

Central Administrative Tribunal, Lucknow Bench, Lucknow

**Review Application No. 4/2011 in Original Application No.
451/1993**

This the 12th day of March, 2011

Hon'ble Mr. Justice Alok Kumar Singh, Member (J)

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Hazratganj, Lucknow.

Applicants

By Advocate: Sri Anil Srivastava

Versus

1. Ram Deo aged about 33 years son of Sri Ishwar Din, resident of c/o Shri T.P. Trivedi , LD 14 H, R/Shed Colony, Alambagh, Lucknow.
2. Mangal , aged about 31 years son of Sri Sada Shiv resident of c/o Sri T.P.Trivedi, LD 14 H, R/ Shed Colony, Alambagh , Lucknow
3. Jagan Nath Dutt Trivedi, aged about 33 years son of B.N. Dutt Trivedi, resident of c/o Sri R.N. Trivedi, LD 80, R/ Shed Colony, Alambagh , Lucknow.
4. Ravi Shankar , aged about 31 years son of Sri Sada Shiv, resident of c/o Sri T.P.Trivedi, LD 14 H, R/ Shed Colony, Alambagh , Lucknow
5. Suresh Kumar, aged about 31 years son of Sri Bhagwati Prasad, resident of c/o Sri Triveni Prasad , L 55 R/Shed Colony,Alambagh, Lucknow.
6. Gulam Momammad, aged about 35 years son of Mohd. Ayub resident of Qr. No. 50, Budhu Lal Tiwari Road, Mehndi Ganj, Lucknow.
7. Krishna Chand Tripathi aged about 32 years son of Sri R.N. Tripathi LD 80/ R/Shed Colony, Alambagh, Lucknow.
8. Chandra Shankar Shukla, aged about 36 years son of Sri shiv Narain Shukla resident of c/o R.P.Shukla LD 21 R/R/shed Colony, Alambagh, Lucknow.
9. Shiv Mol Prasad Tiwari aged about 30 years son of Sri Chandrika Prasad Tiwari , resident of C/o R.P. Shukla LD 21 R R/Shed Colony, Alambagh, Lucknow.
10. Subodh Kumar aged about 29 years son of Hirday Nath resident of c/o Triveni Prasad Trivedi , LD 55 R/Shed Colony, Alambagh, Lucknow.
11. Krishna Kumar Pandey, aged about 31 years son of Sri R.S. Pandey, resident of c/o B.K. Pandey, A II 6A LD Colony, Alambagh, Lucknow.
12. Mritunjay Prasad aged about 48 years son of Sri Gajadhar Prasad Tripathi resident of c/o Sri Harish Chandra Mishra, Q.No.T-4 H.,Control Power, House Running Shed Colony, Alambagh, lucknow U.P.

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13. Jamuna Prasad aged about 50 years son of Sri Ram Swarop Resident of Village Gohra Mau, Post Kakori, District Lucknow, U.P.
14. Raj Kumar Singh, aged about 50 years son of Sri Nanhoo Singh , resident of Shapur Ka Khera, Post Kakori, District Lucknow, U.P.
15. Shanker Sahai Tripathi aged about 49 years son of Sri R.N.Tripathi, resident of c/o Sri R.N.Singh,LD 8-0, Running Shed Colony, Alambagh, Lucknow U.P.
16. Krishna Kumar Dwivedi aged about 47 years son of Sri Radhey Shyam Dwivedi, resident of c/o Sri Ayodhya Prasad Dwivedi LD 2-L, Running Shed Colony, Alambagh, Lucknow.
17. Lodheyswar Pandey aged about 51 years son of Sri Ram Khelawan Pandey resident of c/o Sri Ayodhya Prasad Dwivedi, LD 2-L, Running Shed Colony, Alambagh, Lucknow.
18. Raj Kumar Dwivedi agea bout 51 years son of Mata Prasad Dwivedi resident of Maqbook Ganj, Sarojini Devi Line, Lucknow, U.P.
19. Ram Kishore aged about 52 years son of Sri Ram Goribind resident of c/o R. N. Mishra, LD 52 H, Running Shed Colony, Alambagh, Lucknow, U.P.
20. Bal Ram Singh aged about 49 years son of Sri Raj Narain Singh, resident of c/o Sri Amar Bahadur Singh , LD 19 A, Running Shed Colony, Alambagh, Lucknow , U.P.
21. Devendra Kumar aged about 50 years son of Sri Ram resident of c/o resident of Sri Om Prakash Verma 556/75, Sujan Pura, Alambagh, Lucknow, U.P.
22. Pursottam Ram aged about 51 years son of Sri Sidh Nath Rai resident of c/o Sri S.K. Pandey, Q.No. A-26 A, Running Shed Colony, Alambagh, Lucknow , U.p.
23. Raghu Nath aged about 50 years son of Sri Khub Lal resident of c/o Sri Vishwa Nath Prasad Verma 556/75, Sujan Pura, Alambagh, Lucknow, U.P.
24. Parmeshwar Dayal aged about 31 years son of Mahesh Prasad , resident of C/o Mahesh Prasad LD 28 F, R/Shed Colony, Alambagh, Lucknow.
25. Ram Preet aged about 35 years son of Sri Oree resident of C/o Om Prakash Verma 556/75, Sujan Pura Alambagh, Lucknow.
26. Sabhajeet Pandey, aged about 34 years son of Ram Harsh Pandey, resident of c/o Munni Lal Pandey, Central Power House Colony, Alambagh, Lucknow.
27. Surendra Kumar Dixit aged about 31 years son of Ravi Shanker, resident of c/o Ram Prasad , LD 56 E R/Shed Colony, Alambagh, Lucknow.
28. Sant Raj aged about 31 years son of Oree, resident of c/o D.N. Verma 556/75 Cha/1 Sujan Pura, Alambagh, Lucknow.
29. Deo Narain Yadav, aged about 34 years son of Khedu Yadav, resident of c/o R.N. Singh, LD 44 FR/Shed Colony, Alambagh, Lucknow.

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30. Bal Karan, aged about 35 years son of Kaloo resident of c/o O.P. Yadav LD 33 J R/Shed Colony, Alambagh, Lucknow.

Respondents

By Advocate: Sri Som Kartik

(Reserved on 1.3.2012)

O R D E R

By Hon'ble Mr. Justice Alok Kumar Singh, Member (J)

This Review Application is directed against the judgment and order passed by this Tribunal on 22.7.2011 in O.A. No. 491/93

2. I have heard the learned counsel for the parties and perused the material on record.

3. Before dealing with the arguments advanced on behalf of the applicants, it may be mentioned at the outset that the scope of review under section 22 (3)(f) of the Administrative Tribunal Act, 1985 read with Order XLVII Rule (1) and (2) of the CPC lies in a narrow campus. The law is settled on the point that a review can be made only if there is error apparent on the face of record or on discovery of any new and important material which even after exercise of due diligence was not available with the applicant. Any erroneous decision and a decision vitiated by "error apparent" are the two different things as has been distinguished by Hon'ble Apex Court in the case of ***M/s Thungabhadra Industries Ltd. Vs. Govt. of Andhra Pradesh reported in AIR 1964 Supreme Court, 1372.*** In this case, it was laid down that "A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error.

Where without any elaborate argument, one could point to



the error and say here is a substantial point of law which stares one in the face , and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out."

In 2002 Supreme Court Cases (L&S) 756 in the case of K.G. Derasari and Another Vs. Union of India and others, it was observed by the Apex Court that any attempt , except to an attempt to correct an apparent error or an attempt not based on any ground set out in order 47, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment. The Tribunal cannot proceed to re-examine the matter as if it is Original Application before it in the light of the ratio given in **Subhash Vs. State of Maharashtra and other reported in AIR 2002 Supreme Court Cases, 253.**

4. From the side of the learned counsel for respondents, the following case laws were also cited. The ratio decidendi of these case laws is same as mentioned above:-

i) **Chandra Bhushan Pandey, 7700 (M/M) 2011 Vs. Sri Narain Singh, Minister of Horticulture Department, Lucknow and others reported in (2012) 1 UPLBEC 130.**

ii) **J. Solomon and others vs. Union of India and others reported in (1995) 29 Administrative Tribunal Cases (FB) 252.**

iii) **S. Gupta Vs. Union of India and others reported in (1991)**

15 Administrative Tribunal Cases 86.

5. The background facts are that the Hon'ble High Court vide order dated 16.11.2009 passed in Writ Petition No. 1908 of 2000 (S/B) directed this Tribunal to decide the

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controversy afresh of the 30 applicants whose claim is that after completion of 120 days continuous duties, they have acquired temporary status under the Railway Establishment Manual and therefore, they should be absorbed as substitute in Loco Running Shed, Northern Railway, Lucknow. It is worthwhile to mention that during the pendency of the writ petition, the relevant record was inspected by the learned counsel for the applicants at the residence of Sri Anil Srivastava, learned advocate for the other side. Thereafter, a supplementary affidavit was filed categorically saying that majority of the petitioners have discharged services of more than 120 days and thus they have acquired temporary status. This affidavit was controverted from the other side. Against that a Rejoinder Reply was filed enclosing an Annexure showing verification of a chart by one of the officials of the Railways. After perusal of these record, the Hon'ble High Court observed that it appears that sufficient number of petitioners have discharged duties for more han 120 days. It also observed that this chart was not filed before the Tribunal earlier. Finally, the Hon'ble High Court remitted the matter to this Tribunal to decide the controversy afresh and it was kept open for the parties to lead evidence and place on record the relevant material which have been placed before the Hon'ble High Court.

6. First of all, it is mentioned in the aforesaid order dated 16.11.2009 of the Hon'ble High Court itself in para 5, that "it has not been disputed that incase petitioners would have discharged 120 days continuous duties, they will

acquire temporary status under the Railway Establishment Manual on completion of 120 continuous days."

7. During the pendency of this O.A., the applicants moved an application for summoning of record saying that there were 99 pay sheets/paid vouchers, out of which 44 were inspected by the applicants during the pendency of the writ petition. From the other side, it was said that 99 pay sheets paid vouchers were seized by the Vigilance Department. However, in furtherance of the direction of the Hon'ble High Court, the concerned DRM approached the Vigilance Department where he could lay hands only on 56 pay sheets/ paid vouchers. Since these 56 documents were admittedly in the custody of the respondents, they were directed to produce the same in the Court/Tribunal. These documents were accordingly produced before this Tribunal. Thereafter these documents were examined by the applicants as well as representative of the respondents, namely Lallan, Record Keeper under the Divisional Finance Manager, Northern Raiway, Lucknow. According to Supplementary Affidavit filed on behalf of the applicants, after joint inspection, a chart was prepared on 25.3.2011 (S-1) in a tabular form showing working days of all the applicants. This chart has been duly verified by the above record keeper under his seal and signature.

8. After hearing the learned counsel for the parties at length, this Tribunal reached to the conclusion that all the 30 applicants except i) Rajkumar ii) Jagannath Dutt have discharged duties continuously for 120 days and as such they have acquired temporary status. This conclusion was

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drawn mainly on the basis that in the above affidavit, it has been specifically averred in para 4 that the perusal of the above chart would show that except Raj Kumar and Jaggannath Dutt, all the remaining 28 applicants have completed more than 120 days continuous working. This averment was not controverted or refuted by filing any counter affidavit. Rather, as mentioned in para 14 of the judgment, it was submitted by Sri Praveen Kumar, learned brief holder of the respondents that since it was joint inspection and based on record, the respondents do not intend to file any counter affidavit against the above supplementary affidavit. Since, the Supplementary Affidavit stood uncontroverted, there was no reason to disbelieve it.

9. Now, let us come to the present review application, which consists of 24 paragraphs followed by grounds which are similar as covered under these 24 paragraphs. Paragraphs 1 to 12 speak about the previous history and the judgment rendered by this Tribunal. Paragraphs 13 onwards deal with the grounds for review. But surprisingly, in para 13, it has been conceded that bare perusal of the said chart would reveal that almost all the petitioners except two have completed continuo 120 days of service. But it has also been added that they have completed continuous 120 days of service at some point of time but thereafter there are considerable gaps in their working days during the year 1980-81 either before such completion or after such completion and this relevant fact has been ignored by the Tribunal. Suffice is to mention in this regard that this was never the stand of the respondents

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i.e. from the first round of litigation before this Tribunal or thereafter in the judicial review before the Hon'ble High Court or before this Tribunal. This fact is crystal clear from the observation made in aforesaid para 5 by the Hon'ble High Court in the above judgment which is as under-

"It has not been disputed that in case petitioners would have discharged 120 days continuous duties they will acquire temporary status under the Railway Establishment Manual on completion of 120 continuous days."

10. There is also no otherwise pleading in the O.A. in this regard. Otherwise also there is no significance of gap if any, after a person has completed continuous 120 days. There also appears some contradiction in a portion of paragraph 13. At one place, it has been said that almost all the petitioners except two have completed 120 days of service but on the other hand, it has also been said that there are considerable gaps either before such completion or after such completion. If there was any considerable gap before such completion, then how it can be said that except two almost all the petitioners have completed continuous 120 days of service. Similarly, in para 14, it has been said that even after completion of 120 days of continuous service, if there are gaps in service for more than 20 days, that person will have to again complete 120 days continuous service. This is also altogether new pleading which was never taken earlier and therefore, cannot be considered under review jurisdiction. In para 15 again, a new point regarding Uma Devi's case has been

taken which was not taken earlier. Further, it has been said that Indra Pal yadav's case has no applicability. This point has already been considered. The review is not meant for reconsidering the same point . The points contained in paragraphs 16 and 17 have also been considered already. Then in the remaining paragraphs 18 to 24, new pleas have been raised which cannot be considered under this review jurisdiction. Again in these paragraphs , reference has been made to certain Railway Establishment Manual which were very much there before the judgment of this Tribunal and from this angle also, their reinterpretation by way of review is out side the scope of review application as has been rightly objected from the other side in para 14 of the written objection.

11. It is also worthwhile to mention that this litigation has been pending for the last three decades and most of the applicants are now on the verge of their age of retirement as already observed in para 18 of the judgment of this Tribunal. When this litigation started, the initial stand of the reviewist was that on the basis of record of pay sheets and paid vouchers etc., it has been found by the Committee that out of 30 applicants, no body has completed continuous 120 days of working. When the matter went before the Hon'ble High Court and it was directed that the relevant record may be inspected, the entire record was not produced. However in furtherance of the orders of the Hon'ble High Court, the available record was inspected at the residence of the learned Counsel for petitioners (Rlys.) Sri Anil Srivastava who is learned counsel

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for the present reviewist. A chart was prepared there also which was duly verified by Divisional Finance Manager , NR, and it was also brought on record. The Hon'ble High Court then observed that *prima facie* it appeared that sufficient number of petitioners have discharged duties for 120 days and have acquired temporary status under the Railway Establishment Manual. Thus, a *prima facie* finding has already been recorded by the Hon'ble High Court in favour of the applicants. However, finally the matter was remitted back to this Tribunal for deciding it afresh. Accordingly, parties appeared before this Tribunal and the applicants requested for summoning remaining 56 pay sheets and paid vouchers on the ground that out of total 99 pay sheets /paid vouchers, inspection of only 44 was done during pendency of the matter before the Hon'ble High Court. After remittance of the matter to the Tribunal by the Hon'ble High Court, the D.R.M. concerned is said to had approached the Vigilance Department and obtained those remaining 56 pay sheets/ paid vouchers and produced the same in this Tribunal for inspection. After the joint inspection of those papers, the above chart was prepared. Thus, it appears that the reviewist had been taking a pedantic approach in the matter instead of pragmatic approach from the beginning of the litigation about 30 years before. Initially they denied the claim of 120 days of continuous working without producing the record on some pretext or the other and then producing it in part before the Hon'ble High Court and then producing the remaining part before this Tribunal when no alternative was

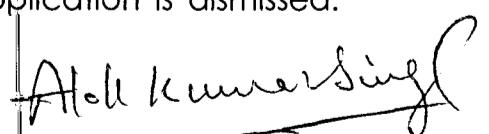
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left with them. Then, after joint inspection, an affidavit was filed on behalf of the applicants enclosing the relevant chart duly countersigned by the representative of the Railways saying that except two all the applicants have completed continuous 120 days of working. Reviewer had also an opportunity to controvert this averment but they did not. Ultimately, the matter has been finally decided. Now, they have filed this review petition taking certain new points altogether as already discussed.

12. In view of the above, there does not appear to be any error apparent on the face of record. There is also no discovery of any new and important material which even after exercise of due diligence was not available with the applicants. It was kept open by the Hon'ble High Court to both the parties to give evidence and once the evidence filed by means of affidavits was closed, the O.A. was decided on the basis of that evidence. Now, under the review jurisdiction, it is not possible to re-open that opportunity or to re-appreciate or re-appraise the matter in question. Even if any erroneous decision has been taken by this Tribunal, the same cannot be rectified under the review jurisdiction because a review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected. The Tribunal cannot proceed to re-examine the matter as if it is original application before it.

13. Finally, therefore, review application is dismissed.

No order as to costs.


(Justice Alok Kumar Singh)
Member (J)

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