

Central Adminsitrative Tribunal, Lucknow Bench, Lucknow

Review Application No. 3/2009 in Original Application

No.569/2006, 148/2005,509/2004,523/2004

This the 4th day of February, 2009

**Hon'ble Mr. M. Kanthaiah, Member (J)
Hon'ble Dr. A. K. Mishra, Member (A)**

1. Pawan Kumar Shukla, aged about 28 years, S/o Sri Komal Ram Shukla, C/o Sri Raj Kumar Shukla, R/o Mohammad Safi National Inter College, Post Hanswar, District-Ambedkar Nagar, U.P.
2. Kamal Krishna, aged about 32 years, S/o Sri Virendra Singh, R/o Matiyari, Chinhat, Lucknow.
3. Rakesh Agarwal, aged about 37 years, S/o Sri Raj Narayan Agarwal, R/o 247/12, Yahiyaganj, Lucknow.
4. Dinesh Kumar, aged about 35 years, S/o Sri Khushi Ram R/o Vill. Baburiha Khera, Post Bachrawan, Distt. Railbareilly.
5. Manoj Kumar Srivastava, aged about 34 years, S/o Sri Fateh Bahadur Srivastaqva, R/o 288/197, Arya Nagar, Lucknow.
6. Pawan Jauhari aged about 30 years S/o Sri V. K. Saxena, R/o 427 Rajendra Naga Lucknow.
7. Hansraj Singh aged about 32 years S/o Sri Raj Bahadu Singh R/o Pitamber Kheda, Rajajipuram, Lucknow.
8. Jaideep Shukla, S/o Sri Vishnu Chandra Shukla, aged about 32 years, R/o H.N. D-50, Sector-D, LDA, Colony, Krishna Nagar, Kanpur Road, Lucknow.

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9. Viay Nigam, aged about 34 years, S/o Sri J.M. Nigam, R/o 58/6, Old Aishbagh Colony, Lucknow.
10. Amit Majumdar, aged about 30 years, S/o Sri M.M. Majumdar, R/o 569 Cha/612, Premnagar, Alambagh, Lucknow.
11. Atul Dwivedi, aged about 37 years, S/o Sri Ram Dev Dwivedi, R/o 554 Kha/16-Ga, Vishweshwa Nasgar, Alambagh, Lucknow.
12. Rakesh Singh, aged about 36 years, S/o Sri P.D. Singh, R/o 47/48-D, Sector D, LDA Colony, Kanpur Road, Lucknow.
13. Arun Kumar Sharma, aged about 27 years, S/o Sri Raja Ram Shama, R/o 548 Gha/53, Teji Khera, Manak Nagar, Lucknow.
14. Dharmesh Kumar Singh Chandel, aged about 34 years, S/o Sri H. S. Singh, R/o C/o Sri K.K. Singh, H., No. A-63/C, Chalish Quarter, Alambagh, Lucknow.
15. Sushil Kumar Singh, aged about 33 years, s/o Sri Surya Pratap singh, R/o 6/6, Purani Colony Aioshbagh, Lucknow.
16. Goverdhan Lal, aged about 33 years, S/o Sri B.D. Agnihotri, R/o 50/5, Purani Colony Aishbagh, Lucknow.

17. Mukesh Chandra Srivastava aged about 37 years son of Sri Tara Prasad Srivastava, r/o Quarter No. L.D. 105-B, RDSO Colony, Manak Nagar, Lucknow.
18. Ramesh Chandra Tripathi, aged about 30 years son of Sri Janardan Tripathi R/o Vill- Post Somali, District- Padrauna, U.P.
19. Krishna Kumar aged about 35 years son of Sri Kedar Ram, 559 Kh/68, Shrinagar, Alambagh, Lucknow.
20. Praveen Kumar Awasthi, aged about 36 years son of late R.C. Awasthi, r/o 102, Nala Fateh Ganj, Lucknow. 18.



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21. Vimal Gautam, aged about years son of Sri Raj Bali r/o C/o Smt. Jageshwari Devi, II-74 D, Sleeper Ground, Alambagh, Lucknow.
22. Pramod Kumar Upadhyay aged about 36 years son of Sri Rama Kant Upadhyay r/o 6/198, Sector 6, Vikas Nagar Colony, Lucknow.
23. Ganga Charan, aged about 37 years son of Sri Kalloo Sahu (Tailor) r/o Village and Post- Banthra, Lucknow.

Applicants.

By Advocate Sri S. P. Singh.

Versus

1. Union of India through the Secretary to the Government of India, Ministry of Railway, New Delhi.
2. Chairman, Railway Board, New Delhi General Manager, Northern Railways, New Delhi.
3. Secretary (Establishment) Railway Board, New Delhi.
4. General Manager (Personnel), Northern Railway Headquarters Office, Baroda House, New Delhi. Divisional Railway Manager, Northern Railway, Hazaratganj, Lucknow.
5. Divisional Railway Manager, Northern Railway, Hazaratganj, Lucknow.
6. Chief Medical Superintendent, Northern Railway Hospital, Lucknow.
7. Chief Works Manager (Loco Workshop), Charbagh, Lucknow.
8. Chief Works Manager (C&W Workshop), Alambagh, Lucknow.

Respondents.

Order (Under Circulation)

By Hon'ble Dr. A. K. Mishra, Member (A)

This application has been made under Rule 17 of the Central Administrative Tribunal Procedure Rules for a review of the order

passed on 20.1.2009 in respect of O.A.No.569/2006, 148/2005,509/2004,523/2004.

2. In the very first paragraph of the application, it has been stated that the review application has been made because this Tribunal failed to appreciate certain facts and circumstances of the case which are apparent on the face of the record. The subsequent paragraphs in the application is primarily to elaborate this basic point that the appreciation of the facts and circumstances of the case by this Tribunal in its order dated 20.1.2009 was not correct. At the same time, it has been urged that the direction of the Hon'ble High Court in W.P. No. 36/SB/2005 and W.P. No. 143/SB/2005 to the effect that the circular dated 2.10.2004 of the Railway Board should be examined by this Tribunal along with other relevant circulars before deciding the question. The circular dated 2.10.2004 makes a reference to the Board's letter dated 6.4.2000 clarifying that other things being equal, Diploma Holders and Graduate Engineers who have been given training under the Apprentices Act, 1961, may be given preference over those who are not apprentices in recruitment to Group 'C' posts for which Engineering in Diploma and Engineering in Degree had respectively been laid down as prescribed qualification. This circular of the Railway Board has been referred to in our judgment and we have come to the finding that that Group C posts where prescribed qualification is diploma/degree in engineering should be filled up by apprentices holding Diploma/degree in engineering in preference to others. On that analogy, it was held that the General Manager's decision to limit the selection of Group D posts only to Trade Apprentices was justified. Such classification was held to be reasonable one and could not be treated as violative of Article 14 and 16 of the Constitution of India.

3. The Railway Board in their clarification dated 21. 6.2004 permitted Course Completed Act Apprentices to be considered for empanelment

subject to specific approval of the General Manager. It was therefore within the powers of the General Manager to apply different criteria in respect of the distinct categories of apprentices.

4. The other ground taken in the review application is that reliance has been placed on letter dated 1.11.2004 based on averments made by the respondents although, this letter has not been placed on record. This letter has been mentioned at paragraph 10 of the judgment where the contention of the respondents was being summarized. As a matter of fact, the original direction of the General Manager to confine the verification of certificates of Trade Apprentices was made on 18.8.2004 and 27.9.2004. The letter dated 1.11.2004 has been mentioned by the respondents as an iteration of the same instruction. It is the admitted fact that the verification of the certificates was held up on specific instructions of the General Manager. Since there is no dispute about it, it could not be said that the judgment was solely based on the letter dated 1.11.2004. Paragraph 10 of the judgment, explains this position lucidly.

5. The other ground taken is that the pleading of the applicants in respect of the contention that more qualification is not disqualification for consideration to a post has not been taken into account. On the other hand, the contention of the applicants had been summarized at paragraph 4 of the judgment in which the document leading to their representation made on 19.2.99 to consider them for empanelment as substitute khalasies against Group D post has been mentioned and the clarification of the Railway Board dated 21.6.2004 has also been referred to. But at the same time, an observation has been made that the clarification of the Railway Board did not answer the specific queries whether diploma/degree holders should be considered for lowly posts of substitute Group D Khalasis. That is why, in paragraph 11 which

contains the finding in the judgment, it was observed that the General Manager should follow up with the Railway Board for specific answer to the query made in his letter dated 19.2.99. There was nothing irregular about making such an observation.

5. The scope of review is limited in nature. In the review application, this Tribunal cannot possibly sit on appeal over its own finding on the ground that a different opinion could have been reached on the facts and circumstances of the case.

The Apex Court in ***Union of India Vs. Tarit Ranjan Das 2004 SCC (L&S) 160*** observed as under:-

“The Tribunal passed the impugned order by reviewing the earlier order. A bare reading of the two orders shows that the order in review application was in complete variation and disregard of the earlier order and the strong as well as sound reasons contained therein whereby the original application was rejected. The scope of review is rather limited and is not permissible for the forum hearing the review application to act as an appellate authority in respect of the original order by a fresh order and rehearing of the matter to facilitate a change of opinion on merits. The Tribunal seems to have transgressed its jurisdiction in dealing with the review petition as if it was hearing an original application. This aspect has also not been noticed by the High Court.”

6. In view of the limited scope of review, we do not find sufficient cause to justify a review of our earlier order dated 21.1.2009. However, the applicants, if aggrieved with that order, could seek redress in appropriate forum.

7. In the result, the review application is dismissed.

Apήijre 4/2/09
(Dr. A. K. Mishra)

Member (A)

04-02-09
(M. Kanthaiah)

Member (J)