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**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

**RA No.159 of 2009 with  
MA No.602/2010  
IN  
OA No.585 of 2004**

New Delhi this the 31<sup>st</sup> day of May, 2010

**Hon'ble Mr. Shailendra Pandey, Member (A)  
Hon'ble Dr. Dharam Paul Sharma, Member (J)**

Shri Ramesh Chandra,  
S/o Shri Dwarika Prasad,  
Working as JE-II(IT)  
Under FA&CAO,  
Northern Railway,  
Baroda House,  
New Delhi

(By Advocate: Mrs. Meenu Mainee)

....Review Applicant

**VERSUS**

Union of India through:

1. General Manager,  
Northern Railway,  
Headquarters Office,  
Baroda House,  
New Delhi
2. FA&CAO (Admn.),  
Headquarters Office,  
Baroda House,  
New Delhi.
3. Shri Amarjit,  
J.E.- II (IT),  
Under FA&CAO,  
Northern Railway,  
Baroda House,  
New Delhi.

(By Advocate: Shri Shailendra Tiwari)

.....Review Respondents

**ORDER****Dr.Dharam Paul Sharma, Member (J)**

MA-602/2010 seeking recall of the order dated 24.09.2009 dismissing the review petition is allowed in terms of the prayer made therein.

2. Vide order dated 24.9.2009, the review application was dismissed in the following terms:-

"There is no representation on behalf of applicant Even on second call. We have perused the Review Application and find no justification to review the orders passed. It is dismissed.

The learned counsel for the applicant stated that the above order has been passed without hearing her inspite of the Hon'ble High Court's directions to hear the case on merits. It was pointed out that the RA had been dismissed not only in default but also on merits as could be seen from the order dated 24.9.2009 referred to above. Even if the learned counsel for the review applicant explained her absence on the day of passing the order dated 24.9.2009, nonetheless, the said order having been passed on merits of the Review Petition, the same cannot be gone into afresh as is sought by the learned counsel. However, in <sup>reference</sup> ~~reference~~ to the Hon'ble High Court of Delhi in its order dated 15.7.2009 referred to later in this order, we consider it expedient to accord another opportunity to the learned counsel to make her submissions for our further consideration.

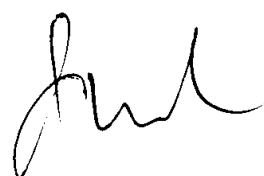


3. The applicant filed the original application praying the following reliefs:-

- "(i) That this Hon'ble Tribunal may be pleased to allow this application and quash the seniority list.
- (ii) That this Hon'ble Tribunal may be further pleased to direct the Respondents to revise the seniority list as per the position on the select list (Annexure A-2) i.e. the position of the panel and not the date of joining.
- (iii) That this Hon'ble Tribunal may be pleased to direct the respondents to promote the Applicant No.1 (petitioner herein) as Senior DEO from the date from which his junior Shri Amarjit (SC) has been promoted.
- (iv) Any other or further relief which this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case may be granted in favour of the applicant.
- (v) That the cost of the proceedings may also be awarded in favour of the Applicant."

4. The said OA was partly allowed vide order dated 03.01.2006 in the following terms:-

"Keeping in view the object underlying in para 303 of Indian Railway Establishment Manual-I read with Railway Board's Circular dated 10.09.1991, the applicants cannot be allowed to lose their seniority when they were not released by the administration in time and for the administrative reasons. Therefore, we hold that the applicants would be entitled to their seniority based upon merit/select list dated 12.04.1999 but this aspect would have one exception that Respondent No.5

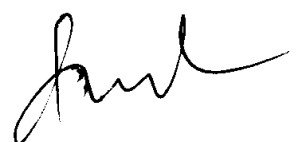


who in the meantime has already been promoted to the next higher grade of Sr. DEO and which promotion remained unchallenged would remain unaffected."

5. It is submitted by the learned counsel for the review applicant that the aforesaid order dated 3.1.2006 has been implemented and other six colleagues of the review applicant have been given the benefit but the review applicant has not been given the benefit of his seniority over Shri Amarjit because of the error that has crept in the order in respect of Respondent No.5 on the ground that promotion of Respondent No.5 to the post of Sr. DEO and the said promotion remained unchallenged. The review applicant challenged this in W.P (C )No.16408/2006 with CM No.7087/2009 in the Delhi High Court. The said writ petition was disposed of vide Order dated 15.7.2009 by the Hon'ble Delhi High with the following observations:-

"Learned counsel for the petitioner submits that there is an error apparent on the face of the record and she would like to move a review application before the Tribunal. She prays for leave to withdraw the writ petition.

Leave and liberty granted. Writ Petition is dismissed as withdrawn. The Tribunal is requested to consider the application for review to be filed by the petitioner on merits if it is filed within 15 days from today, without going into the question of limitation"



6. The Review Applicant has thus filed the present review application admittedly beyond the period of limitation. The review application was taken up for consideration on merits in terms of directions of the Hon'ble High Court in its order dated 15.07.2009, referred to above.

7. The review applicant has submitted that the Tribunal has erred in concluding that the promotion of Respondent No.5 was not challenged in the OA. In this context, the learned counsel for the review applicant has drawn our attention to para 5.8 of the OA wherein the following averments have been made:-

"Because of wrong principle of seniority having been adopted by the Respondents, Shri Amarjit who was junior to the applicant has been promoted as Sr. DEO Grade Rs.5000-8000 from 14.11.2002(wrongly typed on the OA as 14.11.2001) which is arbitrary."

8. It has thus been contended that the promotion of Respondent No.5 was indeed challenged as can be seen from the aforesaid averments in the OA. The learned counsel for the review applicant has further drawn our attention to para 8.3 of the relief Clause wherein it has been prayed that " this Honourable Tribunal may be pleased to direct the respondents to promote the applicant No.1 as Sr. DEO from the date from which his junior Shri Amarjeet S.C has been promoted."

9. We do not find any force in the contention of the review applicant when both Clause 5.8 and Clause 8.3 are read together. What the review applicant has sought is his own promotion as Sr. DEO from the date from which his junior Shri Amarjit has been promoted. It is one thing that he challenged the promotion of his colleague and it is another thing to seek parity with his junior claiming benefits of promotion alleged to be wrongly made. The relief that can be given in the first case would be by way of setting aside the promotion under challenge. It is not so in the latter case. Whereas the question of parity would be involved.

10. In view of the aforesaid, it cannot be said that while seeking benefits of wrong promotion to Respondent No.5 as alleged by the review applicant, the review applicant has indeed challenged the legality of promotion of Respondent No.5. As a matter of fact what the review applicant prayed for was directions to the respondents to promote him as well from the date from which his junior, Shri Amarjit Singh (SC), was promoted. We are, therefore, of the considered view that while making exception in respect of Respondent No.5, this Tribunal has not erred in holding that promotion of Respondent No.5 to the next higher grade of Sr. DEO which remained unchallenged, would remain unaffected. We do not find any merit in the contention of the review applicant that there is an error apparent on the face of order dated 03.01.2006 in the OA warranting review thereof sought by the review applicant.

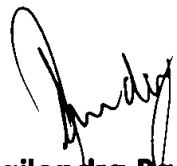


11. It needs to be remembered that the scope of a review is a limited one and it is not permissible for the forum hearing the review application to act as an appellate authority in respect of the original order and rehearing of the matter to facilitate a change of opinion on merits as has been held in *Union of India vs. Tarit Ranjan DAs* (2004 SCC (L&S) 160).

12. Accordingly, the review application is dismissed being devoid of substance.



**(Dr. Dharam Kaul Sharma)**  
**Member (J)**



**(Shailendra Pandey)**  
**Member (A)**

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