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**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Review Application No. 332/00004/2016

In

Original Application No. 239/2009

This, the 26th day of September, 2017

Hon'ble Mr. Justice V.C. Gupta, Member (J),

Hon'ble Mr. R. Ramanujam, Member (A).

1. Brijanand Dubey, son of Sri Radhey Dubey,
2. Ram Autar Chaudhery, son of Sri Shuggreev,
3. Paras Nath Malviya, son of Sri Trijugi Narain,
4. Murli Dhar, son of Sri Ori Ram,
5. Gaya Prasad, son of Sri Abhai Raj,
6. Ram Singh II., son Sri Ram Awadh Singh,
7. Rajendra Pandey, son of Sri Awdhesh Pandey,
8. Jitendra Pratap Singh, son of Sri Ram Komal Singh,
9. Banshi Dhar, son of Sri Ram Narayan,

All the above applicants are posted as Diesel Mechanics and presently working in Diesel Shed, Gonda.

....Applicants

By Advocate : Sri Surendran P.

Versus

1. Union of India through its Secretary, Department of Railway, New Delhi.
2. General Manager, North Eastern Railway, Gorakhpur.
3. Divisional Railway Manager (DRM), North Eastern Railway, Ashok Marg, Lucknow.
4. Chief Personnel Officer, North Eastern Railway, Gorakhpur.
5. Senior Divisional Mechanical Engineer, North Eastern Railway, Gonda.
6. Mahendra Kumar Mishra, son of Sri Ram Nath Mishra, resident of 105 Railway Colony, Gonda.
7. Moin Khan, son of Sri Maqbool Khan, resident of Diesel Shed, NER, Gonda.
8. Ram Pratap Chaudhery, son of Sri Lallu Prasad, Diesel Shed, NER, Gonda.
9. Parveen Kumar Srivastava, son of Sri T.P. Srivastava, resident of Diesel Shed, NER, Gonda.



10. Wash Ahamad Khan, son of Sri Tara Khan, resident of Diesel Shed, NER, Gonda.
11. Chandara Bhan Prasad, son of Sri Thakur Prasad, resident of Diesel Shed, NER, Gonda.
12. Chandarika Prasad, son of Sri Shiv Ram, resident of Diesel Shed, NER, Gonda.
13. Ishitiyak Hussain, son of late Faiaz Hussain, resident of Diesel Shed, NER, Lucknow.
14. Jagdish Singh Bist, son of Sri Pratap Singh Bist, resident of Diesel Shed, NER, Lucknow.
15. Sunil Mehrotra, son of Sri B.N. Mehotra, resident of – 414 J Semra Colony, Gonda.
16. Ram Pravesh Upadhyay, son of Sri Ram Chandra Upadhyay, resident of 396-f Girija Railway Colony, Gonda.
17. Deepak Kumar Maulik, son of late N.B. Maulik, resident of 26 Asha Ram Lane, Gonda.
18. Suresh Prasad Singh, son of late Harbansh Singh, resident of house No. 112-B Khaira Railway Colony, Gonda.

...Respondents

By Advocate: xxxx.

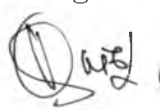
[Order reserved on 21.09.2017]

ORDER

Delivered by: Justice V.C. Gupta, Member (J)-

The order sought to be reviewed had been passed by Hon'ble Sri Navneet Kumar, Member (J) and Hon'ble Ms. Jayati Chandra, Member (A) on 07.04.2014. Hon'ble Member-J had retired thereafter. This review petition was, therefore, referred to a Bench of Hon'ble Dr. Murtaza Ali, JM sitting at Allahabad and Hon'ble Ms. Jayati Chandra, AM. Now Hon'ble Ms. Jayati Chandra, AM has also retired. Only Hon'ble Dr. Murtaza Ali, JM is still working at Allahabad Bench. Hence, CAT, Principal Bench, New Delhi by their order dated 18.09.2017 have nominated this Bench to hear this review petition.

2. Heard the learned counsel for the applicant who has preferred this review petition. The order which has been sought to be reviewed is dated 07.04.2014 passed in O.A. No. 239 of 2009. The O.A. was filed by Mahendra Kumar Mishra and 14 others for re-fixing their seniority over and above the



respondents' no. 6 to 8 Parash Nath Malviya and 2 others. During the pendency of the O.A., the seniority was re-fixed and respondent no. 6 to 8 were placed junior to the applicants. They were also reverted to the lower post and their salary was re-fixed as evident from para-12 and 13 of the judgment.

Para -12 and 13 of Judgment in O.A. No. 239 of 2009 are extracted herein below for ready reference:

"12- The respondent nos. 1 to 5 have sought the dismissal of the O.A. on the ground of pronouncement of Hon'ble Supreme court in the case of B.S. Bajwa (supra) to the effect that "the settled seniority should not be unsettled." This is precisely the issue. Where is the settled seniority list? The Respondents have not shown where and how the question raised in their own show cause notice were settled and which are reproduced below:

"उक्त तथ्यों के परिप्रेक्ष्य में पुनः यह स्पष्ट किया जाता है कि आपकी नियुक्ति तिथि 29.08.84 है अतः किसी भी दशा में दिनांक 4.5.84 की नियुक्ति हुये कर्मचारियों से ऊपर आपकी वरीयता निर्धारित नहीं की जा सकती है जो कि पहले भी मंडल तथा मुख्यालय स्तर से स्पष्ट निर्णित हो चुका है।

अतएव संशोधित वरीयता पत्रांक ई/ 11/210/डीजल/गोण्डा दिनांक 5.8.94 के अन्तर्गत निर्धारित वरीयता क्रमांक के आधार पर दिनांक 5.8.94 से डी. तक-111 (यां0) वेतनमान 950-1500 के पद पर उक्त कर्मचारियों की पदानवति किया जाना है।"

13. They have further passed an order dated 15.10.2009 by which the seniority list notification dated 5.8.1994 is held to be the correct list and the pay scale of respondent nos. 6 to 8 others have been re-fixed."

3. It is pertinent to mention here that the authorities passed the order of re-fixation of the seniority in pursuance of the order passed by this Tribunal in O.A. No. 341 of 1995, wherein respondent no. 6 to 8 of the original application were the applicants. The order of the Tribunal was challenged in writ petition filed before Hon'ble High Court in writ petition no. 1058 (SB) of 2014 but the same was dismissed on 11.01.2016. The order passed by Hon'ble High Court reads as under:

"Court No. - 2

Case :- SERVICE BENCH No. - 1058 of 2014

Petitioner :- Brijanand Dubey & 8 Ors.

Respondent :- Union Of India Through Secy. Deptt. Of Railway New Delhi & O

Counsel for Petitioner :- Srikant Mishra, Ajay Shukla

Counsel for Respondent :- Jyotsna Pal, Mayankar Singh,

Prashant Kumar Srivastava

Hon'ble Satyendra Singh Chauhan, J.

Hon'ble Ritu Raj Awasthi, J.

Heard learned counsel for the parties.

This petition has been filed challenging the order dated 7.4.2014 (corrected on 1.5.2014) passed by the Central Administrative Tribunal, Lucknow (for short "the Tribunal") as well as the order dated 15.10.2009 passed by the

Divisional Railway Manager, (Personnel), North Eastern Railway, Lucknow.
 Various points have been raised by the counsel for the petitioners. It appears that all these points have not been brought to the notice of the Tribunal and the same have been raised here for the first time. Submission of counsel for the petitioners is that seniority cannot be altered in pursuance to the order of 2009.

If that is so, the petitioners are given liberty to file review application before the Tribunal within a period of thirty days.

The writ petition is accordingly disposed of.

Order Date :- 11.1.2016"

4. The review has been sought on the following grounds which are mentioned at page no. 6 of the application of review which are extracted herein below:

- “(a) Because there is an error apparent on the face of record as there was no prayer from the applicants in O.A. No. 239 of 2009 seeking a direction for compliance of order dated 15.10.2009.
- (b) Because against the order dated 15.10.2009 the applicants (Respondents in O.A.) moved representation on 14.01.2010 which was not decided till date.
- (c) Because the applicants were trade tested and promoted from 05.05.1987 as Diesel Mechanic Grade-III, no representation or objection was made by the Respondents.
- (d) Because the applicants were again promoted as Diesel Mechanic Grade-II from 20.07.1993 by means of order dated 07.01.1994. No representation/objection was made by any of the Respondents.
- (e) Because no representation was moved by the Respondents stating that the promotion of the applicants were illegal.
- (f) Because this Hon’ble Tribunal did not appreciate that the applicants were given several promotions and by way of passing the order dated 15.10.2009 disturbed the entire seniority of the applicants.
- (g) Because the applicants were given seniority based on an order dated 13.01.2005 passed by this Hon’ble Tribunal in O.A. No. 341 of 1995.”

5. So far as the ground (a) is concerned it is true that no direction was sought to comply the earlier order passed by the Tribunal in O.A. No. 341 of 1995 but it is not in dispute that the authorities complied with the order of O.A. No. 341 of 1995 during the pendency of O.A. No. 239 of 2009. The order which had been passed in pursuance of earlier O.A. was complied with and also acted upon as evident in para-12 and 13 quoted herein above.

6. So far as the ground (b) is concerned, the same itself speaks that the order passed in earlier O.A. was implemented. It has not been shown as to under which provision of law, a representation could be made against the order of re-fixation of seniority passed in pursuance of the order passed by

this Tribunal in OA No. 341 of 1995. The authorities are not expected to decide every representation nor are they compelled to decide the representation made by the review applicants unless there exist provisions to make a representation against a particular order under statute or rules.

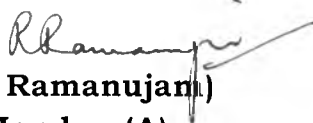
7. We are fortifying our view with the judgment of Hon'ble Apex Court in **U.O.I. & Anr. Vs. M.K. Sarkar, [2010] 2 SCC 59, U.O.I. & Anr. Vs. A. Durairaj [2010] 14 SCC 389 and C. Jacob Vs. Director General of Geology and Mining [2008] 10 SCC 115.**

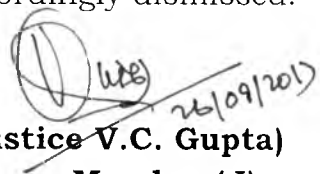
8. It is also pertinent to mention here that the applicants' no. 3, 4 & 5 in the review application were respondent's no. 6 to 8 in O.A. No. 239 of 2009. However, this review petition has also been filed by those persons who are not party in O.A. No. 239 of 2009.

9. So far as the applicant No. 3,4 & 5 of the review petition are concerned they have no right to challenge the order of implementation passed by authorities by moving a representation. If they were aggrieved with the order of this Tribunal they ought to have challenged the same before an appropriate forum. The applicant no. 3,4 & 5 are estopped to challenge the order of implementation after order passed in O.A. No. 341 of 1995 which had already attained finality. Moreover, they have not taken any plea that the order passed in O.A. No. 341 of 1995 had not been properly implemented in accordance with direction issued by the Tribunal.

10. So far as the other grounds are concerned they are not sustainable and this Tribunal while exercising the power of review cannot consider them. The scope of review is very limited. Even a wrong order cannot be reviewed. The order under review was challenged but writ was dismissed.

11. Hence, this review petition cannot be admitted for regular hearing and the same is liable to be dismissed and is accordingly dismissed.


(R. Ramanujam)
Member (A)


(Justice V.C. Gupta)
Member (J)