

RA No.34/90

in

OA No.1886/89

SH.S.K. KAUSHIK & 4 ORS.

DATE OF DECISION: 13 - 8 - 1990

APPLICANTS

VERSUS

UNION OF INDIA

RESPONDENTS

SHRI B.S. MAINEE

ADVOCATE FOR ORIGINAL APPLICANT

SHRI ANIS SUHRAWARDY

ADVOCATE FOR THE REVIEW

APPLICANTS

SHRI O.P. KSHATRIYA

ADVOCATE FOR THE RESPONDENTS

CORAM:

HON'BLE SHRI T.S. OBEROI, MEMBER (J)

HON'BLE SHRI I.K. RASGOTRA, MEMBER (A)

#### JUDGEMENT

(DELIVERED BY HON'BLE SHRI I.K. RASGOTRA, MEMBER (A))

The above Review Petition has been filed by S/Shri S.K. Kaushik, Subhash Chander, Kedar Nath, Naresh Chander Bahuguna and Rakesh Kumar Sharma, selected intermediate apprentice senior draftsmen (Rs. 1400-2600), Northern Railway, New Delhi, praying that the Tribunal may review/recall its judgement dated 22.1.1990 in OA 1886/89 and rehear the matter after affording an opportunity to the petitioners in this review application. It has further been prayed that the operation of the judgement and order dated 22.1.1990 passed in OA 1886/90 may be stayed in the meantime.

2. In its judgement dated 22.1.1990, the Tribunal had quashed the selection held in terms of Northern Railway's order No. 752-E/87-VIII/E-1-B/II dated 28.4.1989 (page 15 of the paper book of OA No.1886/89). Further the special examination held on 29.9.1989, in accordance with the interim direction of the Tribunal was also cancelled. The respondent railway was further directed to call for fresh applications from eligible candidates considering the vacancies annually and determining the age of eligibility yearwise. The Railway respondents were further directed to complete the entire process of holding the written test, viva voce and declaring the results in the time frame fixed by the Railway Board but not later than six months from the date of communication of this order.

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3. The petitioners in the review petition have submitted that the applicants in OA No. 1886/89 had not impleaded the petitioners in the review application, although they were most likely to be affected by the judgement of this Tribunal. It has, further, been averred that non-impleading of the petitioners in the RA, as parties in the original application No. 1886/89 has deprived them of the opportunity of defending their interests.

4 The OA No. 1886/89 had come up for hearing on 19.9.1989 when an interim order directing the respondents:

- (a) to hold a written test and viva voce test for the applicants within 15 days from the date of receipt of the order; and
- (b) to withhold the result of such examination till disposal of the application (OA No.1886/89) was passed.

The respondents were directed to withhold the result of the selection process already undertaken by them till the written and viva voce test of the applicants were completed.

5. On the next date of hearing viz. 29.9.1989 Shri Anis Suhrawardy appeared in the court and submitted that he represented persons who have already been subjected to test and have been selected and are likely to be affected by the interim order that may be passed in this case. Advocate, Shri Anis Suhrawadi's representation was allowed and he was heard. Advocate, Shri O.P. Kshatriya, appearing for the respondents, submitted that before the Tribunal's order dated 19.9.1989 was communicated to the respondents, the result of the written test and viva voce had been announced on 20.9.1989. After hearing the learned counsel of both the parties and considering the submissions made by Shri Anis Suhrawardy, Advocate representing the persons likely to be affected, the original interim order was modified as under:

"(i) The respondents will hold a special examination,

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both written test and viva voce for the post of Senior Draftsman in terms of Para (C) of Clause (iii) of circular dated 20.6.1978 issued by the Ministry of Railways. (Annexure A-2, page 16 of the application), within 15 days from today, but the results of the test will not be announced till the disposal of this application;

- (ii) Persons already selected in the test held, the results of which have been announced may be sent for training but they should be informed that their selection will be subject to the outcome of this application.

Shri Mainee requests that this application may now be taken up for final hearing early. Shri Kshatriya agrees to file reply to the application within a fortnight from today. Shri Mainee prays for a week's time thereafter to file his rejoinder.

The application is posted for final hearing on 2.11.1989."

6. From the preceding paragraph it would be seen that the respondents were given directions to hold a special examination for the applicants in the OA No. 1886/89 and to withhold the result till the disposal of the OA. Simultaneously the persons already selected in the test held were allowed to proceed for training but they were informed that their selection will be subject to the outcome of this application. The modified order was passed after hearing Advocate Shri Anis Suhrawardy.

Following facts were in the full knowledge of the petitioners in the present RA. Firstly, the provision that the "persons already selected in the test were allowed to proceed for training at the specific request of petitioners in the RA". Secondly their selection was subject to the outcome of OA No.1886/89 and finally, OA No.1886/89 was posted for final hearing on 2.11.1989. It is not the case of Advocate Shri Suhrawardy that the petitioners were unaware of the litigation in this particular matter. They were admittedly aware of the

progress of this case. They participated in the initial deliberations and were successful in getting the interim orders passed by the Tribunal modified in their favour. Yet they chose not to ask for their being impleaded in the OA.

7. In the course of hearing of the RA on 25.7.1990, *Shri* Anis Suhrawardy was repeatedly asked by the Court to establish as to the manner in which the petitioners in the RA were adversely affected by the judgement dated 22.1.1990. There was no clear cut or specific answer to the specific question put to the learned counsel.

8. In the facts of the case as above, the petitioners are at present merely trying to look for shelter under a technicality of their having not been impleaded in the OA. We are of the view that they could not have been impleaded at the time when the OA was filed in September, 1989 as the results of the selection had not been declared. The result of the selection, however, became subject to the outcome of the OA vide our interim order passed on 29.9.1989. *by this Tribunal*. At the time the interim order was passed the petitioners in the present RA, with Advocate Shri Anis Suhrawardy were present in the court. In fact, they were heard as interveners when interim order passed earlier was modified. At that stage, they were at liberty to ask for impleadment, which was not done. To seek shelter under a technicality of having not been impleaded in the OA at this stage cannot be allowed to procrastinate the implementation of the judgement dated 22.1.1990. Justice and fairplay must prevail on a mere technicality.

The Review Application No. 34/90 is accordingly dismissed.

*I.K. Rasgotra*  
(I.K. Rasgotra)  
Member (A)

13/8/1990

*T.S. Oberoi*  
(T.S. Oberoi)  
Member (J)