

**RA No. 291/05/2016 in (OA No. 291/482/2012) with
MA No. 291/170/2016 & MA No. 291/171/2016**

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

**REVIEW APPLICATION NO. 291/05/2016
IN
(ORIGINAL APPLICATION NO. 291/482/2012)
WITH
MISC. APPLICATION NO. 291/170/2016
&
MISC. APPLICATION NO. 291/171/2016**

Order reserved on 02.02.2021

DATE OF ORDER: 10.02.2021

CORAM

**HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER
HON'BLE MRS. HINA P. SHAH, JUDICIAL MEMBER**

Hemant Kumar Meena son of Sh. Suraj Mal Meena aged about 30 years, R/o Near Dharmendra Kirana Store, Jago Ka Mohalla, Prem Nagar-II Kota and presently working as Assistant Loco Pilot, under Senior Section Engineer (TRO) / CT CC, West Central Railway, Kota Division, Kota.

....Applicant

Shri Mukesh Agarwal, counsel for review applicant / petitioner (through Video Conferencing).

Shri C.B. Sharma, counsel for original applicant in OA (through Video Conferencing).

VERSUS

1. Union of India through General Manager, West Zone, West Central Railway, Jabalpur.
2. Divisional Railway Manager (Estt.), West Central Railway, Kota Division, Kota.
3. Shri Mahaveer Meena, Assistant Loco Pilot, C/o CT CC, Gangapur City, West Central Railway, Kota Division.

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4. Shri Hemraj Meena, Assistant Loco Pilot, C/o CT CC, Gangapur City, West Central Railway, Kota Division.
5. Shri Lakhan Singh, Assistant Loco Pilot, C/o CT CC, Gangapur City, West Central Railway, Kota Division.

....Respondents

Shri Anupam Agarwal, counsel for respondent Nos. 1 and 2 (through Video Conferencing).

None present for respondent Nos. 3 to 5.

ORDER

Per: Hina P. Shah, Judicial Member

The present Review Application has been filed by the applicant, (Vijay Kumar son of Sh. Ghashi Lal R/o Village & Post Naya Nohra, Teh. Lalpura, Distt. Kota), under Section 22(3)(f) of the Administrative Tribunals Act, 1985 read with Rule 17 of the Central Administrative Tribunal (Procedure) Rules, 1987 against the order dated 17.03.2015 passed by this Tribunal in OA No. 482/2012 (Hemant Kumar Meena vs. Union of India & Ors.).

2. It is the claim of the review applicant/petitioner that the original applicant had filed O.A. No. 482/2012 seeking a direction to the respondents to allow Grade Pay (GP) Rs.2400/- w.e.f 01.05.2010 or 04.06.2010 to the cadre of Senior Assistant Loco Pilot (SALP) by

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placing the name of the applicant in the suitability List dated 15.04.2011 (Annexure A/7) and order dated 18.05.2011 (Annexure A/8) at proper place by quashing letter dated 11.05.2012 (Annexure A/1) with all consequential benefits. He had also prayed that the respondents be directed to allow the seniority to the applicant in the cadre of Assistant Loco Pilot (ALP) as allowed vide seniority list dated 08.12.2010 (Annexure A/6) at Sl. No. 186 and further in the cadre of SALP after allowing GP of Rs. 2400/- by deleting the name from Sl. No. 5 from the seniority list dated 08.02.2012 (Annexure A/10) by quashing letter dated 11.05.2012 (Annexure A/1) with all consequential benefits. His another prayer was that the respondents be directed to modify order dated 26.04.2012 (Annexure A/12) to the extent of date of effect of grant of Grade Pay Rs. 2400/- as 01.05.2010 or 04.06.2010 instead of with immediate effect with all consequential benefits including arrears of pay & allowances, etc.

3. The review applicant/petitioner states that this Tribunal vide its order dated 17.03.2015 has disposed of the O.A. with the following directions to the respondents, which are as under:

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"20. Thus, on the basis of above discussions, we issue the following directions to the respondents: -

- (A). The applicant is entitled for his seniority in Kota Division with effect from 22.03.2005 as he was an appointee of 22.03.2005 and Shri Anoop Kumar Vaish was appointee of 16.01.2001, being lower of the two.
- (B). The applicant is also entitled for PB-1 Rs. 5200-20200 plus grade pay of Rs. 2400 with effect from 22.10.2010 the date on which he joined at Kota Division as his juniors at Kota Division were given grade pay of Rs. 2400 with effect from 01.05.2010.
- (C). The applicant will also be entitled for all consequential benefits like arrears of pay and allowances, etc.
- (D). The respondents shall complete this exercise within a period of three months from the date of receipt of a copy of this order."

4. The review applicant states that the original applicant had not impleaded the present review applicant as party respondent in the O.A. and in his absence, the Tribunal has passed the aforesaid order. In compliance of the orders of the Tribunal, the respondent No. 2 has revised seniority list of SALP in GP Rs. 2400/- dated 14.07.2015 vide its order dated 24.12.2015 and the present review applicant has been lowered down in seniority and name of the original applicant is placed at Sl. No. 159-A and now he comes

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at Sl. No. 164, (Annexure-RP/2) & (Annexure-RP/3) respectively.

5. The review applicant states that it is only in April 2016 when it came to his knowledge of the compliance of order dated 17.03.2015 that the respondents have revised the seniority list, he immediately contacted his counsel and as his rights were adversely affected due to his being lower down in seniority of SALP dated 14.07.2015, he has no other remedy but to approach this Tribunal by filing Review Application for redressal of his grievance on following grounds:

a) The order passed by the Tribunal in absence of necessary parties, whose rights are adversely affected, is against the principles of natural justice and, therefore, the same deserves to be reviewed.

b) The Tribunal has not appreciated the fact that as per Para 310 of IREM Vol.-I, Railway Servants transferred on Mutual Exchange from one cadre of a Division, Office or Railway to the corresponding cadre in another division, office or Railway shall retain their seniority on the basis of

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the date of promotion to the grade or take seniority of the Railway servants with whom they have exchanged, whichever of the two may be lower. It is his claim that original applicant was initially appointed as ALP on 18.09.2006 in Delhi Division and on mutual transfer joined Kota Division on 04.06.2010 in GP of Rs. 1900/-, which is clear from order dated 09.06.2010. Therefore, as per para 310 of IREM, he was entitled for seniority amongst employees in GP of Rs. 1900/- as available on 04.06.2010 i.e. on joining in Kota Division as appointment of Yogesh Kumar i.e. 02.03.2007 was in GP of Rs. 1900/- and not in GP of Rs. 2400/-. Therefore, the order passed by the Tribunal does not sustain in eyes of law.

c) As per re-structuring of cadre of ALP by Railways, 80% post as SALP in the GP of Rs. 2400/- and 20% as ALP in the GP of Rs. 1900/- w.e.f. 01.05.2010 and as per the said scheme, respondents issued the suitability list dated 15.04.2011 as the original applicant was not on the cadre strength of Kota Division, his name was not included in the said list. As the original

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applicant was not born in the cadre on the said date in Kota Division, the original applicant has no right to include his name in the seniority list and claim promotion on the said basis. As such, the original applicant cannot be placed above him in the seniority of SALP in the GP of Rs. 2400/-.

6. The review applicant, therefore, prays that as per the decision of the Hon'ble Apex Court in the case of **Ranjan Kumar & Ors. vs. State of Bihar & Ors.**, reported in (2014) 16 SCC 187, the writ petition was disposed on the ground that necessary parties were not impleaded, hence, the present O.A. was defective on the same grounds as no relief could have been granted to the original applicant for not impleading necessary parties. Therefore, as he is the one of the necessary parties, who is affected, the present Review Application may be allowed by reviewing the order dated 17.03.2015 passed by this Tribunal in OA No. 482/2012 giving an opportunity of hearing to the review petitioner/applicant in the interest of justice.

7. It is seen that the review applicant has filed present Review Application on 11.05.2016 along with Misc. Application No. 291/170/2016 for condonation of delay in filing present Review Petition that the delay

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was neither intentional nor deliberate and that the same was filed after his counsel obtained certified copy of order dated 17.03.2015 on 28.04.2016 and, therefore, immediately the said Review Petition was filed and the delay be condoned in the interest of justice. He also filed Misc. Application No. 291/171/2016 seeking permission to file Review Petition.

8. This Tribunal vide its order dated 26.05.2016 issued notices to respondents to file their reply. As seen from the records, time and again, matter was adjourned but none of the respondents have filed their reply for the reasons best known to them till the date of hearing of this Review Application.

9. Heard learned counsels for the parties through Video Conferencing and perused material available on record along with judgments.

10. The review applicant reiterated the facts stated earlier and further mentioned that Review Application be allowed as he is the affected party and that original applicant has mischievously made candidates much below as party respondents though he very well knew that the review applicant will be actually affected and,

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therefore, Review Application be allowed in view of several judgments of the Hon'ble Apex Court on the issue that affected persons have a right to be heard.

11. Though no reply was filed by the respondents but both learned counsel for the official respondents as well as learned counsel for the original applicant have orally argued the matter to justify their stand.

12. The learned counsel for official respondents pointed out that if the order dated 17.03.2015 passed by the Tribunal is seen, it will be clear that this Tribunal at para 13 has observed that "*Though it is not clear from the pleadings as to why both i.e. the applicant (Hari Kesh Meena) as well as Shri Anoop Kumar Vaish were reverted from the grade pay of Rs. 2400 to 1900 before their mutual transfer. However, without going into this controversy, we proceed with the fact that both the applicant as well as Shri Anoop Kumar Vaish when mutually transferred were in the pay band-1 Rs. 5200-20200 plus grade pay Rs. 1900.*"

The official respondents stated that the query raised by the Tribunal was not discussed / explained properly because according to Notification of Railway Board RBE No. 107/2007, it is necessary for mutual transfer in Initial Grade and in Inter Mediate Grade of two

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employees that they both should belong to the same community/category. He also raised the plea that original applicant had to make the review applicant a party respondent as he was the affected and necessary party to the O.A. Also they have raised point of jurisdiction i.e. O.A. was not challenged by original applicant at the relevant time when he came to Kota and also when seniority list of 2011 and 2012 did not disclose his name. The official respondents stated that the order of Tribunal was challenged before the Hon'ble High Court of Rajasthan, Jaipur Bench, Jaipur by filing DB CWP No. 11653/2015 along with 08 such WPs. The Hon'ble High Court has dismissed the said bunch of WPs vide its order dated 23.11.2015. The learned counsel for the official respondents produced a copy of the said order before this Tribunal.

13. The learned counsel for the original applicant stated that he had made persons affected as party respondents and that there was no lacuna on his part. He further stated that the Tribunal vide its order dated 17.03.2015 has gone through the pleadings in detail and passed justified and proper order and none of the facts were misled. He too stated that the Hon'ble High

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Court of Rajasthan has dismissed the WPs filed by the official respondents clearly stating that the same were without any substance as they did not find any manifest error being committed in the facts of the case which may call for any interference. Therefore, the present review applicant has no case for re-opening the matter as there is no error apparent on face of record and that the Review Application deserves to be dismissed.

14. After hearing the parties, it is clear that after passing of the orders by this Tribunal, the matter was carried forward to the Hon'ble High Court of Rajasthan who has finally applied its mind and passed necessary orders.

15. After coming to our knowledge about passing of the aforesaid order dated 23.11.2015 by the Hon'ble High Court of Rajasthan, Jaipur Bench in the present matter, it will be highly unjust to hear the Review Application by this Tribunal as the Hon'ble High Court has upheld the orders of this Tribunal and, therefore, the appropriate jurisdiction lies before the Hon'ble High Court as the official respondents have passed necessary orders after the Writ Petitions filed by them were dismissed. Therefore, the issue of review

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applicant being an affected party or not has to be considered by the Hon'ble High Court as the orders of this Tribunal were challenged before Hon'ble High Court and the same has attained its finality. Hence, it is complete unfair on our part to make any such observations after the Hon'ble High Court has arrived at its finding. Thus, it is necessary for the Review Applicant / Petitioner to file the Review Petition / Application before the appropriate forum.

16. In view of observations made above, we are of the considered view that Review Application/Petition be filed before the appropriate forum. Accordingly, the present Review Application is disposed of with no order as to costs.

17. In view of Review Application being disposed of, M.A. No. 291/170/2016 and M.A. No. 291/171/2016 are disposed of as infructuous.

**(HINA P. SHAH)
JUDICIAL MEMBER**

**(DINESH SHARMA)
ADMINISTRATIVE MEMBER**