

(9)

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD**

(THIS THE 9th DAY OF December, 2010)

**Hon'ble Dr. K.B.S. Rajan, Member (J)
Hon'ble Mr. S. N. Shukla, Member (A)**

Review Application No. 39 of 2002

In

**Original Application No.1215 of 1998
(U/S 19, Administrative Tribunal Act, 1985)**

Union of India through
Chairman, Railway Board,
New Delhi and Others.

..... **Applicants**

Present for Applicant : Shri Prashant Mathur, Advocate

Versus

Anil Kumar and four others

..... **Respondents**

Present for Respondents :Shri Rakesh Verma, Advocate

O R D E R

(Delivered by Hon. Dr. K.B.S. Rajan, Member-J)

This application has been filed by the respondents in the OA seeking review of the order dated 6.3.2002 in OA 1215/1998. By the aforesaid order, the respondents were directed to inspect the records relating to the five applicants in the OA and the particular examination and if no irregularities were found to have been

committed by them or in the particular examination generally their results should be declared and they be allowed to appear for viva voce test and if they qualify they should be given appointment as if they qualified in the first examination. Other consequential benefits available to the applicants such as seniority etc., were also afforded in this order.

2. The review application has been filed on time and the grounds of review as contained in the review application order in nut shell as under:-

- a) It is apparent that malpractices and irregularities had been committed in the examination as one of the candidates had produced merit list much before declaration of the result.
- b) The post of Assistant Electrical Driver is a safety category post and the Board has to take all necessary steps before nominating the candidates to the indenting/user departments. Admittedly in the examination conducted by the then Chairman, certain malpractices and irregularities were noticed.
- c) Out of five applicants four appeared in the re-examination and one candidate (Applicant No.2) had been selected and was nominated by the Commission.

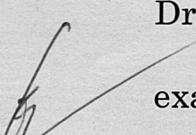
3. The respondents in the regular application have contested the OA. According to them all the allegations are misconceived



and have no nexus with the dispute of present case. According to them cancellation was with reference to selection for a few irregularities of posts and not for all and in any event there is no error apparent on the face of record.

4. Counsel for the applicant submitted that almost all examinations conducted by RRB during the time of a particular Chairman of the Railway Recruitment Board had to be cancelled due to overwhelming irregularities and illegalities committed. As such the Railway Board decided to cancel some of the examinations where such malpractices were evident. On this ground that various examinations were cancelled and when some of them were agitated against, the court did not interfere. Counsel for the respondents submitted that the grounds do not meet the parameters prescribed for review.

5. Arguments were heard and documents perused. A perusal of the order under review would reveal that the grounds raised in this review were nothing new and all such grounds were raised at the time of hearing of the main OA itself and these have been met with in the very order itself. The leakage of results had been taken as the serious irregularity by the Respondents. As regards the same, the Tribunal had clearly held that such a leakage is not with reference to this particular post of Assistant Electrical Driver. It has also indicated that the decision to cancel the examination was also taken after nine months of the receiving of



the computerized list without assigning any particular reason for such delay.

6. Thus, by the review petition, the applicants have only tried to have the case reheard, which is impermissible, as held by the Apex Court in the case of *Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi*, (1980) 2 SCC 167, wherein, the Apex Court stated:

8. *It is well-settled that a party is not entitled to seek a review of a judgment delivered by this Court merely for the purpose of a rehearing and a fresh decision of the case. The normal principle is that a judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so: Sajjan Singh v. State of Rajasthan*

In his concurring judgment, Justice Krishna Iyer in the same case has observed,

A plea for review, unless the first judicial view is manifestly distorted, is like asking for the moon. A forensic defeat cannot be avenged by an invitation to have a second look, hopeful of discovery of flaws and reversal of result.

In respect of the powers of the Tribunal regarding Review of its own orders, it has been held in the case of State of W.B. v. Kamal Sengupta, (2008) 8 SCC 612, as under:-

17. *The power of a civil court to review its judgment/decision is traceable in Section 114 CPC. The grounds on which review can be sought are enumerated in Order 47 Rule 1 CPC, which reads as under:*

“1. Application for review of judgment.—(1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed

or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the court which passed the decree or made the order."

18. Since the Tribunal's power to review its order/decision is akin to that of the civil court, statutorily enumerated and judicially recognised limitations on the civil court's power to review the judgment/decision would also apply to the Tribunal's power under Section 22(3)(f) of the Act. In other words, a tribunal established under the Act is entitled to review its order/decision only if either of the grounds enumerated in Order 47 Rule 1 are available. This would necessarily mean that a tribunal can review its order/decision on the discovery of new or important matter or evidence which the applicant could not produce at the time of initial decision despite exercise of due diligence, or the same was not within his knowledge or if it is shown that the order sought to be reviewed suffers from some mistake or error apparent on the face of the record or there exists some other reason, which, in the opinion of the Tribunal, is sufficient for reviewing the earlier order/decision.

.....

35. The principles which can be culled out from the abovenoted judgments are:

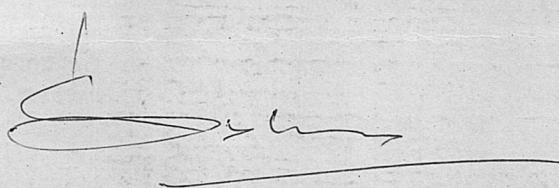
- (i) The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/analogous to the power of a civil court under Section 114 read with Order 47 Rule 1 CPC.
- (ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.
- (iii) The expression "any other sufficient reason" appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.
- (iv) **An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(f).**
- (v) **An erroneous order/decision cannot be corrected in the guise of exercise of power of review.**
- (vi) **A decision/order cannot be reviewed under Section 22(3)(f) on the basis of subsequent decision/judgment of a coordinate or larger Bench of the tribunal or of a superior court.**

[Handwritten signature/initials over the bottom left corner]

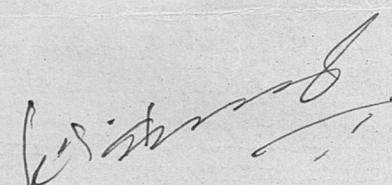
(vii) While considering an application for review, the tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/ decision as vitiated by an error apparent.

(viii) Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court/tribunal earlier. (Emphasis supplied).

7. In view of the above there is no merit in the review application and accordingly the same is rejected. The respondents shall comply with the order dated 6.3.2002 and in case of selection of the applicants their seniority would date back with others who have been selected in the subsequent examination conducted.



(S.N.SHUKLA)
Member (A)



(Dr.K.B.S.RAJAN)
Member (J)

Uv/