

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

RA/021/00023/2016 in OA/021/01005/2014

Date of CAV : 25-10-2018

Date of Order : 31-10-2018

Between :

P.Nagabhushanam S/o Mallappa,
Aged about 49 years, Occ : Sub-Inspector,
Sardar Vallabhbhai Patel National Police Academy,
Sivarampalli, Hyderabad-500 052.Review Applicant/Applicant

AND

1. Union of India rep by
The Secretary to the Government,
Ministry of Home Affairs,
(Police Division) North Block,
NEW DELHI -01.
2. Sardar Vallabhbhai Patel National
Police Academy Rep by its Director,
Government of India, Ministry of Home
Affairs, HYDERABAD – 500 052.Respondents

Counsel for the Applicant: Mr. Siva

Counsel for the Respondents : Mr.V.VinodKumar, Sr.CGSC

CORAM :

THE HON'BLE MR.B.V.SUDHAKAR, ADMINISTRATIVE MEMBER
THE HON'BLE MR.SWARUP KUMAR MISHRA, JUDICIAL MEMBER

(Order per Hon'ble Mr.Swarup Kumar Mishra, Judicial Member)

This review application has been filed by the original applicant in the OA to review the order dated 03-06-2016 of this Tribunal in OA No. 01005/2014.

2. The original order dated 03-06-2016, passed by this Tribunal show that this Tribunal after going through all the aspects of the matter had categorically held as under :

“8. We have given our anxious consideration to the contentions advanced by the learned counsel appearing for the parties. There is no dispute that two pay scales operate in 2nd respondent academy in the cadre of Sub Inspector. Seven posts are existing posts and 30 posts are newly created posts. The incumbents of 7 posts are drawing pay in PB-1 Rs.5,200-20,000 with grade pay of Rs.2,800/-. The incumbents of the newly created posts are drawing pay in PB-2 Rs.9,300-34,800 with grade pay of Rs.4,200/-. IN the first pluhs we gain an impression that operation of two pay scales for the same cadre appears to be in violation of equity clause. However, on close scrutiny of the material placed on record we do not detain ourselves long to dispel the impression. The existing posts are occupied by regular employees of the 2nd respondent academy. With regard to newly created posts, persons from CAPFs are taken on deputation. The grade pay in CAPFs for the post Sub Inspector and the grade pay of the newly created posts are made equal so as to draw the competent persons to impart necessary training to the high rank police officers in the 2nd respondent academy. Had the pay of the newly created posts been not place on par with the pay of the personnel in CAPFs, perhaps no personnel from CAPFs would come to 2nd respondent academy on deputation. The apparent reason or allowing higher grade pay to the newly created posts is to draw meritorious persons from CAPFs. It is a matter of record that the applicant while being absorbed in 2nd respondent academy has given undertaking that he would accept the pay scale attached to the post of Sub Inspector in the 2nd respondent academy. There is a rationale in placing the personnel in the newly created posts on higher pay band and grade pay and it is linked with the object of drawing competent personnel on deputation to the 2nd respondent academy. Therefore, the principle of equity in the given facts and circumstances cannot be made applicable.

9. Accordingly, we find that the applicant failed to make out any valid ground for grant of pay band and grade pay on par with newly created posts in the cadre of Sub Inspector of Police.”

3. The review applicant contends that in response to the query raised by the Bench at the time of hearing the OA, material was placed to substantiate the reliefs sought for. Orders of direct recruitment to the cadre in question was produced to buttress the contention that the newly created

posts that carry higher pay scale are not being filled up exclusively by deputation. This aspect has not even been recorded and the obvious reason was that it would be difficult to sustain the order of dismissal.

4. The Review Applicants also contend that the existing posts are occupied by regular employees of the 2nd Respondent academy. With regard to newly created posts, persons from CAPFs are taken on deputation. The grade pay in CAPFs for the post of Sub Inspector and the grade pay of the newly created posts are made equal so as to draw the competent persons to impart training to the high rank police officers in the 2nd Respondent academy is not supported by any material on record. In fact there are 7 existing posts and 30 newly created posts in PB-2 with GP 4200/-, 14 posts are filled by permanent employees on promotion and 11 posts are filled by direct recruitment from open market and 3 posts are filled by deputationists drawn from CAPFs. Hence, the contention that these 30 newly created posts are exclusively being filled by deputationists only from CAPFs and they are meant to attract meritorious and competent personnel from CAPFs is factually in-correct and not sustainable. Allowing 7 permanent staff in the rank of Sub Inspector the Grade Pay of Rs.2800/- and 14 permanent staff in the rank of Sub Inspector with the Grade Pay of Rs.4200/- is itself defeats the equality which needs to be rectified as it violates Articles 14 and 16 of Constitution of India and it amounts to creation of a class among equals.

5. The review applicants contend that in response to the query raised by the Bench at the time of hearing the OA, material was placed to

substantiate the reliefs sought for. Orders of direct recruitment to the cadre of Constables was produced to buttress the contention that the newly created posts that carry higher pay scale are not being filled up exclusively by deputation. This aspect has not even been recorded and the obvious reason was that it would be difficult to sustain the order of dismissal.

6. The scope of review under Order 47 Rule 1 of the C.P.C read with Section 22(3) (f) of the A.T. Act is very limited. Unless there is an apparent error on record, it cannot be rectified under the umbrella of a Review Application. An error which is not self evident and it can be discovered by a long process of reasoning cannot be treated apparent on the face of the record justifying exercise of power of review [State of West Bengal & Ors Vs. Kamal Sengupta & Ors (2008) 2 SCC (L&S) 735 and Parsion Devi Vs. Sumitri Devi 1997 (8) SCC 715 (relied on)].

7. It may not be out of place to mention here that even an erroneous decision by itself does not warrant a review as has been observed by the Hon'ble Apex Court in case of Akhilesh Yadav Vs. VishwanathChaturvedi [2013 (1) SCC (L&S) 371].

8. In the case of Subhash Vs. State of Maharashtra [AIR 2002 SC 2537], their Lordships of the Hon'ble Apex Court have taken exception to the conduct of the Tribunal in examining the matter as if it was an Original Applicant before it as it is not the scope of review. Accordingly to their Lordships, the Tribunal could have interfered in the matter if the error

pointed out is plain and apparent.

9. Before parting with this order, it may be worthwhile to reiterate that a Review Bench, cannot exercise the privilege which is available to a higher judicial forum. Since there is no error on the face of record justifying correction and re-appreciation, the RA is dismissed. No order as to costs.

(SWARUP KUMAR MISHRA) (B.V.SUDHAKAR)

JUDICIAL MEMBER

ADMINISTRATIVE MEMBER

Dated : 31st October, 2018.

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