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**Central Administrative Tribunal
Principal Bench**

MA No.1534/2005

MA No.1535/2005

in

RA No. 247/2004

&

RA No.273/2004 IN

CA No.18/2004

New Delhi this the 18th day of August, 2005.

Hon'ble Mr. V.K. Majotra, Vice-Chairman (A)

Hon'ble Mr. Shanker Raju, Member (J)

RA No.247/2004

1. Union of India through
Secretary, Ministry of Railways,
Railway Board, New Delhi.

2. General Manager,
Northern Railway,
Baroda House, New Delhi.

-Review Applicants

-Versus-

1. Shri Brijesh Mathur S/o M.L. Mathur
2. K.S. Kardam S/o Phool Singh
3. S.S. Panwar S/o Baru Singh
4. D.K. Garg S/o J.L. Gard
5. R.D. Naik S/o G.S. Naik
6. Moti Lal Meena S/o Hazari Lal Meena
7. H.S. Sidhu S/o Ajit Singh
8. Satya Pal Singh S/o Badloo Singh
9. Anil KUMAR S/o Karam Singh Munda
10. J.M. Lamba S/o C.L. Lamba
11. A.C. Tiwari S/o R.S. Tiwari
12. Sanjay Mathur S/o M.L. Mathur
13. O.P. Chetiwal S/o D.R. Chetiwal
14. Mukesh Baweja S/o R.L. Baweja
15. Sandesh Raj S/p Roslo Ram
16. Triloki Ram S/o Duij Ram
17. Surya Kant S/o P.S. Verma

-Review Respondents

RA No.273/2004

1. Shri G.L. Meena, ADEN/Estate/DLI
2. Shri N.K. Sethi, AEN/D, N. Rly, Construction
3. Shri Mohinder Kumar, ADEN/Estate I New Delhi
4. Shri Hargian Singhm, ADEN/Rohtak, N. Rly, Rohtak
5. Shri Ashok Kumar Diwakar, ADEN/Shamli/N. Rly Shamli
6. Shri Vijay Kumar, ADEN/C/Design, N. Rly Construction
Organisation, Kashmere Gate, Delhi
7. Shri Ashok Kumar, ADEN/Jind, N. Rly, Jind.

-Review Applicants

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-Versus-

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14. Mukesh Baweja S/o R.L. Baweja
15. Sandesh Raj S/p Roslo Ram
16. Triloki Ram S/o Duij Ram
17. Surya Kant S/o P.S. Verma -Applicants in OA

1. Union of India through
Secretary, Ministry of Railways,
Railway Board, New Delhi.

2. General Manager,
Northern Railway,
Baroda House,
New Delhi.

-Original Respondents

Appearances:

Shri K.C. Mittal, Senior Counsel with Shri R.L. Dhawan,
Counsel for Review applicants in RA-273/2004.

Shri V.S.R. Krishna, Counsel for review applicants in RA-
247/2004.

Shri B.S. Mainee, Counsel for respondents in RAs/applicants
in OA.

ORDER**Mr. Shanker Raju, Hon'ble Member (J):**

These RAs have been filed by official respondents and those who have been affected by the outcome of the OA are directed against an order passed by this Tribunal in OA-18/2004 being founded on common facts involving identical questions of law are being disposed of by this common order.

2. MA-1429/2005 has been filed by Shri R.L. Dhawan, learned counsel for the respondents who have been affected by the outcome has prayed in the wake of RA-273/2004 to implead identically situated review applicants is turned down at the outset as there exists no provision for impleadment of applicants in RA.

3. MA-1430/2005 is also for impleadment of review applicants, which is also turned down on the reason stated above.

4. A brief factual matrix is relevant to be highlighted transpires that applicants in OA-18/2004 who have been working as Inspector of Works and were eligible for promotion to the posts of Assistant Engineer against 70% of the vacancies had assailed notification dated 5.9.2003 issued by the respondents, holding selection for promotion from Group 'C' to Group 'B' in the post of AEN against 70% quota vacancies for the assessment period from 1.12.2002 to 31.3.2003 and 1.4.2003 to 31.3.2005 as well as order dated 23.12.2003 where on holding of written test and supplementary written test 23 persons have been shown to have qualified the written test making them eligible for viva voce. The aforesaid has been challenged on the ground that it is impermissible to club the vacancies for several years and to prepare a combined panel. It is also challenged that by not holding the year-wise selection applicants have been deprived of a reasonable opportunity.

5. By an order dated 7.1.2003 the Tribunal vide interim order directed that selections may continue but appointments, if any, made would be subject to the final order passed by this Tribunal.

6. As viva voce was to be held, led to filing of MA-399/2004 and by an order dated 23.2.2004 viva voce was also made subject to the final order passed by this Tribunal.

7. On final hearing of the case by an order dated 29.7.2004 orders impugned have been set aside with a direction to the respondents to earmark periodwise vacancies and formulate separate panels for different periods.

8. In both the RAs a common ground has been taken by the official respondents, represented through Shri V.S.R. Krishna as well as Shri R.L. Dhawan for the respondents, i.e., candidates who on qualifying viva voce have been empanelled and appointed to Group 'B' posts of AEN.

9. It is contended that, as the effect of direction of the Tribunal would be setting aside of the selection and written test as a consequence thereof cancelling the appointment order and the panel formed which would adversely affect their rights and as they had not been heard being impleaded as a party in the OA is in violation of principles of natural justice. A reliance has been placed on the decision of the Apex Court in **M.V. Ravindranath and others v. Union of India & others**, (2000) 10 SCC 474.

10. Apart from the above several other contentions have been raised to point out errors in the judgment.

11. On the other hand, applicants in OA/respondents in RA represented through Shri B.S. Mainee, learned counsel stated that as appointment of the persons who qualified the written examination was not foresighted and was not in existence at the time when the OA was filed. Making subject the appointments and result to the final outcome of the OA is compliance of principles of natural justice. The empanelment and appointment is an event subsequent and when there is a violation of the rules and procedural illegality has cropped up, relying upon the decision of the Apex Court in **V.P. Srivastava v. Union of India**, 1996 (1) SCSLJ SC 253 it is contended that there is no occasion for impleadment of the parties whose interest has been well taken care of by an intimation to them in the order about their qualification in the written test and their interest has been looked after by the official respondents in the OA.

12. It is also stated that having knowledge of the adversity, failure to implead during the pendency of the OA, RAs are likely to be dismissed as an attempt has been made to re-argue the matter, which is not permissible in review.

13. We have carefully considered the rival contentions of the parties and perused the material on record. In **K.Ajit Babu & Ors. v. Union of India & Ors.**, (1997) 6 SCC 473, the following has been held by the Apex Court:

"4. As stated earlier, the appellant has challenged the impugned seniority list prepared on the basis of the decision rendered by the Central Administrative Tribunal, Ahmedabad Bench in Transfer Application No.263 of 1986 dated 14.8.1987, by means of an application under Section 19 of the Act wherein there was no prayer for setting aside the judgment dated 14.8.1987 of the Administrative Tribunal. It is true

that the judgment given by the Central Administrative Tribunal, Ahmedabad in TA No.263 of 1986 would have come in the way of the appellant. Often in service matters the judgments rendered either by the Tribunal or by the Court also affect other persons, who are not parties to the cases. It may help one class of employee and at the same time adversely affect another class of employees. In such circumstances the judgments of the court or the tribunals may not be strictly judgments in personam affecting only the parties to the cases, they would be judgments in rem. In such a situation, the question arises: What remedy is available to such affected persons who are not parties to a case, yet the decision in such a case adversely affects their rights in the matter of their seniority. In the present case, the view taken by the Tribunal is that the only remedy available to the affected persons is to file a review of the judgment which affects them and not to file a fresh application under Section 19 of the Act. Section 23 (3) (f) of the Act empowers the Tribunal to review its decisions. Rule 71 of the Central Administrative Tribunal (Procedure) Rules (hereinafter referred to as "the Rules") provides that no application for review shall be entertained unless it is filed within 30 days from the date of receipt of the copy of the order sought to be reviewed. Ordinarily, right of review is available only to those who are party to a case. However, even if we give wider meaning to the expression "a person feeling aggrieved" occurring in Section 22 of the Act whether such person aggrieved can seek review by opening the whole case has to be decided by the Tribunal. The right of review is not a right of appeal where all questions decided are open to challenge. The right of review is possible only on limited grounds, mentioned in Order 47 of the Code of Civil Procedure. Although strictly speaking Order 47 of the Code of Civil Procedure may not be applicable to the tribunals but the principles contained therein surely have to be extended. Otherwise there being no limitation on the power of review it would be an appeal and there would be no certainty of finality of a decision. Besides that, the right of review is available if such an application is filed within the period of limitation. The decision given by the Tribunal unless reviewed or appealed against, attains finality. If such a power to review is permitted, no decision is final, as the decision would be subject to review at any time at the instance of the party feeling adversely affected by the said decision. A party in whose favour a decision has been given cannot monitor the case for all times to come. Public policy demands that there should be an end to law suits and if the view of the Tribunal is accepted the proceedings in a case will never come to

an end. We, therefore, find that a right of review is available to the aggrieved persons on restricted grounds mentioned in Order 47 of the Code of Civil Procedure if filed within the period of limitation."

14. If one has regard to the above, a third party review is permissible on the ground that being likely to be affected by the outcome of the OA, non-impleadment is denial of reasonable opportunity to defend. However, denial depends upon the facts and circumstances of each case and the Tribunal is competent to determine the same.

15. In **A.M.S. Sushanth and others v. M. Sujatha and others**, (2000) 10 SCC 197, the following ratio has been laid down by the Apex Court:

"4. We find that none of the persons who were selected and whose appointments were set aside by the High Court had been impleaded as a party-respondent. It appears that a public notice was given in a representative capacity only with regard to the appointment to the post of Assistant Sericulture Officer. The direction of the High Court, however, is not confined to that post alone and it is the appointments to the other posts also which have been set aside. This could not be done. The principles of natural justice demanded that any person who was going to be adversely affected by the order should have had an opportunity of being heard. That apart, one would have expected the High Court to have considered the report submitted under Section 65 on its merits and then decided whether the said report should be accepted or not."

16. In **Ramrao and others v. All India Backward Class Bank Employees Welfare Association and others**, 2004 SCC (L&S) 337, the following is the ratio laid down:

"27. It is true that the order of promotion was in question in Writ Petition No.1551 of 1990 at the instance of one Ashok but even in the said writ petition the promotees were not impleaded as parties. As in the case of the Association, even in the writ petition filed by Ashok, the order of dereservation

passed by the Union of India or NABARD or the sponsor Bank had not been questioned. Admittedly, the Union of India or NABARD were not parties in the said writ petitions. An order issued against a person without impleading him as a party and, thus, without giving him an opportunity of hearing must be held to be bad in law. The appellants herein, keeping in view the fact that by reason of the impugned direction, the orders of promotion effected in their favour have been directed to be withdrawn, indisputably, were necessary parties. In their absence, therefore, the writ petitions could not have been effectively adjudicated upon. In absence of the "promotees" as parties, therefore, it was not permissible for the High Court to issue the directions by reason of the impugned judgment."

17. On cumulative reading of the above the ratio decidendi is that when ^{the}~~the~~ interest of the party is affected and rights are affected adversely any order passed if entails civil consequences principles of natural justice are to be observed. Non-impleadment of such a party is a serious infirmity.

18. Though at the stage when the OA had been filed neither selection was held nor appointments were made, though the Tribunal has subjected the appointments to final outcome, yet the order passed by the Tribunal where result of the written examination has been set aside and meanwhile appointments have been processed as the process was not stalled by this order of the Tribunal empanelment of review applicants as well as their appointment on promotion would be cancelled and they are indeed affected as a consequence of the directions of the Tribunal. In our considered view, these applicants are necessary parties to be impleaded in the OA. As civil consequences have ensued upon them, non-following of principles of natural justice, i.e., an opportunity to them with a right to defend is an infraction to the principles of audi alteram partem which has to

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be implied in the rules in administrative action and while imparting justice it is part and parcel.

19. In the result, for the foregoing reasons, on this short point alone RAs^h succeed. Order of the Tribunal dated 29.7.2004 passed in OA-18/2004 is recalled. We allow review applicants in RA-273/2004 and similarly circumstanced to defend their cases, in accordance with law.

20. List the OAs^h for P.F.H. on 16.09.2005.

S. Raju
(Shanker Raju)
Member(J)
18/8/2005
'San.'

V.K. Majotra
(V.K. Majotra)
Vice-Chairman(A)

As per order dt 2.9.05 - time
has been given to put RAs to file
replies to OA & remainder, now OA
not be decided on 18.9.05