) 9 SCC 369.

5. Meaning thereby, an order can only be reviewed if case strictly falls within the pointed domain of Order 47 Rule 1 CPC read with Section 22(3)(f) of the Administrative Tribunals Act, 1985 and not otherwise, which is not available in the case in hand. The applicant in R.A has neither pleaded nor urged any error on the face of record warranting review of the order in question, except re-arguing the case all over again.

6. In the light of the aforesaid reasons, as there is no merit, the RA is dismissed, by circulation.

(AJANTA DAYALAN)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 18.02.2019

HC*