

**CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH**

RA/310/0054/2013 in OA/310/01122/2010

Dated the 28th day of November Two Thousand Nineteen

P R E S E N T

Hon'ble Mr.P.Madhavan, Member(J)
&
Hon'ble Mr.T.Jacob, Member(A)

M.Kumutha,
D/o Mani,
C-10, 17th Cross,
Krishna Nagar Main Road,
Lawspet, Puducherry 605 008. .. Applicant/R3
By Advocate **Mr.R.Saravanan**

Vs.

1. Mrs. T.Pajaniammalle,
W/o Rajamanickam,
No.13, Annai Therasa Street,
Raja Nagar, Puducherry. .. Respondent/Applicant
 2. The Union of India,
rep. by Govt. of Puducherry,
Through the Secretary to Government for Education,
Chief Secretariat,
Puducherry.
 3. The Director of School Education,
Anna Nagar,
Puducherry. .. Respondents/Respondents
- By Advocate **M/s.V.Ajayakumar(R1), Mr.R.Syed Mustafa(R2&3)**

ORDER
(Pronounced by Hon'ble Mr.P.Madhavan, Member(J))

The 3rd respondent in OA 1122/2010 has filed this RA 54/2013 seeking review of the order passed by this Tribunal in the above said OA dated 13.3.2013.

2. The above OA was filed by one Mrs. T.Pajaniammalle seeking to quash the selection of 3rd respondent and consequently to direct R1&2 to appoint her as Trained Graduate Teacher (TGT) in the faculty of Mathematics with all consequential relief including seniority etc. R1&2 had conducted a test for selection of Trained Graduate Teachers in various disciplines under the Directorate of School Education (R2). There was a written test, practical test and interview for the selection. According to the applicant, R1&2 had published a select list on 25.5.10 and a separate wait-list for faculty of Mathematics was also published. There were 2 other candidates under SC category i.e. one Andjaladevy and one M.Kumudha (R3). The applicant scored 44.6203 marks (total) as per list published in internet. Thereafter, R1&2 had published a final select list showing the name of R3 and her marks was 44.1817. But her marks shown in the internet was only 43.7817.

3. Immediately, the applicant filed a representation stating that R3 had only lesser marks than her and the name of the applicant has to be selected. On receipt of representation by R2, he revised the mark list in internet by changing the marks of R3 to 44.1817 and applicant's marks reduced to 44.1203. The applicant alleges malafide on the part of the respondents R1&2 in this aspect.

4. The Tribunal after hearing both sides and perusing the pleadings, held that the

downward change of marks of the applicant and upward change in the marks of R3 consequent to the changes in the marks of the interview is not proper and held that applicant is entitled to get appointment as TGT in SC category and the selection of R3 to the post was quashed.

5. Aggrieved by the above order of the Tribunal, R3 M.Kumudha had filed this RA on the following grounds:-

1. According to the RA applicant the candidates were short-listed based on aggregate marks awarded for academic qualification, (maximum 30 marks), employment seniority (10 marks), written exam (40 marks) in the ratio 1:3. A list of 393 candidates were short-listed on 5.5.10. Then they were called for certificate verification, practical test and oral interview (12.5.10 to 20.5.10).

After completing the procedure, proposal was considered by the Direct Recruitment Committee on 24.5.10 along with overall mark list of candidates and after the meeting, minutes was approved and result was published in the Notice Board of the R2 on 25.5.10 at 12.30 a.m. Subsequent to the official publication, by about 04.00 p.m. the details of marks etc. were handed over to the NIC, Chief Secretariat, Puducherry for publishing on official website. According to RA applicant, while handing over of the data, some erroneous data was also supplied to NIC. When the mistakes were noted, correcting action was taken without any loss of time. The correct details were published on 26.5.10 itself clearly mentioning “earlier data published on 25.5.10 contained certain erroneous data which had crept in inadvertently”. It was published on 26.5.10 at 04.00 p.m. There were mistakes in the

marks of 21 candidates and the RA applicant and T.Pajaniammalle was among the 21 candidates.

Name of the candidate with Hall Ticket No.	Employment Seniority + Academic Marks (out of 40) (10+30)	Written Marks (out of 40)	Actual Data published on 26.5.2010			Erroneous data published on 25.5.2010			Differences
			Pract	Oral	Total	Pract	Oral	Total	
T.Pajaniammalle (P03013419)	22.79	14.13	5.7	1.5	44.12	5.7	2	44.62	-0.5
M.Kumudha (P03013026)	16.97	13.87	5.85	7.5	44.18	5.85	7.1	43.78	0.4

According to RA applicant, as per select-list published on 25.5.10, the OA applicant was having only rank 101 and the rank of RA applicant M.Kumudha was 100. Hence the applicant was short-listed in the wait-list under SC category.

2. She contents that there was no increase or decrease of marks done as alleged.

3. The Tribunal without looking into the facts submitted by the official respondents had cancelled her selection holding that there had taken place an increase and decrease in marks given for interview and the statements of official respondents are not reliable.

4. The results published in the notice board alone can be taken for coming to a decision.

5. There has not taken place any revision of the marks on 26.5.10 as alleged.

6. The Tribunal has taken the incorrect Mark list as original and discarded the reliable records and formed an erroneous opinion.

7. The clerical errors taken place in uploading the data was blown out of proportion. The fact that there were mistakes in the marks of other 21 candidates was not taken notice by the Tribunal.

6. The official respondents in the RA had produced the file relating to the selection including the minutes of the meeting and the original select-list kept in the file.

7. The contesting private respondent in RA contended that, there is no scope for a review in the order passed by the Tribunal. According to the counsel for RA respondent, (1) there has occurred malpractice and her marks for the interview was reduced to 1.5. 23 persons were included pushing out other eligible candidates. He mainly rely on Annexure A8 final marks 44.6203 and Annexure A10 i.e. 43.7817 for the RA applicant.

8. The counsel for the RA applicant would submit that the Tribunal has not gone through the reliable documents by calling for the file relating to the selection. Instead, it relied on a print out of marks taken from internet which has a disclaimer below it. Further, the print out clearly indicates that no proper time or date is shown. On a perusal of Annexure A10 foot note it clearly state that any clarification and

details necessary has to be obtained from the R2. Another interesting aspect is the date of uploading is shown as 01.2.2002 at 10.56 a.m. which has no correlation with the date 25.5.10. This also clearly shows that it is not a verified publication by NIC. Whereas the mark lists published on 26.10.10 (Annexure A14) clearly shows the date of publication as 26.5.10 which is the date of correct publication in the website. This was not taken into account by the Tribunal. Another fact stated in the OA is that, the applicant T.Pajaniammalle has immediately gave representation on 26.5.10 and the official respondents had immediately made correction. But if we go through the file, there has not occurred such corrections as alleged. This clearly shows that some raw data kept in the computer had been uploaded and this has caused the confusion. Immediately, on knowing the mistake, official respondents had taken steps to publish the correct data and it was issued to NIC and uploaded without delay on next day itself i.e. 26.5.10. The above facts were also not noted by the Tribunal. Instead of relying on the print outs produced by the applicant, the Tribunal ought to have called the correct details by procuring the file itself. The Tribunal had acted upon the misconception that Annexures A10 and A8 are reliable documents and acted upon it.

9. The counsel for the OA applicant would content that Annexure A8 & A10 are downloaded from internet. The mistake in the data in the Footnote might be due to incorrect settings in the NIC Computer or due to failure of batteries. The applicant had no access to the original file and she is not in a position to get the same. According to him, marks of interview was changed due to external intervention.

10. The counsel for the RA respondent has invited our attention to the decision of

the Hon'ble Supreme Court in ***Northern India Caterers (India) v. Lt. Governor Delhi (reported in CDJ 1979 SC 011)*** wherein the Hon'ble Supreme Court has held that “*A plea of review, unless the first judicial view is manifestly distorted, is like asking for the moon. A forensic defeat cannot be avenged by an invitation to have a second look, hopeful of discovery of flaws and reversal of result.*” The counsel for RA respondent had cited the decision of Hon'ble High Court of Madras in ***C.Rani v. The Commissioner, Tambaram Municipality & Others*** wherein the Hon'ble High Court after considering the various decisions had summarised the principles for a review under Order 41 Rule 1 as follows:-

“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;
- (ii) Mistake or error apparent on the face of the record;
- (iii) Any other sufficient reason.

The words “any other sufficient reason” have been interpreted in Chhajju Ram v. Neki and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulouse Athanasius to mean “a reason sufficient on grounds at least analogous to those specified in the rule”. The same principle have been reiterated in Union of India v. Sandhur Manganese & Iron Ores Ltd.

20.2. *when the review will not be maintainable:*

- (i) A repetition of old and over rules 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 negated.”

11. From the above principles it can be seen that Court cannot go into a roving enquiry into the case which will amount to an appeal itself. The error or mistake must be apparent on the face of record or it should be based on any other sufficient reason i.e. “a reason sufficient on grounds at least analogous to those specified in the rule. Since there is no claim of discovery of a 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” is made in this RA, the RA mainly depend on two other provisions – mistake or error apparent on the face of the record; or any other analogous sufficient reason.

12. Before going to the discussion it will be useful to look into the judgment passed by this Tribunal and on what basis the selection of RA applicant was cancelled.

13. On a perusal of this Tribunal's order dt. 13.3.13, paragraph 4 & 5 clearly states on what basis the selection of RA applicant was cancelled and the RA respondent was

ordered to be appointed as follows:-

“4. The main grievance of the applicant is that the respondents have notified the marks but subsequently changed it on more than one occasion. Initially, the applicant had obtained 44.6203 marks under the SC Category. However, when she made a representation about the selection of the third respondent who have secured less marks that is 43.7817 the respondents have increased the marks of the third respondent to 44.1817. Thereafter again when a representation was made by the applicant his mark was reduced to 44.1203 from 44.6203. This according to the applicant is a clear case of malafide action on the part of the respondents and they have played a fraud in changing the marks to support their case for selection of third respondent. However, the respondents have filed reply statement and they have stated as follows:

“The respondents humbly submit that on the next day i.e. on 26.5.10 the correct marks were published stating in unequivocal terms therein that “The earlier data published on 25.5.2010 contained certain erroneous data which had crept in inadvertently. Subsequently those errors have been rectified and published on 26.5.2010 at 16.00 hrs.”. The correct data published in respect of the applicant and the third respondents on 26.5.2010 is given below:-

Category	T.Pajaniammalle	M.Kumudha
Employment Seniority + Academic Marks (out of 40) (10+30)	22.79	16.97
Written Marks (out of 40)	14.13	13.87
Practical Test Mark (out of 10)	5.7	5.85
Oral Interview Mark (out of 10)	1.5	7.5
Total	44.12	44.18

5. We have considered the case of both sides from the facts narrated above it may be seen that the respondents have changed the marks of the applicant downward and increased the marks of the third respondent upwards. This change has

taken place only on the interview portion of the total marks. The written test marks etc., has remained unchanged. In that view of the matter the statement of the respondent which is extracted above is not reliable and due to downward change of marks of the applicant we are of the opinion that the applicant will be eligible for appointment in the SC Category to the post of Trainee Trained Graduate Teacher.”

14. On a reading of the above two para, it can be seen that the Tribunal had acted on a misconception that-

“1. There was a publication of original mark-list which is produced as Annexure A8 & A10.

2. The respondents had changed the marks and increased the marks of RA applicant in the interview and downgraded the marks of RA respondent No.1 in the interview and this was done for accommodating RA applicant instead of RA respondent.”

15. The official respondents R1&2 in the OA had filed a detailed reply stating that the reasons for the occurrence. According to them, in their anxiety to publish the result immediately on the next day itself, they handed over the CD containing some Raw data also which required correction, to the NIC in the Secretariat and it was erroneously put in the website on 25.5.2010. But immediately they found out the mistake and uploaded the correct marks of the candidates on 26.5.10 itself. According to the RA applicant, the official respondents had published the correct selection list with marks in the notice board of R2 and she had Rank 100 and the RA respondent No.1 T.Pajaniammalle had come as Rank No.101. The case of the respondent No.1&2 is that not only the RA respondent 1 and RA applicant, there were 19 other candidates whose marks were wrongly shown and all were corrected.

Actually there has not taken place any upward change or downward changes in the marks awarded.

16. The OA was filed to call for the records of the 2nd respondent No.162005/DSE/Estt-III/A/2009 dt. 25.5.10. Since the said file itself is the best evidence, the file was produced. On going through the file, it can be seen that there has not taken place any upward increase in the marks given to RA applicant and no downward movement in the marks given to the RA respondent No.1. The selection list was approved by the committee on 24.5.10 itself and the minutes was signed and result was published. There is no basis for the averment of RA respondent No.1 that when she made representation on 26.5.10 the marks were changed. On a casual perusal of Annexure A8 and A10 would show that the date of uploading is shown as 1.2.02 at 10.56 a.m. This itself shows that the said data was not the authenticated data given for uploading in the website.

17. The Tribunal has accepted the Annexure A8 & A10 as the result published officially and taken a view that the marks of RA applicant was increased and RA respondents No.3 was reduced. It is a mistake which can be seen by anyone on going through Annexure A8 & A10. Instead of calling for the file and verifying the genuineness of the statement made, Tribunal had accepted a data which has no proper date of publication etc. and mistakenly granted a relief.

18. The RA applicant had made out a case for review on the basis of mistake or error apparent on face of record and any other sufficient reason, as provided under order 41 R.1 CPC.

19. Hence, we are of the view that the judgment of this Tribunal dated 13.3.13 in OA 1122/10 required review and we accordingly do so.

20. The judgment in OA 1122/10 will stand reviewed and the OA 1122/10 fails and it will stand dismissed. Interim orders passed will stand vacated accordingly.

21. RA is disposed off accordingly.

(T.Jacob)
Member(A)

28.11.2019

(P.Madhavan)
Member(J)

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