

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

R.A.No. 331/92 In

**O.A. No.** 989/89

199

**T.A. No.****DATE OF DECISION** 28.9.1993

Shri K.P. Seth &amp; Ors.

**Petitioner**

Shri B.S. Mainee

**Advocate for the Petitioner(s)****Versus**

Union of India

**Respondent**

Shri K.N.R. Pillai

**Advocate for the Respondent(s)** non-official

Shri B.K. Aggarwal,

**Counsel for official Respondents****CORAM****The Hon'ble Mr.** J.P. Sharma, Member (Judl.)**The Hon'ble Mr.** S.R. Adige, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

**(ORAL) JUDGEMENT**

(By Hon'ble Mr. J.P. Sharma, Member)

Shri D.K. Sachdeva and 16 other applicants were selected as PWI, Grade I in the scale of Rs. 2000-3200 by a panel notified on February 10, 1989 by the Division Bench. At the time when this panel was declared, K.P. Seth & Ors. filed an application under Section 19 of the A.T. Act, 1985 assailing this order of February 10, 1989 by which the panel was declared. The Principal Bench in the aforesaid OA-989/89, by its judgement dated 27.11.1991, gave certain directions to the official respondents, who

did not contest that application by filing a reply, and quashed the aforesaid panel declared by the order dated 10.2.1989 and notified by the order dated 21.4.1989 by the Allahabad Division.

2. The case of the present applicants is that they were not parties in the original application filed by Shri K.P. Seth and Others and as such, they could not present their point of view and objection in the aforesaid original application by way of respondents. It is also the case that official respondents did not contest that application. It is stated that they learnt about the judgement of November, 1991 only when the notice of CCP was issued at the instance of the applicants of the O.A. The review applicants have gone to the Hon'ble Supreme Court and filed the S.L.P., CC No.18356/92 and the Hon'ble Supreme Court by its order in IA-1/92 dated November 11, 1992, passed an order that the petitioners before the Supreme Court can approach the C.A.T. by way of filing a review petition and also apply for interim relief, if so advised. On the filing of the present R.A., notices were issued both to the official respondents in the O.A. as well as the original applicants in OA-989/89. The official respondents did not oppose the review application, while the original applicants

opposed the R.A. as well as a prayer made by the review applicants for granting condonation of delay for the reasons stated in the petition and the same has also been opposed by the other party.

3. We have heard the learned counsel at length.

4. The main argument of the learned counsel, Shri B.S. Mainee, is that by virtue of the order of the Railway Board, the Cadre of the P.W.I. was decentralised w.e.f. 23.9.1987 and any selection entered into by the respondents with regard to the existing vacancies upto September, 1987, was illegal and if any such selection had been resorted to and a panel declared on the result of such selection, would be illegal and unenforceable non-est for all purposes. The learned counsel has referred to the authority of Rajbir Singh, a seniority matter of the Railways, wherein the same matter of issue of seniority was taken to the Supreme Court and those who were likely to be affected, were not impleaded as the opposite parties and the relief was granted to the petitioners as that involved the interpretation of rules and application of the decided principles of law. In the similar manner, Shri Mainee argued that since the panel was illegally prepared, that cannot be enforceable at law and persons empanelled therein, have no vested right to be appointed to the grade of PWI-I. The learned counsel, Shri Mainee, has also placed the long history

of the earlier case where the official respondents did not file their reply in spite of a number of opportunities afforded to them. The learned counsel also took objection to the filing of the review application after such a long period as the judgement was delivered in November, 1991 and the review application was filed in October, 1992.

4. Shri K.N.R. Pillai, counsel for the review applicants, has assailed the judgement on the ground that the review applicants, who were already empanelled, were not impleaded as respondents in the O.A. and since they could not know about the pending matter before the Tribunal, they could not take any steps to safeguard their interests. They should not be deprived of a right of hearing on the well-established and recognised principles of natural justice. The learned counsel for the review applicants has also explained the delay, establishing the bonafide that the review applicants have also gone to the Hon'ble Supreme Court and were, therefore, directed to seek the remedy before the Bench, C.A.T. The learned counsel has also referred to the decision of Union of India Vs. Dharam Chand Gauba reported in A.T.R. 1989(1) CAT 231, in which non-party petitioners have filed the review application which was entertained even after one year.

5. Shri B.K. Aggarwal, counsel for the respondents, supported the case of the review applicant, relying on the authority of C.A.T., Ahmedabad Bench (P.L. Khandelwal Vs. U.O.I., 1991(2) SLJ 100).

6. Having given a careful consideration, we are of the opinion that the review applicants were not only proper but necessary parties in the earlier OA-989/89, filed by the opposite party in the review application - Shri K.P. Seth & Ors. Since the official respondents did not contest that application and their right to file the counter was forfeited, the matter could not be highlighted before the Bench which gave the final decision in November, 1991. The contention of the learned counsel, Shri B.S. Mainee, that the panel was wrongly drawn for those vacancies which arose prior to the decentralisation on the basis of the combined seniority, can only be decided after hearing the review applicants as a right has vested in them by a selection right or wrong and the consequent promotion from the grade of PWI-II to PWI-I. By virtue of this judgement of November, 1991, the panel has to be quashed, giving side effect even to the extent of reversion of the selected persons. In view of this, it shall be equitable and just to allow this review application and to set aside the judgement of November, 1991 not on merits,

but only on the ground that the review applicants were not heard as they were not impleaded as party.

The operative portion of the judgement, therefore, is fully set aside in which directions were issued to the respondents.

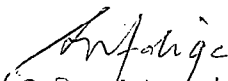
7. Since the judgement dated November 27, 1991 no more exists, the applicants of OA-989/89 are directed to implead all these 17 and odd persons as respondents in this case by filing an amended memo. of parties. Since all these persons are duly represented by Shri K.N.R. Pillai, separate notice need not be issued to them. Shri Pillai has given an understanding that in case the review application is allowed, he will take only two weeks' time to file the reply. A copy of the O.A. will be supplied by the learned counsel for the applicant within a week.

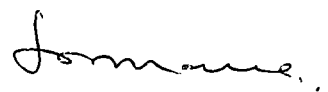
8. A right to file the counter of the official respondents was forfeited, but since the matter has been reopened, that order of forfeiting the right of the official respondents, is also recalled and the official respondents are also given two weeks' time to file the reply. In the reply so filed, a copy thereof be given to the learned counsel, Shri B.S. Mainee, who may file

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rejoinder within two weeks thereafter. List the matter for further direction/hearing on 3.11.1993. It is also made clear that no further time for filing the reply will be allowed.

  
(S.R. Adige)  
Member (A)

  
(J.P. Sharma)  
Member (J)