

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

R.A./15/94 in O.A./428/93,
R.A./16/94 in O.A./429/93
R.A./17/94 in O.A./122/92,
R.A./18/94 in O.A./427/93,
R.A./19/94 in OA/430/93.

DATE OF DECISION 12.5.1994.

Union of India and others Petitioner s

Shri N.S.Shevde Advocate for the Petitioner (s)

Versus

Shri Ramsingh D. Parmar & Others Respondent

Advocate for the Respondent (s)



CORAM

The Hon'ble Mr. N.B.Patel : Vice Chairman

The Hon'ble Mr. K.Ramamoorthy : Member (A)

2
R.A./15/94 in

: 2 :

O.A./428/93.

1. Union of India,
Notice to be served through :
The General Manager,
Western Railway,
Head Quarter Office,
Churchgate,
Bombay - 400 020.
2. The Divl. Railway Manager,
Divisional Office,
Pratapnagar,
Western Railway,
Baroda.
3. Divl. Commercial Supdt.,
Western Railway,
Divl. Office,
Pratapnagar,
Baroda.

...Applicants.

Versus

1. Shri Ramsingh D. Parmar,
C/o. Kiran K. Shah,
3, Achalayatan Society,
Division II,
Navrangpura,
Ahmedabad - 380 009.

...Respondent

R.A./16/94 in

O.A./429/93.

1. Union of India,
Notice to be served through,
The General Manager,
Western Railway,
Churchgate,
Bombay - 400 020.
2. The Divisional Railway Manager,
Divisional Office,
Pratapnagar,
Baroda.
3. Divisional Commercial Superintendent,
Divisional Office,
Pratapnagar,
Baroda.

...Applicants.

Versus

1. Shri A.B. Bhatt,
C/o. Kiran K. Shah,
3, Achalayatan Society,
Division II,
Navrangpura,
Ahmedabad - 380 009.

...Respondent.

...3...

R.A./17/94 in
O.A./122/92

1. Union of India,
 Notice to be served through,
 The General Manager,
 Western Railway,
 Head Quarter Office,
 Churchgate,
 Bombay - 400 020.
2. The Divl. Railway Manager,
 Divisional Office,
 Pratapnagar,
 Western Railway,
 Baroda.
3. Divl. Commercial Supdt.,
 Western Railway,
 Divl. Office,
 Pratapnagar,
 Baroda.

...Applicants.

Versus

1. Shri Tarunkumar K.Thakkar,
 Sr.Asstt. Luggage Clerk,
 Anand Railway Station,
 BRC Divn.,
 Anand.

...Respondent.

R.A./18/94 in
O.A./427/93

1. Union of India,
 Notice to be served through.,
 The General Manager,
 Western Railway,
 Head Quarter Office,
 Churchgate,
 Bombay - 400 020.
2. The Divl. Railway Manager,
 Divisional Office,
 Pratapnagar,
 Western Railway,
 Baroda.
3. Divl. Commercial Supdt.,
 Western Railway,
 Divl. Office,
 Pratapnagar,
 Baroda.

...Applicants.

Versus

1. Shri Ramesh C.Rawal,
 C/o. Kiran K.Shah,
 3, Achalayatan Society,
 Division II,
 Navrangpura,
 Ahmedabad - 380 009.

...Respondent.

R.A./19/94 in
O.A./430/93

1. Union of India,
Notice to be served through
The General Manager,
Western Railway,
Head Quarter Office,
Churchgate,
Bombay - 400 020.
2. The Divl. Railway Manager,
Divisional Office,
Pratapnagar,
Western Railway,
Baroda.
3. Divl. Commercial Supdt.,
Western Railway,
Pratapnagar,
Baroda.

...Applicants.

Versus

1. Shri Rakesh Chauhan,
G/o Kiran K. Shah,
3, Achalayatan Society,
Division II,
Navrangpura,
Ahmedabad - 380 009.

...Respondent.

(Advocate for the applicants : Mr. N. S. Shevde)
(Advocate for the respondents: -)

Decision by circulation.

ORDER

R.A./15/94 in O.A./428/93,
R.A./16/94 in O.A./429/93,
R.A./17/94 in O.A./122/92
R.A./18/94 in O.A./427/93 &
R.A./19/94 in O.A./430/93.

Date : 12.05.1994.

Per : Hon'ble Mr. K. Ramamoorthy : Member (A)


We do not find that the judgment is vitiated by error apparent on the face of the record. The judgment is not by way of a summary disposal but is pronounced by a reasoned speaking order. The Tribunal is aware of the

(5)

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fact that the Railways had **given** notice. This fact is mentioned in the judgment itself in para-5. Thereafter, the Tribunal has given its judgment on the merits of the case and in pursuance of equity considerations as spelt out in the judgment. As is mentioned in the Supreme Court judgment in Managing Director, ECIL, Hyderabad Versus B.Karuhakar (SC) 1993- P.532, this Tribunal has, "to consider on merits, not as court of appeal, but within its parameters of supervisory jurisdiction" and to give appropriate relief and the Tribunal had considered the direction as a necessary relief in this case.

Review Applications are, therefore, rejected.



(K. Ramamoorthy)
Member (A)

Sd/-
(N.B. Patel)
Vice Chairman

ait.

Prepared by : H.P. Ghotshi
Checked by :
DATE 00/11

Chief Officer (J)
Central Administrative Tribunal
Ahmedabad Bench

AHMEDABAD BENCH

Application No. 24/17/94 in 64/122/92 of 19

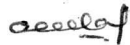
Transfer Application No. _____ Old w.Pett.No

CERTIFICATE

Certified that no further action is required
to be taken and the case is fit for consignment to the
Record Room (Decided).

Dated: 07.06.94

Countersigned :


Signature of the
Dealing Assistant.


~~Section officer~~ Court officer.

AT AHMEDABAD BENCH

INDEX SHEET

CAUSE TITLE 24/17/94 in 04/122/92 OF 19

NAME OF THE PARTIES U. O. I. & oec

VERSUS

MR. T.K. Thakke

[illegible]

1. Judgment / Order by Hon'ble Mr. K. Ramamurthy AM dated 22 ⁰²/₉₄
- (i) Hon'ble Mr. N.B. Patel V.C and
- (ii) Hon'ble Mr. K. Ramamurthy AM

- ✓ 2. Both the aforesaid Members are functioning in this Tribunal.
2. Hence to be placed before the said Members i.e., Hon'ble Mr. N.B. Patel V.C & Hon'ble Mr. K. Ramamurthy AM
3. Hon'ble Mr. _____ still belongs to Local Bench but Hon'ble Mr. _____ is now a Member/V.C. of _____ Bench.
3. Hence may be sent for consideration by circulation to the said Members i.e., Hon'ble Mr. _____ & Hon'ble Mr. _____.
4. Both the aforesaid Hon'ble Members have ceased to be Members of the Tribunal.
4. Hence to be placed before Hon'ble V.C. for constituting a Bench of any 2 Members of this Bench.
5. Hon'ble Mr. _____ has ceased to be Member of Tribunal but Hon'ble Mr. _____ is available in this Bench.
5. Hence may be placed before Hon'ble V.C. for constituting a Bench of Hon'ble Mr. _____ who is available in this Bench and of any other Member of this Bench for preliminary hearing.
6. Both the aforesaid Members are now Members of other Benches namely _____ and _____ Benches.
6. May be placed before Hon'ble V.C. for sending the R.A. to both the Members for consideration by circulation. If one of the Members is of the view that the petition merits a hearing, reference may be made by Hon'ble V.C. to the Hon'ble Chairman seeking orders of the Hon'ble Chairman.
7. The case is not covered by any of the above contingencies.
7. Therefore, orders of the Hon'ble V.C. Chairman are required to be obtained by Hon'ble Chairman.

cancel
27/04/94

50031 Bhagya - 4-59H
DR/CS) 55-94

Hon'ble Mr. K. Ramamurthy (mem-A)

Diarised under

RA St. No. 15 of 94

Submitted.

Application has been scrutinized and found to be
in order. May be placed before Hon'ble Member(A) by circulation.

copy
2/10/94

copy
4-5-94

SPTJ)
Bach
5594
DRJ)

Hon'ble mem(A)
Mr. K. Ramamurthy

RAst 15/94

Filed by Ms. N. S. Shende
Learned Advocate for Petitioner
with second copy of N/12 dated
10/12/94, served to
other side

By *Shende*
15/94 Dy Registrar C.A.3 (3)
Ahmedabad

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD

R. A. NO. 17 OF 1994
IN
O. A. NO.122 OF 1994

Union of India & Ors....	... Applicants
V/s	(Original respondents)
Tarunkumar K.Thakkar.....	... Opponent
	(Original applicant)

APPLICATION FOR REVIEW
OF JUDGEMENT IN O.A .
NO.122/92 DATED 22.2.94.

The applicants herein- original respondents
humbly beg to submit as under:-

1. The application O.A.NO.122/92 filed by
the original applicant challenging the show-cause
notice as well as the ~~order of xxxxxxxx~~ decision
taken by the competent authority to delete the name of
the applicant from the panel of Senior ACC/Senior ALC
scale Rs.1200-2040(RP) has been decided by the Hon'ble
Tribunal along with four other matters by judgement
dated 22.2.94 holding that the candidates have actually

officiated in higher posts, the Tribunal is of the view that the reversion at such a late stage is not equitable and the applicants should be deemed to have appeared in the subsequent examination held in 1992 and qualified therein and their promotions will be considered arising from the 'deemed' passing, which is being ordered as a major of equity only.

2. Being aggrieved by the said judgement dated 24.2.94, the applicants herein humbly beg to file this application for review on the following amongst other grounds, viz.:-

(i) The judgement delivered by the Hon'ble Tribunal is against law, against facts of the case and evidence on record.

(ii) The judgement is vitiated by error apparent on the face of the record.

(iii) The Hon'ble Tribunal has erred in holding that the original applicant was being declared unsuccessful after nearly five years of examination.

(iv) Hon'ble Tribunal has failed to consider that the original applicant was served with show-cause notice in November, 1991 after completion of investigation and after taking a decision by the competent authority in that behalf.

(v) Hon'ble Tribunal ought to have considered that the matter arose from a complaint made by one of

employee~~s~~, who was declared failed in the said Test to CBI and as such more time was required in making enquiry by CBI as well as ~~the~~ by the railway administration before taking decision to issue a show-cause notice to the employees, who were declared successful but had actually not obtained passing marks in the selection.

(vi) Hon'ble Tribunal ought to have considered that no equity is created in favour of the employees who had not secured passing marks but were erroneously declared as passed.

(vii) Hon'ble Tribunal in teeth of its findings that errors, if discovered could be corrected even if there is no specific provision to make changes in the result declared has erred in holding that the reversion of the applicants after a long period of more than 6 years is not equitable.

(viii) Hon'ble Tribunal has erred in holding that the applicant should be deemed to have passed the subsequent examination held in 1992 without appearing therein.

(ix) Hon'ble Tribunal ought to have considered that the applicant had not appeared in the subsequent selection in 1992 and as such cannot be considered as deemed to have passed therein.

(x) Hon'ble Tribunal has committed an error in holding that the applicant is deemed to have passed

in the test for the post which is a selection post.

(xi) Hon'ble Tribunal has committed an error in holding that the applicant should be deemed to have appeared in the subsequent examination held in 1992 when actually he has not appeared therein in spite of giving an opportunity by the administration.

(xii) Hon'ble Tribunal ought to have considered that there is no rule for deemed passing of candidates, who have not at all appeared in the selection.

(xiii) Hon'ble Tribunal ought to have considered that mere working in the promotional post by the applicant without having qualified the selection does not create any right in favour of the applicant.

(xiv) The judgement and order in the O.A. is otherwise erroneous.

(xv) There is sufficient cause to review the judgement delivered by the Hon'ble Tribunal in O.A.

3. The applicants herein, original respondents therefore pray that:-

(A) Hon'ble Tribunal will be pleased to grant this application and review the judgement dated 22.2.94 in O.A.NO.122/92.

(B) Any other order may be passed that the Hon'ble Tribunal deems fit & proper.

(C) Costs of this application be awarded from the opponent.

: 5 :

VERIFICATION

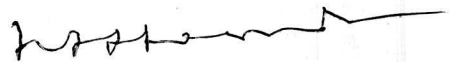
I, B.N.Meena, age about 36 years, son of
Shri R.N.Meena, working as Senior Divisional Personnel
Officer, Western Railway, Baroda and residing at Baroda
do hereby state that what is stated above is true to my
knowledge and information received from the record of
the case and I believe the same to be true. I have not
suppressed any material facts.

Baroda



Dated: 31.3.1994

Senior Divisional Personnel Officer,
Western Railway, Baroda.



Adv. J. H. (Raj)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AT AHMEDABAD.

R.A.NO. 17 OF 1994.

IN

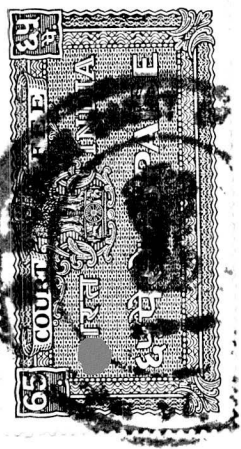
O.A.No. 122 of 1992.

Union of India & Others.

.. Applicant
(Original Respondent)

V/s.


T.K.Thakkar

.. Respondent
(Original applicant)Affidavit in support of Review
Application.


I, B.N.Meena age about 36 S/o Shri R.N.Meena residing at Bunglow, Pratapnagar colony/Baroda. I am working as Senior Divisional Personnel Officer, in the office of Divisional Railway Manager, Western Railway, Baroda and while working in such capacity I am responsible for service matter relating to staff in my department and competent to make this affidavit on behalf of the original respondent.

What is stated in the Review application in para 1 to 3 is correct and I believe the same to be true solemnly affirmed at Baroda on ¹⁴13 day of April/1994.

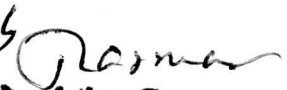
Baroda.


Senior Divisional Personnel Officer,
Western Railway, Baroda.

Date: 13.4.94.

solemnly affirmed before me by
Shri... B.N. Meena ...
who is identified before me by
Shri... T.K. Chaudhary ... Advocate
to whom I personally know.

On this... day of April 1994


Clerk of the Court
District Court,
Vadodara.
Filed by
Mr. MeenaAt Road
15/4/94

I know Signature
(T.K. Chaudhary)
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 122 of 1992, O.A.No./427/93, O.A.NO./428/93,
~~XXXXXXXX~~
O.A.NO. 429 of 1993, and O.A./430 of 1993.

DATE OF DECISION 14th February, 1994.

1. Shri Tarunkumar K.Thakkar,
2. Shri Ramesh C. Rawal,
3. Shri Ramsingh D.Parmar,
4. Shri A.B.Bhatt, Petitioners
5. Shri Rakesh Chauhan.

Shri K.K.Shah Advocate for the Petitioner(s)

Versus

Union of India and Others Respondent

Shri N.S.Shevde Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. N.B.Patel

: Vice Chairman

The Hon'ble Mr. K.Ramamoorthy

: Member (A)

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: 2 :

O.A./122/92

1. Shri Tarunkumar K.Thakkar,
Sr.Asstt.Luggage Clerk,
Anand Railway Station,
BRC Divn.,
ANAND.

...Applicant.

Versus

1. Union of India,
Notice to be served through :
The General Manager,
Western Railway,
Head Quarter Office,
Churchgate,
Bombay - 400 020.
2. The Divl.Rly.Manager,
Divisional Office,
Pratap Nagar,
Western Railway,
Baroda.
3. Divl. Commercial Supdt.,
Western Railway,
Divl. Office,
Pratap Nagar,
BARODA.

...Respondents.

O.A./427/93

1. Shri Ramesh C.Rawal,
C/o.Kiran K.Shah,
3,Achalayatan Society,
Division II,
Navrangpura,
Ahmedabad - 380 009.

...Applicant.

Versus

1. Union of India,
Notice to be served through,
The General Manager,
Western Railway,
Churchgate,
Bombay - 400020.
2. The Divisional Railway Manager,
Divisional Office,
Pratapnagar,
Baroda.
3. Divisional Commercial Superintendent,
Divisional Office,
Pratapnagar,
Baroda.

...Respondents.

O.A./428/93

1. Shri Ramsingh D.Parmar,
C/o.Kiran K.Shah,
3,Achalayatan Society,
Division II,
Navrangpura,
Ahmedabad - 380009.

...Applicant.

Versus

1. Union of India,
notice to be served through
The General Manager,
Western Railway,
Churchgate,
Bombay-400020.
2. The Divisional Railway Manager,
Divisional Office,
Pratapnagar,
Baroda.
3. Divisional Commercial Superintendent,
Divisional Office,
Pratapnagar,
Baroda.

...Respondents.

O.A./429/93.

1. Shri A.B.Bhatt,
C/o.Kiran K.Shah,
3,Achalayatan Society,
Division II,
Navrangpura,
Ahmedabad - 380 009.

...Applicant.

Versus

1. Union of India,
Notice to be served through
The General Manager,
Western Railway,
Churchgate,
Bombay-400020.
2. The Divisional Railway Manager,
Divisional Office,
Pratapnagar,
Baroda.
3. Divisional Commercial Superintendent,
Divisional Office,
Pratapnagar,
Baroda.

...Respondents.

110
O.A.NO.430/93.

: 4 :

1. Shri Rakesh Chauhan,
C/o.Kiran K.Shah,
3,Achalayatan Society,
Division II,
Navrangpura,
Ahmedabad-380009.

...Applicant.

Versus

1. Union of India,
Notice to be served through,
The General Manager,
Western Railway,
Churchgate,
Bombay-400020.
2. The Divisional Railway Manager,
Divisional Office,
Pratapnagar,
Baroda.
3. Divisional Commercial Superintendent,
Divisional Office,
Pratapnagar,
Baroda.

...Respondents.

(Applicant's Advocate : Shri K.K.Shah
Respondents Advocate: Shri N.S.Shevde)

J U D G M E N T
O.A.NO. 122 OF 1992
O.A.NO. 429 OF 1993
O.A.NO. 430 OF 1993
O.A.NO. 427 OF 1993
O.A.NO. 428 OF 1993.

2210
Dated : 14th Feb.1994.

Per : Hon'ble Mr.K.Ramamoorthy : Member (A)

1. Five applications are considered together for a common Judgment as the basic facts and reliefs sought are similar.
2. The applicants were working as Asstt.Luggage/Coaching/Goods Clerks with the Railways and have approached this Tribunal challenging the order of the Railway panel had no right to be cancelled.

Department passed in 1992 whereby their names were deleted from the panel of candidates who had been earlier declared as having successfully passed the departmental examination held in 1987. The applicants had appeared in a written test which was a selection test for promotion and were notified as having been successful in the examination vide notification dated 15.10.1987. However, in 1991, the Railway Department decided to delete the names from the list of successful candidates of this test. According to the applicants this action of the Railways to change the result after almost a period of 5 years is arbitrary, discriminatory and hence illegal.

3. In their written statement the respondents have stated that -

" after declaration of the said Memorandum dated 15.10.1987 (Annexure-A/1) a complaint was filed by one of the employees who was declared failed in the said test. The said complaint was filed by him to the CBI. Thereafter CBI made some inquiry into the matter. Thereafter a Committee of Officers was nominated by the competent authority to verify the evaluation of answer books of the candidates who appeared in the said test. The Committee on verifying the answer books found that some employees who had passed the written test were shown as failed and some employees who had not passed the written test were shown as passed. The employees, who had not passed the written test or who had not secured the qualifying marks in the said test or who were not eligible to be placed on the panel because of size of the panel had no right to be empanelled "

Since the candidates had got declared as successful due to a clerical error, the Railways had a right to correct the errors, which had been done.

4. The Tribunal had called for the answer books to see for itself the sources of error. On a scrutiny of answer books, it was clear that there were errors in the totalling and as a result of rechecking, the marks assigned to the applicants did undergo a change. It is not the case of the Railways that the applicants themselves were in any way concerned or instrumental for the error in totalling which led to their being declared as successful.
5. It is true that the Railway authorities have given the applicants an opportunity before the marks were changed by issuing them a show cause notice vide their letters issued in November, 1991.
6. In the five cases concerned, the range of short fall of marks was from 1 to 7.
7. The in-equity in this matter arose from the fact that the Railways have come up with the formal orders declaring them as unsuccessful after nearly 5 years of the examination during which period the applicants have got one or more promotions. The applicants had also successfully discharged their functions in their promotion posts as is seen from the fact that some of them have got subsequent promotions also.

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8. A statement showing the salient facts and dates involved is reproduced below :

Sr.No.	O.A.NO.	Name of the applicants.	Originally shown marks leading to notification of 1987 along with required marks for passing.	Marks obtained on re-checking	Short fall as compared with the minimum required marks for passing.	Date of promotions and further promotions.
1.	2.	3.	4.	5.	6.	7.
1.	122/92	Tarunkumar K. Thakkar	51 (50)	44	6	22.11.1997
2.	429/93	A.B.Bhatt	51 (50)	49	1 &	31.10.1997 30.1.1990.
3.	430/93	R.C.Chauhan	40 (40)	37	3	21.10.1987
4.	428/93	Ramsing D.Parmar	50 (50)	43	7	7.10.1987.
5.	427/93	R.C.Raval	51 (50)	43	7	19.11.1987 &20.12.1989.

9. Looking to the very narrow margin of the short fall and taking into account the long lapse of time after which the error is sought to be rectified and the applicants are proposed to be reverted, the Tribunal is of the opinion that it would be inequitable to visit the applicants with the orders of reversion on the ground that they were not entitled to get promotion in the first place. The Tribunal recognises the fact that errors, if discovered, could be corrected even if there was no specific provision to make

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changes in the results already declared. However, it is also necessary to see that such changes are made within reasonable time periods. To revert the applicants after discharging functions in promotion posts for a long period (more than 6 years by now) is not considered equitable.

10. However, the Tribunal is also conscious of the fact that the applicant, should not get the advantage of the error to operate against colleagues who have passed the examination with higher marks and in time. It was also brought to our notice by the counsel for the respondents that the applicants had been given an opportunity to appear in the subsequent departmental examination but the applicants had chosen not to sit in the examination because of this petition. The applicants have also accepted this position, and, therefore, do not claim any seniority rights over their colleagues who have appeared in the 1987 examination and were declared as having finally passed the examination. They also concede the fact that the cases of persons who have appeared in the subsequent examination and have passed should also be not adversely affected and will accept the position as if they had cleared the examination only in 1992.

11. In view of the fact that the candidates have actually officiated in higher posts, the Tribunal is of the view that their reversion at this stage is not equitable.

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The applicants should be deemed to have appeared in the subsequent examination held in 1992 and qualified therein, and their promotions will be considered as arising from this "deemed" passing. This is being ordered as a measure of equity only.

With the above observations, the application is allowed with no order as to costs.

Sd/-
(K. Ramamoorthy)
Member (A)

Prepared by : H P Gholshi
Checked by : 24/8/2004

Sd/-
(N.B. Patel)
Vice Chairman

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