

Central Adminisrative Tribunal
Principal Bench

R.A.No.146/2002 in
O.A.No.3146/2001

Hon'ble Shri V.K. Majotra, Member(A)
Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 11^{th} day of July, 2003

Hind Kumar & Anr.

Applicants

Vs.

Union of India & Others

Respondents

Presence: Sh. B.S.Mainee, learned counsel for
review applicant.

Shri Yogesh Sharma, learned counsel for
for original applicants.

Sh. B.S.Jain, learned counsel for original
official respondents.

O R D E R

By Shri Shanker Raju, M(J):

The present RA has been filed by Respondent No.4, namely, Shri Harish Kumar, working as Diesel Assistant. By an order dated 9.5.2002, interpolation of review applicant's name in the panel for the post of Driver (Goods) has been set-aside by this Tribunal.

2. As one of the criteria as on the date of notification, i.e., 20.3.2000, for the post of Goods Traffic is 60000 Kms. foot plate experience, Respondent No.4 who could not complete the aforesaid qualification, as on the date of notification by a subsequent relaxation, on completion of 60000 Kms foot plate coverage, on 7.7.2001 was interpolated in the panel. Accordingly, observing the same to be arbitrary promotion of Respondent No.4 was set-aside. Directions have been issued to declare the results of the applicants to fill up the post of Driver (Goods).

3.. Against the aforesaid order, Respondent No.4 sought review, on the ground that there exist an

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error apparent on the face of record in so far as the observations of this Court a finding as to quashing of the promotion of Respondent No.4. Whereas it is contended by Shri B.S.Mainee, learned counsel for review applicant, Respondent No.4 was yet to be promoted as Driver (Goods) but was only empanelled.

4. In so far as the ratio relied upon by this Court in Vasant Rao Roman v. Union of India & Others, 1987(2) SLJ (CAT) 318, it is contended that the same applies to the case of Respondent No.4 and as Respondent No.4 had completed 60000 Kms. foot plate coverage on relaxation, accorded to him Board as applicant was utilised in the Control Office on administrative grounds by the Railway Administration, the competent authority accorded his approval for interpolating the name, and in so far as review applicant is concerned, he is entitled for the benefit, and relying upon the decision of Apex Court in S.Nagaraj & Ors. v. State of Karnataka & Ors., JT 1993(4) SC 27, it is contended that review is to be allowed not only within the scope and ambit of Order 47, Rule 1 of CPC but also in the interest justice.

5. On the other hand, review respondents' counsel (counsel for original applicants), Shri Yogesh Sharma, denied the contentions and stated that by way of review application, review applicant is reagitating the entire issue which is not within the ambit of Section 22(3)(f) of the Administrative Tribunals Act, 1985.

6. Moreover, it is contended that as statutory instructions have force of law, foot plate coverage of 60000 Kms. was an essential qualification, and is to be specified as on date of

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the notification, i.e., March, 2000 as the Respondent No.4 has acquired the necessary eligibility qualification subsequently, his empanelment was rightly set-aside.

7. After hearing both the counsel, we have directed the learned counsel original official respondents, Sh. B.S.Jain to produce the record, as he has contended that respondents have sought relaxation on approval by the Railway Board as to empanelment of Respondent No.4.

8. On perusal of the record, we find that no express approval in writing has been sought from the Railway Board but later on when the matter has been spoused by the Association, competent authority, GM(P) by an order dated 19.6.2002 accorded approval for de-empanelment of name of review applicant from the panel of Driver (Goods) and also empanelled Applicant No.1.

9. In view of the above, though we find that even erroneous view taken by the Court cannot be a subject matter of review. However, we find an error apparent on the face of record as per the directions issued, promotion of Respondent No.4 was set aside. Whereas he was yet to be promoted as this is an inadvertent factual error, and the same is liable to be rectified. In para 5 of our Judgement dated 9.5.2002, it has been written as under:

"5. Having regard to the discussion made and reasons recorded above, relaxation granted in the case of respondent No.4 against Annexure A-4 is held to be wrong and arbitrary and thus promotion of Shri Harish Kumar, respondent No.4, to the post of Driver (Goods) grade Rs.5000-8000 from Diesel Assistant when he had not completed the requisite condition of 60,000 Kms. of foot-plate as Diesel Assistant, is quashed and set aside."

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(P)

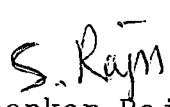
10. In view of the above discussion, as far as para 5 of the Order dated 9.5.2002 quoted above may be modified as under and rest of the matter mentioned in Para 5 will remain their.

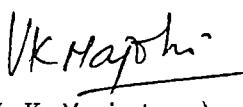
"5. Having regard to the discussion made and reasons recorded above, relaxation granted in the case of respondent No.4 against Annexure A-4 is held to be wrong and arbitrary."

11. Apart from the factual error, as the issue has been made to reagitate the matter, review is not maintainable as per the provisions of Section 22 (3) (f) of the Administrative Tribunals Act, 1985 read with Order 47, Rule (1) of CPC and also in view of the ratios laid down by the Hon'ble Apex Court in K. Ajit Babu & Others v. Union of India & Others, JT 1997 (7) SC 24.

12. However in the light of the fact that there was no relaxation from the Board, as to foot plate coverage of 60000 and the fact that name of Respondent No.4 has already been deempanelled from the panel of Driver (Goods), this review is disposed of in the above directions.

Registry is directed to send a copy of this order to the concerned parties, No costs.


(Shanker Raju)
Member(J)


(V.K. Majotra)
Member(A)

/rao/