

OPEN COURT
CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD

(THIS THE 27TH DAY OF JANUARY, 2010)

PRESENT

HON'BLE MR. JUSTICE A. K. YOG, MEMBER (J)
HON'BLE MRS. MANJULIKA GAUTAM, MEMBER (A)

REVIEW APPLICATION NO. 45 OF 2008

In

ORIGINAL APPLICATION NO. 614 OF 2006
(Under Section 19, Administrative Tribunal Act, 1985)

1. Uma Pati Dubey aged about 48 years son of Late A. N. Dubey, Resident of T-160-A, Officer Colony, N.E. Railway, Lahartara, Varanasi.
2. Ganesh Prasad Sharma aged about 41 years son of Late M. L. Sharma, Resident of Q/No. 207(J) New Loco colony, N. E. Railway, Varanasi.

.....Applicant.

By Advocate: - Shri A. K. Dave

Versus

1. Union of India through the General Manager, North Eastern Railway, Gorakhpur.
2. The Divisional Railway Manager, North Eastern, Railway, Varanasi.
3. Divisional Railway Manager (Personnel) North Eastern Railway, Varanasi.
4. Senior Divisional Manager (Operating) North Eastern Railway, Varanasi.

.....Respondents

By Advocate: - Shri P. Mathur.

ORDER

(DELIVERED BY HON'BLE MR. JUSTICE A. K. YOG, MEMBER (J))

This review petition has been filed against final order dated 31.07.2008 passed by this Tribunal in O.A. No. 614 of 2006 (Uma

(Signature)

Pati Dubey & another Vs Union of India & Ors.) Annexure-1 to the Review Petition.

2. An objection regarding limitation, appears to have been taken in para 4 of the Counter Affidavit, filed by the Respondent Nos. 1 to 4. Which has not been signed and properly identified, the Oath Commissioner has not filled up the blanks indicating month, date and time in 'blank spaces' (crossed by us by Red Ink) and hand written endorsements/cuttings have not been initialed and stamped by Oath Commissioner.
3. First para (on page 14 of the Counter Affidavit) has been struck of and some person has allegedly identified purported 'signature' of the deponent at the bottom of the page (at extreme left). Said does not indicate that said person has identified the person. Further, we find that above name of Ramyash (said to be the clerk in the office of Sri Prashant Mathur, Advocate – representing the Respondents) has been struck but does not bear signature and stamp of Notary, (Oath Commissioner).
4. Reverting to para 4 of the Counter Affidavit, we find it is cryptic and vague, no calculation has been given to indicate that Review Application is time barred. The applicant, however, refers to the Rejoinder Affidavit wherein the applicant has mentioned that the Xerox copy of the Tribunal order dated 31.07.2008/Annexure-1 to the

Review Petition) was prepared on 07 August 2008. Counsel for the Respondent concedes that Review Petition is in time in case Copy of the Tribunal order (in question) was prepared on 07 August 2008. Review Petition is held to be within time. 'Preliminary Objection' fails.

5. Learned counsel for the applicant Sri A. K. Dave, Advocate, has apart from others primarily made two submissions. He referrers to para 16 of the order (in question) pointing out the 4 decisions apart from reliance mentioned therein according to him the ratio of the decision of Supreme Court has been passed by the Bench by making certain observation as follows:-

"We have perused these judgments and find that the circumstances and facts are different from circumstances and facts in the present O.A. and therefore do not cover this case fully or for the reasons enumerated in the above paras"

6. It is being argued that no reasons have been disclosed by the Bench to ignore Apex Court Judgment relied upon by the Applicant and also referred in para 16 of the order (in question). He further pointed out that the Bench also observed that the ratio of the Apex Court judgment did not apply fully.

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7. Learned counsel for the applicant further pointed out that reasons could not be supplied through Counter Affidavit / Supplementary Counter Affidavit (filed in the O.A.).

8. It is being next argued that para 18 of the order of Tribunal dated 31.07.2008 (subject mater of Review Petition) is contrary to para 14 of the said order. For ready reference para 14 & 18 of the order (in question) are reproduced:-

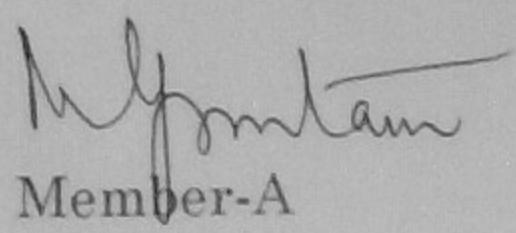
"14. In view of this we are of the view that the results of the reserved category candidates could have easily been segregated and dealt with separately, while the other selected candidates could have been given their appointments. The stand of the respondents as far as sub para (i) above is concerned cannot therefore be accepted as a reason for cancellation of the entire selection process. The argument of the applicant on this issue is therefore upheld."

"18. In view of the above analysis, we are of the view that the Order dated 19.04.2006 by which the entire selection stands cancelled cannot be challenged as bad in law. There is, therefore, no valid ground for this Tribunal to interfere in the aforesaid order and give rise to a plethora of unwanted litigations.

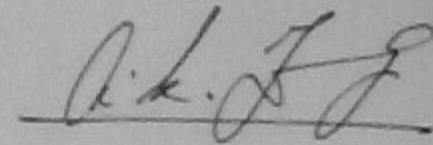
9. Learned counsel for the Respondents is unable to reconcile para 14 and 18 of the Tribunal order (in question).

10. There are errors apparent in the order dated 31.07.2008 which is hereby set aside. O.A. is restored to its original number and directed to
(J)

be listed on 23.03.2010. Meanwhile parties are directed to maintain 'status quo' as existing as on date. Review Application allowed.



Member-A



Member-J

/Dev/