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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 344 OF 1987.
~~T.A. No.~~

DATE OF DECISION 22.9.1987

SHRI MADHUSUDAN LAXMAN GOKHALE Petitioners.
& 2 ORS.

G.S. WALIA

Advocate for the Petitioner(s)

Versus

THE UNION OF INDIA & ORS. Respondents.

D.M. THAKKAR FOR RES. NO. 4, 5 & 7

Advocate for the Respondent(s)

& R.M. VIN.

CORAM :

The Hon'ble Mr. P.H. TRivedi, VICE CHAIRMAN.

The Hon'ble Mr. P.M. JOSHI, JUDICIAL MEMBER.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Y*
2. To be referred to the Reporter or not? *Y*
3. Whether their Lordships wish to see the fair copy of the Judgement? *NB*
4. Whether it needs to be circulated to other Benches of the Tribunal. *Y*

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1. Shri Madhusudan Laxman Gokhale, aged about 47 years, Indian Inhabitant, working as Chief Permanent Way Inspector, Andheri, Bombay - 69.
2. Shri Arvind Narhar Joshi, aged about 47 years, Indian Inhabitant, working as Chief Permanent Way Inspector (Relaying), Andheri, Bombay - 69.
3. Shri H.R.N. Murthy, aged about 46 years, Indian Inhabitant, working as Permanent Way Inspector at Dadar, W.Rly., Bombay.

..... Petitioners.

(Advocate : G.S. Walia.)

Versus.

1. Union of India through General Manager, Western Railway, Churchgate, Bombay - 20.
2. General Manager, Western Railway, Churchgate, Bombay - 20.
3. Chief Engineer, Western Railway, Churchgate, Bombay - 20.
4. D.K. Jain, PWI, Rajkot Division, C/o. Divisional Railway Manager, Western Railway, Rajkot Division, Rajkot.
5. S.N. Mathur, Permanent Way Inspector, Rajkot Division, C/o. Divisional Railway Manager, Rajkot. W.Rly.
6. J.N. Vaish, Permanent Way Inspector, Western Rly. Rajkot Division, Rajkot. C/o. Divl. Railway Manager, Rajkot.
7. S.P. Saighal, PWI, Rajkot Division, C/o. Divisional Railway Manager, W.Rly., Rajkot.

..... Respondents.

(Advocate: D.M. Thakkar for Resp.No.4,5 & 7.
And R.M. Vin.)

≡ R D E R

O.A. No. 344 OF 1987

Date: 22.9.1987

Per: Hon'ble Mr. P.M. Joshi, Judicial Member.

In this application, at this stage, mainly two points invite our urgent consideration. Firstly, whether application

can be entertained as review application and secondly, whether it can be admitted when the petitioner has not exhausted the remedy by filing representation against the letter No. E/E/1030/5/1/5/VOL.VI dated 9.7.1987, the implementation whereof is sought to be stayed.

2. At the outset, it may be stated that since there was a reference of the payment of application fee of Rs.50/- by postal order No. DD 359763, the application was registered as O.A.No. 344/87 by the Registry. When the matter came up for hearing, Mr. G.S.Walia, the learned counsel for the petitioners, strongly emphasised that his application should be treated and registered as review application, as he has sought the relief to review the judgment delivered by the Bench of this Tribunal in Transferred Application No. 90/86 dated 22.1.1987. After issuing notice to the Respondents pending admission, we have heard Mr. G.S.Walia, the learned counsel for the petitioners and Mr. R.M.Vin, the learned counsel, appearing for the Respondents No. 1,2 & 3. Respondents No. 4 & 5 have filed their written objections. We have also heard Mr. D.M. Thakkar, appearing for them.

3. The petitioners, viz; (1) Madhusudan Laxman Gokhale, Chief Permanent Way Inspector (CPWI), (2) Arvind Narhar Joshi, (CPWI) & (3) H.R.N. Murthy, (PWI), have filed this application on 17.7.1987. It was strenuously urged by Mr. Walia on behalf of the applicants that they have filed this review application as they are aggrieved by the judgment delivered in T.A.No. 90/86. According to him, the petitioners were not impleaded as parties in the said proceedings, they are entitled to file this review application. They have challenged the judgment in T.A.No. 90/86 on the ground inter-alia that the Railway Board's letter dated 15.4.1966 (marked Exh.'B') was not brought on record wherein, it was stated that the condition for the absorption of surplus staff was laid down to the effect that "no benefits for the previous service should

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however be allowed for fixation of seniority irrespective of the facts that whether the service are continuous or otherwise". Mr. Walia, in support of his submission has relied on the cases of John Lucas & Anrs. v/s. Additional Chief Mechanical Engineer S.C. Railway and Ors. decided by the Central Administrative Tribunal, Bangalore Bench. (comprising of K. Madhava Reddy, Chairman, K.S. Puttaswamy, Vice Chairman, JJ and P. Srinivasan, Administrative Member) wherein it has been held as under :-

"There is nothing in the Administrative Tribunals Act or the Code of Civil Procedure which prevents a Tribunal from entertaining an application by an affected party to review its judgment. In our view this Tribunal may review its judgment even *suo motu*. And if it can review *suo motu*, it can certainly entertain a petition by an aggrieved party bringing to its notice any error in its earlier judgment by way of review petition and seeking redressal of his own grievance. But one thing must be emphasised, though perhaps obvious, that a review petition may be filed only by a person who is aggrieved and has a grievance to be redressed when he is filing the petition." (emphasis supplied)

4. Mr. D.M. Thakkar, the learned counsel for the Respondents No. 4 & 5, does not dispute the proposition of law enunciated in the decision rendered in the aforesaid case. According to him, the petitioners can not be said to have been aggrieved by the decision rendered in T.A.No. 90/86 as they are prompted to file this application only because of the decision and action taken by the Chief Engineer as contained in letter dated 9.7.1987 (Exh. 'D') and consequently, they have sought interim relief against the implementation of the said decision in terms of para 10(b). It was further submitted by him that the letter dated 9.7.87 clearly indicated that it was provisionally decided to revise the seniority position of the employees shown therein and the Chief Engineer also invited the objection of the affected employees within one month and when the petitioners have not made their representation, the present application can not be entertained in view of the provisions contained under Section 19 of the Administrative Tribunals Act, 1985.

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as they have not exhausted the remedy available to them.

Mr. R.M. Vin, the learned counsel appearing for the Railway Administration, declared that he has no submissions either for or against, with regard to the points raised at this preliminary stage and he would abide by the orders which may be passed by the Tribunal.

5. In order to comprehend the contentions canvassed by the learned counsel for the petitioners and Respondents No. 4 & 5, it would be in the fitness to relate to the relief sought by the petitioners in this application. The reliefs sought by the petitioners are stated in para 9 as under :-

9. Relief(s) sought :

In view of the facts mentioned in Para 6 above, the Applicants pray for following relief(s):-

- (a) This Hon'ble Tribunal may be pleased to review its judgment delivered in Transferred Application No. 90 of 1986 dated 22.1.1987 and thereafter quash and set aside the same.
- (b) This Hon'ble Tribunal may further order and/ or direct the Respondents Nos. 1 to 3 to treat the Applicants senior to Respondents Nos. 4 to 7 in the category of PWIs and that no weightage should be given to Respondents Nos. 4 to 7 of their working/ services rendered in the category of AIOWS prior to their absorption as APWI in accordance with Railway Board's letter dated 15.4.1964 (Exh.'B' hereto).
- (c) This Hon'ble Tribunal may further hold and declare that the seniority list published in Office Order No.E/E/1030/5/1/Vol.VI dated 24.7.82 is legal and in accordance with the rules.
- (d) Any other or further order as to this Hon'ble Tribunal may deem fit and necessary in the circumstances of the case may be passed.
- (e) Cost of this Application may be provided for.

6. The petitioners also prayed that pending hearing and final disposal of their review application, the implementation of Western Railway letter No. E/E/1030/5/1/5/Vol.VI dated 9.7.1987 (Exh.'D') and the decision in T.A.No. 90/86 dated 22.1.87 be stayed.

7. It is pertinent to note that the Respondents No. 4 to 7 viz; M/s. (1) D.K. Jain, (2) S.N. Mathur, (3) J.N. Vaish & (4) S.B. Sehgal, in the Special Civil Application No. 611/81, which was initially filed before the High Court of Gujarat, had not claimed seniority over the present petitioners. Their main grievance was that their services in the cadre of AIOW and their continuous officiation in the grade of APWI were not taken into account by the Railway Authorities in fixing their seniority. While deciding the said matter, final order was passed in the following terms :-

In the circumstances of the case, the petition is allowed with a direction that the petitioners' seniority and confirmation in the grade of Asstt. Permanent Way Inspector (APWI) will be regularised on the basis of their service in the cadre of AIOWs and their continuous officiation in the grade of APWI and a seniority should be refixed qua the petitioners on par with similarly situated employees including Mr. F.N. Pandya (Applicant in S.C.A.No. 896/77). It is further directed that the case of the petitioner will also be considered on merits for promotion to the next higher grade with effect from the respective dates when their immediate juniors were promoted to such higher grade. There shall be no order as to costs.

8. Now, the judgment of the Tribunal in T.A.No. 90/86 was rendered on 22.1.1987. Now, if they were really aggrieved by the said judgment they could have filed the application for review before the expiry of thirty days within which a review petition must be filed. However they have preferred to file this review application on 17.7.1987, therefore, it will be barred by limitation. Even apart from it, having regard to the facts and circumstances of this case and the pleadings of the petitioners, it can not be said that they are aggrieved by the judgment rendered in T.A.No. 90/86. Their grievance is directed against the decision and action taken by the Chief Engineer in his letter dated 9.7.1987; wherein he has indicated a provisional seniority position of the employees shown therein and that being the position, they have therefore sought interim relief of stay against the implementation of the said letter dated 9.7.1987. Simply because the petitioners prefer to regard their application

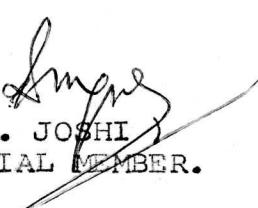
as review application, it can not be registered as such, without examining the relevant issues. As it could be seen from the nature of the reliefs which the petitioners have preferred to sought from the Tribunal, is not restricted to review of the judgment. They have prayed that the same should be quashed and set aside. More over they have sought further directions against the Respondents No. 1, 2 & 3 to treat the present petitioners, senior to the Respondents No. 4 to 7 in the category of PWI and that no weightage should be given to Respondent No. 4 to 7 of their working/service rendered in the category of AIOW prior to their absorption as APWI. They have also sought declaration that the seniority list published in the office order dated 24.7.1982 be declared legal and in accordance with rules. Obviously, these reliefs, which the petitioners have sought, can never be covered under the review application. It **may** be observed here that the petitioners can certainly pursue their grievance, if any, for the nature of the relief they have sought by filing a separate application under section 19 of the Act (Administrative Tribunals Act, 1985). Perhaps, in that case they can also legitimately claim that the decision in T.A.No. 90/86 is not binding to them as they were not parties to the proceedings.

9. The petitioners in para 6.7, they have clearly stated that they have not chosen to make any representation against the said change or revision in the said seniority list (as per letter dated 9.7.1987) and they have filed the review application directly. However during the course of his arguments, Mr. Walia, the learned counsel for the petitioners submitted that the petitioners have later on, filed such representations. Evidently, therefore they have to wait for a period of six months, from the date of the representation, during which they can legitimately expect a decision by the competent authority. Till the expiry of

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the said period, it can not be said that petitioners have exhausted the remedy available to them as envisaged under section 19 of the Act, in case, it is sought to be treated as original application.

10. In view of our aforesaid discussion, we have no hesitation in holding that having regard to the facts and circumstances including the pleas raised and reliefs prayed for in the application, the present review application can not be entertained and rejected in limine. Rs. 50/- being the application fee paid by the applicants be refunded to them for review petition as no fee is prescribed either under the Act or the Rules made thereunder.


(P.M. JOSHI)
JUDICIAL MEMBER.


(P.H. TRIVEDI)
VICE CHAIRMAN