

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA.

R.A. No. 17 of 2002

(Arising out of O.A. No. 512 of 1996)

With

M.A. No. 98 of 2002

(In RA No. 17 of 2002 for condonation of delay)

Union of India through the Chief Personnel Officer,
N.E. Railway, Gorakhpur.

...Applicant-Respondent

By Advocate : Shri Shekhar Singh

Vs.

1. Lallan Choudhary, S/o Shri Ram Awadhesh Choudhary
2. K.B. Salahuddin, S/o Late Mohammad Usman
3. Umi Ram, S/o Late Sarni Ram
4. Satyendra Poddar, S/o Nand Lal Poddar
5. Shyam Sunder Choudhary, S/o Late Ganga Choudhary
6. Arvind Kumar Singh, S/o Laxmi Narayan Singh
7. Daya Shankar Pathak, S/o Late Din Bandhu Pathak
8. Bimal Kumar Lal, S/o Shri Surinder Lal
9. Ainul Haque Ansari, S/o Md. Balib Ansari
10. Akhilendra Kumar Mishra, S/o Shri Uraj Nandan Mishra
11. Mohan Prasad Singh, S/o Shri Ram & Kripal Singh
12. Bijay Kumar Pathak, S/o Shri Mukh Lal Pathak
13. Vijay Kumar Sah, S/o Shri Rajendra Pd. Sah.

.. Respondents/Applicants

By Advocate : Shri R.N. Mukhopadhaya

C O R A M

Hon'ble Shri L.M. Goyal, Vice-Chairman

Hon'ble Shri J.K. Kaushik, Member (J)

24.11.2004

O R D E R

By J.K. Kaushik, M(J):- This review has been filed on
behalf of Union of India through the Chief Personnel
Officer, N.E. Railway, Gorakhpur under Section 22 of the
A.T. Act, 1985 for seeking the review of order dated
8.6.2001 passed by this Bench of the Tribunal in OA No.
517 of 1996 Lallan Chaudhary and 12 others vs. Union of

India and others. The following prayer has been made:-

" It is , therefore, prayed that Your Lordships may graciously be pleased to issue notice to the respondents and after hearing the parties be pleased to review the order dated 8.6.2001 passed in OA No. 517 of 1996 by Hon'ble Mr. Laxman Jha, Member (J) and Hon'ble Mr. L. Mmingliana , Member (A) and further be pleased to modify the order dated 8.6.2001 in terms of para 10 hereinbefore and further be pleased to hold that the applicants are entitled to seniority in the order of merit obtained in the examination held at the end of Training period

Or

Pass any other or orders as your Lordships may deem fit and proper.

And

for this the applicant shall ever pray."

2. The review has been grounded on the following grounds:-

- (i) The attention of this court was invited towards para 303 (A) of IREM Vol I revised Edn.1989 wherein it has been envisaged that the seniority to the direct recruits is to be assigned as per the merit position in the Training where initial training is necessary which is the case here.
- (ii) After considering the case of the respondents applicants in the light of aforesaid rules, the Court came to the conclusion that the reliefs claimed in the OA i.e. fixation of seniority from 23/24 December, 1981 cannot be granted. Similar is the position regarding



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seniority claim from 5.9.1996 as observed in para 5 and 12 of the judgement.

(iii) It has not been clarified in the order dated 8.6.2001 as to which result of examination is to be taken into consideration while assigning seniority.

(iv) The order deserves to be modified to the extent that seniority be assigned on the basis of merit obtained in the Examination held at the end of training period.

3. The respondents-applicants have filed an exhaustive written statement followed by the supplementary written statement almost repeating the facts and grounds narrated in the very OA. The applicants-respondents has filed reply to supplementary written statement controverting the facts and grounds indicated in the supplementary written statement. We refrain from narrating the same here just to avoid plethora material which is otherwise not relevant for deciding the Review Application.

4. A Misc. Application No. 90 of 2002 has been filed for condonation of delay in filing of this RA. The reasons for condonation of delay have been adduced therein which we shall deal in the later part of this order.

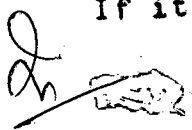
5. We have heard elaborate arguments advanced by both the learned counsel for the parties and have carefully perused the pleadings and records of this case.



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6. The learned counsel for the parties have reiterated the facts and grounds mentioned in the respective pleadings of the parties as noticed above, which have been closely examined and considered by us. As regards the question of limitation, the relevant rules provides that a RA is to be filed within a period of 30 days from the date of receipt of a copy of the order. In the instant case the copy of order was received by the applicants-respondents on 20.7.2001, and this RA has been filed on dated 24.12.2001. Thus there is a delay of over five months in filing of the same. It has been averred that the matter had to pass through various departmental channel in addition to obtaining the legal opinion of their learned counsel which was given on 15.11.2001. Thereafter, time was taken in preparing the RA and filing of the same. We are satisfied with the reasons for condonation of delay and such delay can be condoned by the Tribunal as held by Full Bench of this Tribunal in case of Nand Lal Nichani and ors vs. Union of India and ors (1989) 10 ATC CAT PB. 113 (18). We, therefore, condone the delay and accept the MA No. 90 of 2002 accordingly.

7. We have noticed that this review has not been filed by any of the parties to the OA in strict sense. If it is taken to have been filed on behalf of Union of



India, the other respondents in the OA have not been impleaded as performa respondents. Thus the same suffers from non-joinder of necessary parties and as such the same is not maintainable and deserves to be rejected on this ground itself.

8. As per Rule 17 of CAT (Procedures) Rules, 1987, the review application is required to be supported by an affidavit as per Form No. 14, giving details as per Rule 80 to 84 of the CAT (Rules of Practice), 1993. But such details are not forthcoming. In the so-called affidavit, it has been averred that the contents are true 'as per my personal knowledge'. The person signing the affidavit was not even a party to the OA and he also did not argue the case, how could he make such assertion is amazing.

9. The similar is the position regarding the learned counsel representing the applicants-respondents. He was not the counsel in the earlier OA, and cannot be expected to have any knowledge as to what was argued at the time of decision in the main OA. We also do not find any affidavit of the learned counsel, regarding the ~~same~~, who dealt with and advanced the arguments at the time of hearing of the main OA. The legal position on this point is very clear that such review can not be entertained, as per the verdict



of Hon'ble Patna High Court in case of Rotary Club Begusarai etc. vs. State of Bihar & Ors. If that be so, The RA cannot be sustained.

10. It is well settled that the review proceedings are not by way of appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 CPC. In connection with to Limitation of powers of the court under Order 47 Rule 1 while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, the Supreme Court in the case of Aribam Tuleshwar Sharma V. Aribam Pishak Sharma, wherein their Lordships have made the following pertinent observation (para 3 - AIR 1979 SC 1047) :-

" It is true as observed by this court in Shivdeo Singh vs. State of Punjab (AIR 1963 SC 1909) that there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; It may be exercised where some mistake or error apparent on the face of the record is found; It may



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also be exercised on any analogous ground. But it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a Court of Appeal. A power of review is not to be confused with appellate power which may enable an Appellate Court to correct all manner of errors committed by the Sub-ordinate Court."

11. A Civil Court's power to review its own order under the code of Civil Procedure is contained in Order 47 Rule 1 which provides as under:-

"ORDER XLVII Rule 1:- Application for review of judgement - (1) Any person considering himself aggrieved -

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or


(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgement to the Court which passed the decree or made the order."

2. x x x x

12. Now adverting to the facts of this case and testing the same on the touchstone of the aforesaid

rules/principles of law, the applicants-respondents have



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not whispered any word relating to the grounds of review. There is no plea that there was discovery of new and important matter or evidence which, after exercise of due diligence was not within the knowledge of the person seeking review or could not be produced by him at the time when the order was made. It is also not the plea that there is some mistake or error apparent on the face of the record found in the order. The only case of the applicants-respondents is that the order should be modified so as to assign seniority as per merit obtained in the examination conducted as para 303 (a) of the IREM. We find that the said rule has been elaborately considered by this Bench of the Tribunal and after taking into consideration the order has been passed well thought. We, therefore, find that the review application is ~~groundless~~ groundless and thus no interference is called for from this Bench of the Tribunal.

13. It would be pertinent to notice that the unchecked review has never been the rule. If such groundless review are permitted, every disappointed litigant may avenge his defeat by ~~by~~ routing a review petition (P.N. Eswara Iyer v. Registrar, Supreme Court of India (AIR 1980 SC 808) refers). We also observe that the applicants-respondents has filed this review application in a casual manner just to make some score



unmindful of the amount of valuable time of this Court as well as the unwarranted burden on the public ex-chequer. Such practice is required to be curbed so as to save valuable time of Court, lighten the burden on public ex-chequer as well, ~~also save~~ opposite party from harassment.

14. In view of what has been said and discussed above, we reach to an irresistible conclusion that this RA is frivolous, having no merits as well as hit by non-joinder of necessary parties and the same stands rejected with a costs of Rs. 2000/- to be recovered from the official responsible in the matter. The amount of costs is to be remitted to the Registrar of this Bench of the Tribunal for utilisation for purchase of Library books within a period of two months from the date of receipt of a copy of this order.

/CBS/

J.K. Kaushik
(J.K. KAUSHIK) M(J)

L.M. Goyal
(L.M. GOYAL) V.C.

Rs. 2000/- (Rupees two thousand) only has since been deposited vide cheque no 183178 of 24.1.05 in favour of Registrar C.P. Pals. Bancel. copy filed on telers.
dm
3/3/05