

**CENTRAL ADMINISTRATIVE TRIBUNAL
AMHEDABAD BENCH, AHMEDABAD**

Review Application Nos.07/2020

in OA No.34/2019

Dated the 8th day of January 2021

CORAM :

Hon'ble Shri Jayesh V Bhairava, Member (Judicial)

Hon'ble Shri Dr A.K.Dubey, Member (Administrative)

Mr Hiren Himatbhai Makwana,
S/o Himatbhai Ramjibhai Makwana,
Hindu (SC) Age 29, Business -Unemployed.
Block 12, Gujarat Housing Board,
Opp. Laxman Dham, Palace Road,
Palitana, Pin-364270. Dist. Bhavnagar (Gujarat). ... Applicant

(in person)

V/s

- 1 Union of India and others,
Through Ministry of Railway,
Chairman, Railway Board,
Rail Bhavan, New Delhi (India).
- 2 Chairman, Railway Recruitment Board,
1st Floor, Meter guage Railway Station Building,
Ahmedabad (Gujarat).
- 3 Director, Railway Recruitment Control Board,
Rail Bhavan, New Delhi (India).
- 4 Chief Officer,
Research Designs and Standards Organisation (RDSO),
Operating Department, Main Office Western Railway,
Churchgate, Mumbai (Maharashtra).
- 5 Director (Psycho Test),
Research Designs and Standards Organisation (RDSO),
Manaknagar, Lucknow Pin 226011 (U.P.) ... Respondents

ORDER (BY CIRCULATION)

Per Hon'ble Shri J V Bhairavia, Member(J)

1 The present review application No.07/2020 is filed by the original applicant seeking recall/review of order dated 19/10/2020 passed in OA No.34/2019 (Annexure A/1). It is noticed that aggrieved by non

selection of the applicant for the post of Assistant Loco Pilot, the applicant herein had approached this Tribunal by filing OA No.34/2019 and had sought the following reliefs:

“(1) The Hon’ble Tribunal may be pleased to issue appropriate order or direction to appoint the applicant for the post of ALP.

(2) The Hon’ble Tribunal may be pleased to issue appropriate, order or directions to strike balance and to set aside all unfair, illegal, arbitrary and violation of the article 14, 16, and 17 of Constitution of India in the recruitment procedures.

(3) The Honourable Tribunal may be pleased to pass such other and/or further orders as may be deemed fit, just and proper in the interest of justice.

(4) Quash the impugned action of the respondents Nos.1, 2, 3, 4 and 5 whereby they did not allow the real beneficial qualified candidates to be selected for the posts as on the advt. CEN No.1/14 of Railway recruitment Board, being the action arbitrary, discriminatory, illegal, malice in law and corruption.

(5) I pray to the honourable Tribunal to take appropriate actions against the responsible officials of this scam under IPC, Corruption Act, and atrocity act in the interest of country and the Public Safety.

(6) Pass such other orders or reliefs as deemed fit and proper in the facts and circumstances of the case in the favour of the applicant and against the respondents Nos.1, 2, 3, 4 and 5.”

2 This Tribunal after going through the factual matrix of the case and the contentions raised by parties found that the applicant had participated in the recruitment process for the post of Assistant Loco Pilot as per advertisement CEN/No./2014 dated 18/01/2014 published by the respondents. After being unsuccessful in the aptitude test, he had challenged the validity and reasonability of the terms and conditions stipulated in the employment notice, more particularly the condition of minimum T score of 42 marks as qualifying marks for each test (sub test) of the Aptitude test. It was found that before the recruitment process began, the RRB had declared all the terms and conditions including the minimum qualifying marks for the Aptitude test. Since the examining body in clear terms declared the condition that the candidates needs to secure a minimum score of 42 marks in each of the tests batteries to qualify in the aptitude test. By accepting the said conditions the applicant herein had participated in written examination as well as aptitude test. Therefore, this Tribunal came to

the conclusion that it is not open to the applicant to challenge the validity of the terms and conditions of the employment notice after participating in the selection process as the same is observed in para 13, 14 and 15. Hence the OA was dismissed by order dated 19/10/2020 on merits.

- 3 Aggrieved by the said order dated 19/10/2020, the review applicant has filed the present RA on the ground that the applicant in the OA contended that action of the respondents was in violation of mandate of Articles 14, 15, 16, 17, 46 and 335 of Constitution of India and the respondents had adopted corrupted practice for recruitment. Railway Board destroyed the Policy and no relaxation was given to SC/ST/OBC candidates to pass the aptitude test on the point of safety. Whereas the Railway Board vide letter dated 7/11/2007 had given relaxation to the departmental candidates to pass the aptitude test. The said conduct of the respondent amounts to scam as also to deprive the constitutional rights of weaker section. However, the said contention of the applicant was not considered by this Tribunal and caused damage to the weaker section including the said applicant. Hence, this Review Application.
- 4 The applicant has also contended in para 7 of the RA that the Government of India abolished the oral interview system and introduced written and aptitude test vide Railway Board letter dated 04/06/2003. Thereafter, vide letter dated 21/03/2005 the Railway Board again decided that the Railways may switch back to the earlier system of multiple cutoff and qualifying status for the aptitude test. It is also contended that respondents in their reply in the OA stated that after detailed study of the panellists, the decision for shifting back to multiple cutoff system as was followed before 13/10/2000 was done on the basis of the recommendation of the High Level Safety Committee. Thereafter, the advertisement for recruitment was published on 01/09/2003 based on Railway Board's letter dated 04/06/2003. It is further contended by the applicant that the report of

the Railway Board is whimsical and unreliable. Therefore, this Tribunal ought to have considered the claim of applicant to the effect that respondent had erroneously introduced the minimum cutoff marks in each test of the aptitude test.

- 5 The applicant has further contended he had sought additional information under RTI vide application dated 18/07/2020 (Annexure A/2 & A/3 in this RA) whereby he has requested to supply the copy of RDSO's study report no PT-23 of May 2004. Further he has also sought information about what actions were taken with those employees after the study report, what fault was found in the candidates of SC/ST/OBC so that the relaxation was removed and also provide total marks given to those employees who have undergone process of psycho test. In response to it vide letter dated 06/10/2020 the first Appellate Authority i.e. Ministry of Railways supplied the information to the applicant wherein it was stated that the concerned report was made by the officers of Psycho Technical Directorate working at that time. Officers who made the study report have retired from railway. Report No.PT-23 was already provided to him and the details about aptitude test were clearly mentioned under FAQ section of Psycho Technical Directorate Link of RDSO website and advised to refer to it. It is contended that the first Appellate Authority had not supplied the specific details as sought for under the provision of RTI and denied the same on the ground that the officer who prepared the policy/report has retired. The Railway Authority failed to supply the information and with malafide intention deprived the applicant to be successful in the aptitude test. The said conduct of the respondents amounts to fraud under Constitution. The applicant placed reliance on judgment passed by Hon'ble Apex Court in the case of UP Juniors Doctor Committee v/s D.Shital Nandwani and contended that if the respondents have built the foundation on water and the conduct is fraudulent, there is no need to hear the respondents in this Review Application. It is further contended that unintelligent candidates who got less marks in written test, got more marks in aptitude test.

6 On the basis of aforesaid pleadings and grounds in the RA, the applicant has sought following reliefs :

“Hence I once more pray to Hon’ble Tribunal in the interest of justice to recall this order of Dt. 19/10/2020. I should be given relaxation of 10% in the aptitude test which is my constitutional right or the letter of multiple cutoff must be set aside and the merit must be emphasized as article 14 & 16. In the interest of the country and to make India corruption free, please take action as per the Indian Constitutional Law. As I stated in the OA the sun was risen in the west. So there is CBI enquiry is essential in this matter. I am ready to go upto Supreme Court in this matter. We also have rights for the interest of the country, for the service of the country. Again I pray to Hon. Tribunal to recall the order dated 19/10/2020 and provide me relief as stated in the OA.”

7 The scope for a review application is clearly defined in various orders of the Hon’ble Supreme Court. The Hon’ble Supreme Court in the case of *State of West Bengal & others v. Kamal Sengupta and another* (2008) 3 AISLJ 209 has held that the Tribunal can exercise the powers of a Civil Court in relation to matters enumerated in clauses (a) to (i) of sub-section (3) of Section 22 of the Administrative Tribunals Act including the power of reviewing its decision. By referring to the power of a Civil Court to review its judgment/decision under Section 114 CPC read with Order 47 Rule 1 CPC, the Hon’ble Supreme Court laid down the principles subject to which the Tribunal can exercise the power of review. At para 28 of the said judgment the Hon’ble Supreme Court culled out the principles which are:

- (i) *The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/analogous to the power of a Civil Court under Section 114 read with Order 47 Rule 1 CPC.*
- (ii) *The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.*
- (iii) *The expression “any other sufficient reason” appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.*
- (iv) *An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(f).*

- (v) *An erroneous order/decision cannot be corrected in the guise of exercise of power of review.*
- (vi) *A decision/order cannot be reviewed under Section 22(3)(f) on the basis of subsequent decision/judgment of a coordinate or larger Bench of the Tribunal or of a superior Court.*
- (vii) *While considering an application for review, the tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.*
- (viii) *Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the Court/Tribunal earlier.”*

8 The Hon’ble Supreme Court in an another judgment in the case of Union of India v/s Tarit Ranjan Das 2004 SCC (L&S) 160 while dealing with the order passed in Review Application at paragraph 13 observed as under:

“The Tribunal passed the impugned order by reviewing the earlier order. A bare reading of the two orders shows that the order in review application was in complete variation and disregard of the earlier order and the strong as well as sound reason contained therein whereby the original application was rejected. 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 rehearing of the matter to facilitate a change of opinion on merits. The Tribunal seems to have transgressed its jurisdiction in dealing with review petition as if it was hearing original application. This aspect has also not been noticed by the High Court.”

9 Bearing in mind the above principles laid down by the Hon’ble Supreme Court, existence of an error on the face of the record is *sine qua non* for review of an order. It is not permissible for the forum to here in the review application to act as an Appellate Authority in respect of the original order by a fresh re-hearing of the matter to facilitate a change of opinion on merits. We have examined the grounds urged by the review applicant in support of his prayer for reviewing the order and we find that the review applicant has failed to bring out any apparent error on the face of order under review. So far as grievance of the applicant that this Tribunal has not considered the contention of the applicant that the respondents had erroneously introduced the

minimum cutoff marks in the aptitude test and no relaxation was granted to the weaker section candidates and thereby the Railway Authority violated the mandate of Articles 14, 15, 16 and 335 etc of Constitution of India is concerned it is noticed that in para 12 to 15 of the order under review, this Tribunal considered the main grievance stated in the OA and same has been found lack of merit for the reason as narrated in the said paras. In our considered opinion the grounds and reasons stated by the review applicant in this RA is not tenable to exercise the power of Review.

- 10 Thus, in view of above discussion and in light of the law laid down by Hon'ble Apex Court (supra), the applicant has failed to point out any error much less an error apparent on the face of record justifying the exercise of power under sub-clause (f) of sub-section (3) of Section 22 of the Administrative Tribunals Act, 1985. The review application deserves to be dismissed and accordingly, the same is dismissed.

(Dr A K Dubey)
Member(A)

(Jayesh V Bhairavia)
Member(J)

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