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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Review Petition No. 46 of 1986

IN

Registration O.A. No. 82 of 1986

Rajendra Prasad Ruhella Applicant

Versus

Union of India & Others Respondents.

Hon.S.Zaheer Hasan, V.C.
Hon. Ajay Johri, A.M.

(By Hon. Ajay Johri, A.M.)

This is a review petition under Section 22ff (and not Section 23 (3) as quoted by the applicant) of the Administrative Tribunals Act XIII of 1985 against the judgement given by this bench on 28.10.1986 in registration No. 82 of 1986 R.P.Ruhella Versus Union of India & Others.

2. The grounds for seeking review are
(i) that the relief was sought on several grounds including the instructions contained in Eastern Railway's circular of 3.6.80, while the applicability of the said circular was examined and it was held that the same was not applicable the other grounds were lost sight of while giving the judgement;

(ii) that the petitioner had passed the examination held by the National Council of Training after having completed the training under the Apprentices

Act 1961. As per para 135 of the Indian Railway Establishment Manual (IREM for short) trade apprentices are recruited to fill at least 50% of the skilled vacancies in the designated trades. and the Railway Board with a view to safeguard the interest of the apprentices have issued instructions for absorption of the apprentices without holding any future test vide their letter of 29.1.71 (Annexure 'E' of Review Petition). In terms of the above the petitioner after completing his training in 1978 was entitled to be absorbed but he was not so absorbed with ulterior motives on the plea that there was no vacancy. Thus para 135 of the Indian Railway Establishment Manual had been violated;

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(iii) that the act of the Railway Administration to compel him to appear in the trade test on occurrence of a vacancy in 1980 was arbitrary, vindictive and contrary to rules ;

(iv) that the petitioner was entitled to be absorbed against vacancy occurring subsequently but this was not done; and

(v) that the revised procedure for filling up vacancies issued by Eastern Railway on 3.6.80 is meant for new vacancies after absorption of Trade Apprentices trained under Apprentices Act, 1961.

3. This petition is opposed by the respondents on the grounds that this Tribunal had considered the aspect of his promotion from unskilled

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grade to skilled grade, that the Indian Railway Establishment Manual does not make it obligatory to offer any permanent employment to Apprentices trained under Apprentices Act and that the provisions of para 135 of the IREM and Railway Boards letter have been correctly followed.

4. We have heard the learned counsel for both parties. The ^{3/}learned counsel for the petitioner contended that para 135 of the IREM has not been discussed in the judgement. This permitted recruitment upto 50% of vacancies from Trade Apprentices. Also in accordance with para 3822 of IREM the absorption should have been made according to extant rules which are given in para 135 and since 50% of vacancies had been reserved for Apprentices, the petitioner should have been absorbed. The Railway Boards letter of 14.12.73 also lays down that course completed apprentices may be absorbed upto 50% of vacancies in skilled grade. The learned counsel for respondents reiterated the stand taken by the respondent in their reply.

5. The petitioner had asked for three reliefs of which the material relief was :

Promotion as per letter of 3.6.80
and Railway Boards letter of 24.2.79 and
20.2.1980
and para 135 of IREM

The grounds for relief were that he is entitled

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to be promoted departmentally without any further examination or test, as per provisions of para 135 of IREM, that he is also entitled to be promoted in terms of letter of 3.6.80, that he is entitled to be promoted against departmental quota as per provisions in Railway Boards letter of 24.2.79 and 20.2.1980.

6. In our judgement we have discussed in detail the petitioners promotion against departmental quota. We had in para 5 of our judgement held :

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" It is therefore clear that for an unskilled Artisan whether he may be graduate or an I.T.I. qualified person or a person having received training under the Apprentices Act he is to render a minimum of three years service in the unskilled grade before he can appear in the departmental selection for promotion to skilled grade against the 25% vacancies reserved for I.T.I. trained/Act Apprentices trained persons who have been appointed in the class IV category as Khalasi...."

Further in para 7 we have commented on the claim of the petitioner against 50% vacancies reserved for promotees, 25% reserved for serving unskilled and semi skilled artisans and 25% against open market candidates. Thus the aspects of departmentally promoting the petitioner and his appointment to skilled grade against direct recruitment quota has been ^{fully} considered.
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7. Para 135 of IREM says :-

"Trade Apprentices are recruited by Railway Administrations to fill at least 50% of the vacancies in the specified designated trades in Railway Workshops and not running sheds.....subject to the provisions that ratio of trainees to workers (other than skilled and semi skilled) is as prescribed in the Apprentices Act. The remaining vacancies are to be filled by unskilled/semi skilled/basic trademen....."

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We will like to make it clear that this para does lay down the principles of manning the skilled Artisans post but it does not say that a person given training under the Apprentices Act has to be considered as recruited also. The process of recruitment starts after persons with the Trade Qualifications, after passing the examination held by the National Council of Training, are available. It cannot be claimed that a person, because he has been given training, has to be considered recruited also. The trainee bank can be tapped for filling up the vacancies. The petitioner has accordingly been given an opportunity in 1980 where he failed. Though specific mention of para 135 is not made in our judgement this aspect has been commented upon in para 6 of our judgement.

8. Annexure 'F' of the review petition is a letter of the Railway Board dated 29.1.71. The petitioner is taking a plea that this letter with a view to safeguard the interests of apprentices

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asks the railways not to hold any test in future. This is a new document. The interpretation made is erroneous. The Railway Board stopped the practice of Railways testing the apprentices after they completed their training (under the Apprentices Act). They were told that this practice was not correct. The time completed Act Apprentices have to be tested at the end of training by the National Council and not by the railways. Hence the qualifying examination which can make the apprentices eligible for consideration for appointment will be the prescribed National Council Tests. Railways have to hold in any case a selection to select candidates out of those who apply for appointment. Not all the candidates can be appointed. A reasonable selection procedure has to be followed to find out who are the best from amongst the applicants. The petitioner cannot be considered as recruited when he was put for being given training under the Apprentices Act. It was obligatory for the respondents to give this training to such numbers of persons who came within the prescribed percentage in the particular trade.

9. In his review petition the petitioner has said that the letter of 3.6.80 did not apply to him while in the relief asked for in the petition it is one of the letters on which relief is sought. He wanted promotion as per letter of 3.6.80 also. His contentions are therefore not on sound grounds.

10. The learned counsel for the petitioner has relied on Naresh Chander Versus Hindustan Insecticides Ltd. (FLR 1985(51)93) regarding absorption of the petitioner. In that case the contract provided for absorption. The petitioner's case is not similar. He was not given any undertaking for absorption after training. His contract perhaps had no such clause. The respondents have reproduced the relevant para in their reply to the review petition in para 6. No other supporting document was produced to claim relief under any similar proviso as in the relied upon case.

11. A judicial review is possible when :-

- (i) ~~Some~~ ^{or} new and important matter or evidence which could not be produced earlier has been discovered.
- (ii) There is some mistake or error apparent on the face of the record.
- (iii) Or any other sufficient reason.

A review cannot be asked for merely a fresh hearing or for correction of an erroneous view taken earlier but only for the correction of a patent error of fact or law, which stares one in the face without elaborate argument being needed to establish it. (Theengabhadra Industries Ltd. Versus Govt. of Andhra Pradesh (AIR 1964 SC 1372)). We have given due consideration to all the contentions raised in support of his prayer for setting aside the judgement. We have not found any patent mistake in our conclusion and no grave error had crept in our

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judgement. We find that there is no mistake or error apparent on the face of record and there is no sufficient reason to persuade us to review our judgement. The request for review is therefore not sustainable. Under the circumstances the review petition is dismissed with costs on parties.

[Signature]

Vice Chairman (J)

[Signature]

Member (A)

Dated the 27th May, 1987

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