

Commissioner of Police Vs. Smt. Krishna Kumari

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Court : Central Administrative Tribunal CAT Principal Bench New Delhi

Decided On : Feb-07-2013

Judge : G. GEORGE PARACKEN, MEMBER (J) & THE HONOURABLE MR. SHEKAR AGARWAL, MEMBER (A)

Appeal No. : R.A. No. 337 of 2011 & MA Nos. 2597, 2598 of 2011 IN O.A. No. 2639 of 2008

Appellant : Commissioner of Police

Respondent : Smt. Krishna Kumari

Judgement :

G. George Paracken:

1. This Review Application has been filed by the Respondent in OA No.2639/2008 disposed of on 19.05.2010 having its operative part as under:-

5. We have carefully considered the rival contentions of the parties and perused the material on record. In our considered view the respondents have misapplied the instructions to fill up the quota of SC/ST from the candidates belonging to that respective category even if they have achieved the merit at par with general category candidates. As such, after the decision in R.K. Sabharwals case (supra), which has transformed into an OM dated 2.7.1997, has to be applied for reservation to SC/ST category candidates who achieve merit of general category have to be deemed as general category candidates and this quota would not be counted towards reservation. If it is so, because of non-following of the aforesaid the fundamental right of applicant to be considered as a SC category candidate fairly and equitably for promotion has been violated. The action of the respondents cannot be countenanced.6.As regards liberty accorded to the applicant, we find that applicant has described in his OA the quota etc. and as well demonstrated through RTI information that she was at the 8th position and was within the zone of consideration against 15 vacancies earmarked for SC category in which the candidates have been adjusted but secured merit of general standards.

7. The decision of the Apex Court and OM hold the field and accordingly OA is allowed to the extent that now the case of the applicant for promotion in promotion list A against SC quota on the basis of the selection of the year 1999 shall be considered and in the event she is otherwise qualified, consideration for promotion shall be accorded to her from the date juniors have been promoted as such, from the year 1999 with all consequences, as admissible in law, within a period of three months from the date of receipt of a copy of this order. No costs.

2.The factual matrix of this case is that in the year 1999, a list A test was held and its result was declared on 19.11.1999. 138 women constables were declared passed but no separate list of SC quota was published. The applicant obtained information under Right to Information Act (RTI for short), 2005 to the effect that 128 women constables were selected under the general category and all the SC/ST candidates who were selected were adjusted among them and not against the unreserved category. The Applicant secured 8th position. As the applicants request for promotion was rejected in the year 2004, she filed OA No. 2462/2006. Then the

respondents took the stand, vide its order dated 3.7.2008, that the quota meant for SC/ST had been exhausted. As a result, the Original Application was held infructuous giving liberty to the Applicant to file a fresh OA and accordingly OA No. 2639/2008 which is under review has been filed.

3. According to the learned counsel for the applicant in the Original Application, it was stated that at the time of holding of promotion to list A, the respondents were required to follow the law laid down by the Apex Court in R.K. Sabharwal v. State of Punjab, 1995 (2) SCC 745 and the instructions issued by the Department of Personnel and Training vide its OM dated 2.7.1997. Accordingly, the persons belonging to the reserved categories who were appointed on the basis of merit, should not have been brought under reservation quota. On the other hand, their quota should have been diverted to other candidates. The Tribunal has also considered the judgment in SC and ST Officers Welfare Council v. State of U.P., AIR 1997 SC 1451 in which a three-judge Bench of the Apex Court ruled out that a separate lists of general candidates and SC/ST have to be prepared. Further, relying upon the judgment of the Honble High Court of Delhi in Mohit Yadav v. Union of India, 2003 (2) ATJ 554 wherein it was held that merely because some reserved category candidates have been appointed under the general category quota, the quota for reserved candidates cannot be varied. The counsel for the Applicant has also relied upon the order of the Bombay Bench of the Tribunal in T.C. Verma v. Union of India, 2006 (3) ATJ 247 (CAT) to hold the proposition that SC/ST candidates against general quota would not be considered to have been filled by such methodology.

4. The respondents opposed the said OA, firstly on the ground of principles of res judicata as the claims of the Applicant in OA No.2462/2006 for selection in the years 1999 and 2005 were considered and rejected by this Tribunal. Secondly, as per Section 3 of the Limitation Act, it was incumbent upon this Tribunal to decide the plea of limitation irrespective of the fact whether the same is raised or not. Consequently, the claim of the Applicant for selection for the list of 1995 is barred by limitation under Section 21 of the Administrative Tribunals Act, 1985 and could not have been entertained by this Tribunal and that too in second litigation on the same issue. Thirdly, the liberty granted by this Tribunal in OA No.2462/2006 (supra) was only in case of non-filling of cadre strength in the SC category for the year 2005 and the same could not have been ipso facto extended to the selection for the year 1999. Further, it was only vide letter No.14011/63/01-4TP dated 21.03.2002, clarified that in the case of promotion by selection, the Scheduled Caste/Scheduled Tribe candidates who secured more marks than the General Category candidates whose name appeared at the end of the General Category list will be promoted to the higher grade in place of the latter. By the said letter it was also clarified that the Scheduled Caste/Scheduled Tribe candidates appointed by promotion on their own merit and seniority and not owing to reservation will not be adjusted against the reserved points of the reservation roster. They will be adjusted against unreserved points and reservation, if any, will be given in addition. According to the Review Applicant, this Tribunal has also failed to consider the fact that the promotion List-A 1999 was prepared as per the existing rules on the said date and in compliance with the Government orders.

5. We have heard Mrs. Rashmi Chopra, learned counsel for the Review Applicant and Mr. Yogesh Sharma, learned counsel for the respondents. It was on detailed consideration of the matter, this Tribunal vide its order dated 19.5.2010 allowed the OA and held that the respondents have misapplied the instructions to fill up quota of SC/ST from the candidates belonging to that respective category, even if they have achieved the merit at par with general category candidates. As such, after the decision in R.K. Sabharwal's case (supra) followed by OM dated 2.7.1997 has to be applied for reservation to SC/ST category candidates who achieve merit of general category has to be deemed as general category candidates and the said quota would not be counted towards reservation. Accordingly, it was held that because of non-following of the aforesaid fundamental right of applicant to be considered as a SC category candidate fairly and equitably for promotion had been violated. This Tribunal has also observed that as per information made available to the Applicant under RTI Act, she secured the 8th position and came within the zone of consideration against 15 vacancies earmarked for SC category in which she has been adjusted but secured merit of general category candidate. Accordingly, the OA was allowed to the extent of considering the applicant for promotion to list A against SC

quota on the basis of the selection of the year 1999 and in the event she was otherwise qualified, to consider her for promotion from the date her juniors have been promoted as such, from the year 1999 with all consequences, as admissible in law.

6.The respondent-Commissioner of Police challenged the aforesaid order of this Tribunal before the Honble High Court of Delhi in Writ Petition (Civil) No.7027/2010. According to the judgment dated 11.8.2011 therein after some arguments, on instructions from the Petitioner, their counsel sought permission to withdraw the Writ Petition with liberty to approach this Tribunal to seek review of the order dated 19.5.2010 in accordance with law on the ground that the Original Application of the respondent was barred by limitation. On the aforesaid submission, the High Court of Delhi dismissed the Writ Petition as withdrawn with liberty as prayed for, without prejudice to the other grounds and contentions raised by the petitioner in the Writ Petition which would be open to challenge.

7.According to the Review Applicant, the order dated 19.5.2010 directing consideration and grant of promotion to the respondent is contrary to law. The Review Applicant has also stated that the respondent did not qualify for selection process for the year 1999. He has also stated that the aforesaid OA was hit by principles of res judicata. The very same claim was raised by the respondents in OA No. 2462/2006 wherein selection for the year 1999 and 2005 was considered and rejected.

8. Further, the Review Applicant has submitted that the claim of the respondent for selection in the list of 1999 was barred by limitation under Section 21 of the Administrative Tribunals Act, 1985, and could not have been entertained by the learned Tribunal and that too in the section litigation on the same issue. The learned counsel for the Review Applicant has also relied upon the instructions contained in Section 3 of the Limitation Act and argued that it is incumbent on the court to decide the plea of limitation irrespective of the fact whether the same is raised or not. The liberty granted by the Tribunal on the issue of non-filling of SC posts cannot be misused by the respondent to agitate the plea of promotion which stood concluded. In fact, the liberty was granted only in the case of non-filling up of cadre strength for the year 2005 and cannot ipso facto extend to the selection for the year 1999.

9.The Review Applicant has further submitted that it is only on 21.03.2002, vide clarification No.14011/63-01/UTP the Government stated that in the case of promotion by selection, the SC/ST candidates who secured more marks than the general category candidates whose name appeared at the end of the general category list, would be promoted to the higher grade in place of the latter.

10.The learned counsel for the respondent (applicant in the OA) opposed this Review Application. Firstly, he has raised the preliminary objection that while the OA was decided on 19.5.2010 then why this RA has been filed only on 10.09.2011, as such the same is barred by limitation. Secondly, he has stated that the Review Applicant is trying to reargue the whole case on merits by utilizing the remedy of RA, which is not permissible in the eyes of law. In this regard, she has relied upon the Apex Courts judgment in the case of Chandra Kanta and Another Vs. Shekh Habib AIR 1975 SC 500 wherein it has been held that the Review Application cannot be utilized for the purpose of rearguing the case. She has also relied upon the judgment of the Apex Court in the case of Smt. Meera Bhanya Vs. Smt. Nirmala Kumar Chaudhary AIR 1995 SC 455 where it has been held that the power of review cannot be exercised on the ground that the decision was erroneous on merits. Further, he has submitted that in the case of Union of India Vs. Tarit Ranjan Dass 2004 SCC (Lands) 160, the Apex Court has held that the scope of review is limited and it is not permissible for the forum hearing the Review Application to act an appellate authority in respect of the original order by a fresh order and rehearing of the matter to facilitate a change of opinion on merits.

11. Learned counsel for the respondents has also stated that the Review Applicant has suppressed the material facts from the Honble High Court of Delhi by stating that the Original Application was barred by limitation and by giving wrong statement they sought the liberty to file the Review Application. He has reiterated that the OA was filed within the limitation period, therefore, there was no question of dismissing

the OA on the ground of limitation. He has also rejected the submission of the Review Applicant that the case is hit by the principles of res judicata.

12. On merits, the learned counsel for the respondents has stated that in the Review Application, the applicant has made a wrong and false statement whereas both the selections were not required to be qualifying in nature but were based on merits subject to availability of vacancies but in the present case, in spite of availability of SC quota vacancy, the respondents did not promote the applicant and counted those SC persons against the SC quota who were promoted on the basis of general seniority and by counting those SC, the respondents illegally mentioned that they have filled up the SC quota. However, the aforesaid facts came to the knowledge of the applicant by seeking information under RTI and, therefore, the action of the respondents in the OA were challenged before this Tribunal by filing OA No.2462/2006 which was disposed of on 3.7.2008. He has specifically stated that the submission of the applicant that the OA was hit by res judicata was quite contrary to the facts.

13. We have heard Mrs. Rashmi Chopra, learned counsel for the Review Applicant and Mr. Yogesh Sharma, learned counsel for the respondent. It is seen that the Review Applicant could not succeed in Writ Petition (Civil) No.7027/2010 filed before the Honble High Court of Delhi against the order of this Tribunal in OA No.2639/2008 (supra). The submission of the learned counsel for the Review Applicant before the Honble High Court of Delhi was only that the application was barred by limitation. It is not the case of the Review Applicant that the aforesaid contention was raised by them before this Tribunal, but if that was so, the respondents could not have raised this issue before the Honble High Court of Delhi and ultimately they have stated that now they want to raise this issue before the Tribunal by filing a review and sought permission to withdraw the Writ Petition. In other words, it is not the order of the High Court of Delhi to raise the issue of limitation before the Tribunal by filing the present Review Application. It was their own submission before the Honble High Court of Delhi that they would like to file the Review Application on the ground that the Original Application was barred by limitation.

14. In our considered view it was only when the Review Applicant found that there was no merit in the Writ Petition filed by them, they had taken the flimsy ground that the OA itself was hit by limitation and they could not raise the said issue before this Tribunal. According to us, the ground taken by them is not the one on which a Review Application can be filed. Review Application can only be filed only as per the provisions contained in Order XLVII of CPC which reads as under:-

1. Application for review of judgment

(1) Any person considering himself aggrieved.

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

15. By no stretch of imagination, it can be held that this Review Application is covered by the aforesaid

provisions. Consequently, we dismiss this Review Application. There shall be no order as to costs.

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