

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
.....

Commercial Complex(BDA),
Indiranagar,
Bangalore- 560 038.

Date: 9/9/87

- (1) R.A.No.25/87
in A.Nos.1625(a) to (d)/86(F),
- (2) R.A.No.29/87
in A.Nos.1238 to 1241/86(F),
- (3) R.A.No.30/87
in A.Nos.1238 to 1241/86(F),
- (4) C.C.A.Nos.8 & 9/87
in A.Nos.1238 to 1241/86(F)
and A.Nos.1625 (a) to (d)/86(F).

To

1. The Additional Chief Mechanical Engineer,
Railway Workshop, South Central Railway, Hubli.
2. The General Manager,
South Central Railway, Secunderabad- 500 371.
3. Shri.M.Sreerangaiah,
Advocate,
S.P.Buildings, 10th Cross,
Cubbonpet Main Road, Bangalore- 2.
4. Sri.V.Narasimhalu,
Head Clerk in ACME's Office,
SCR, Hubli.
5. Sri.Xavier Chouria,
Head Clerk in ACME'S Office,
SCR, Hubli.
6. Sri.B.R.Chillal,
Head Clerk in O/o The ACME,
SCR, Hubli.
7. Sri.P.S.Sadashivarao,
Head Clerk in O/o ACME,
SCR, Hubli.
8. Sri.R.U.Goulay, Advocate,
No.90/1, IInd Block, Thyagarajanagar,
Bangalore- 28.

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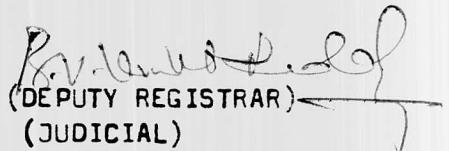
F No. RA 30/87

9. Sri. John Lucas,
R/o. Railway Quarters,
1294/A, Down Chawals, Hubli.
10. Sri. T.D. Kulkarni,
R/o. 1305/UBL, Railway Quarters, Meshvapur, Hubli.
11. Sri. V.K. Kulkarni, Advocate,
981, 4th (M) Block,
Rajajinagar,
Bangalore-10.
12. Sri. Y. Venkateswar Rao, Head Clerk,
O/o. ACME/UBLS, S.C.R.Workshop, Hubli.
13. Sri. Xavier D. Chowdry, Head Clerk,
O/o. Machine Shop, S.C.R.Workshop, Hubli.
14. Sri. V.R. Kalghtgi, Head Clerk,
O/o. Carriage Shop, S.C.R.Workshop, Hubli.
15. Sri. R. Subramanian, Head Clerk,
O/o. Boiler Shop, S.C.R.Workshop, Hubli.
16. Sri. S. Rangarajan, Head Clerk,
O/o. Yard Shop, S.C.R.Workshop, Hubli.
17. Sri. A. Appanikutty, Head Clerk,
O/o. Erecting Shop, S.C.R.Workshop, Hubli.

Sub: SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of the ORDER passed
by this Tribunal in the above said Application on 31-8-87.

Encl: As above.


(DEPUTY REGISTRAR)
(JUDICIAL)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

DATED THIS THE 23rd DAY OF AUGUST, 1987

Present : Hon'ble Sri Ch.Ramakrishna Rao

Member (J)

Hon'ble Sri P.Srinivasan

Member (A)

Review Application No. 25/87.

1. The Additional Chief Mechanical
Engineer, Railway Workshop,
South Central Railway, Hubli.

2. The General Manager,
South Central Railway,
Secunderabad - 500 371.

vs.

1. V.Narasimhalu, Head Clerk
in ACME'S Office, SCR,
Hubli.

2. Xavier Chouria, working as
Head Clerk in O/o the ACME,
Southern Railway, Hubli.

3. B.R.Chillal, working as
Head Clerk in O/o the ACME,
Southern Railway, Hubli.

4. P.S.Sadashivarae, working as
Head Clerk in O/o the ACME,
South Central Railway, Hubli.

Review Application No.29/87.

1. John Lucas,
R/o Railway Quarters, 12 94/A,
Down Chawals, Hubli.

2. T.D.Kulkarni,
R/o 1305/UBL, Rly Quarters,
Keshavapur, Hubli.

vs.

1. The Additional Chief Mechanical Engineer,
S.C.R.Workshop, Hubli.

2. The General Manager,
SCR, Secunderabad,

3. B.R.Chillal, Head Clerk
in O/o ACME, Southern
Railway, Hubli.

4. Y.Venkateshwar Rao, Head Clerk,
O/o ACME/UBL, S.C.Rly Workshop,
Hubli.

5. P.Sadasiva Rao, Head Clerk, -do-

6. Xavier O.Chowdry, Head Clerk,
O/o Machine Shop, SCR Workshop,
Hubli.

Applicants.

(Sri M.Sreerangaiah)

Respondents.

(Sri R.U.Geulay)

Applicants.

(Sri V.K.Kulkarni)



WJ

7. V.R.Kalghatgi, Head Clerk, O/o Carriage Shop, SCR Workshop, Hubli.
8. R.Subramanaian, Head Clerk, O/o Boiler Shop, SCR Workshop, Hubli.
9. S.Rangaraja, Head Clerk, O/o Yard Shop, SCR Workshop, Hubli.
10. V.Narasimulu, Head Clerk O/o Smithy Shop, SCR Workshop, Hubli.
11. A.Appanikutty, Head Clerk O/o Erecting Shop, SCR Workshop, Hubli.

... Respondents.
(Sri M.Sreerangaiah)

Review Application No.30/87.

1. The Additional Chief Mechanical Engineer, Rly. Workshops, SCR, Hubli.

2. The General Manager, SCR, Secunderabad - 71.

vs.

... Applicants.
(Sri M.Sreerangaiah)

1. V.R.Kalghatgi, Head Clerk, O/o Carriage Shop, SCR Workshops, Hubli.
2. R.Subramanyan, Head Clerk, Boiler Shop, SCR Workshops, Hubli.

3. Rangarajan, Head Clerk, Yard Shop, SCR Workshops, Hubli.

4. A.Appunni Kutty, Head Clerk, Erecting Shop, SCR Workshop, Hubli.

... Respondents.
(Sri R.U. Goulay)

CONTEMPT OF COURT Nos. 8 & 9/87.

1. V.R.Kalghatgi, Head Clerk, Carriage Shop, SCR Workshop, Hubli.

2. R.Subramanyan, Head Clerk, Boiler Shop, SCR Workshop, Hubli.

3. Rangaraja, Head Clerk, Yardshop, SCR Workshop, Hubli.

4. A.Appunni Kuddy, Erecting Shop, SCR Workshop, Hubli.

... Applicants in
CC No.8/87.
(Sri R.U.Goulay)

5. V.Narasimhalu, Chief Clerk, O/o ACME, SCR, Hubli.

6. B.R.Chillal, Chief Clerk, -de- .

7. Xavier Cheurie, Chief Clerk, -de- .

8. P.s.Sadashivaraao, Chief Clerk, -de- .

... Applicants in
CC No.9/87.

(Sri R.U.Goulay)

vs.

1. The Additional Chief Mechanical Engineer, SCR Workshops, Hubli.

2. The General Manager, South Central Railway, Secunderabad.

... Respondents in
CC Nos. 8 & 9/87.

(Sri M.Sreerangaiah)

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These applications have come up before the Tribunal today. Hon'ble Sri Ch.Ramakrishna Rao, Member (J) made the following :

OR D E R

Applications No. 1238 to 1241 of 1986 were disposed of by an order dated 17.12.1986 by a Bench of this Tribunal to which one of us was a party. Applications No. 1625(a) to (d) were disposed of by order dated 18.12.1986 by both of us sitting in a Bench. In the last mentioned order, we had followed the earlier order of 17.12.1986 passed in applications No.1238 to 1241 of 1986 as the issue involved was the same. The respondents in both ^{the} group of cases were the same, namely, the Additional Chief Mechanical Engineer, South Central Railway Workshop, Hubli and the General Manager, South Central Railway, Secunderabad. These respondents have filed two review applications - one in respect of the order passed in applications No.1238 to 1241 and another in respect of the order passed in applications No.1625(a) to (d) and these review applications have been registered as review applications No.30 and 25 of 1987. Two persons claiming that their interests had been adversely affected by the decision of this Tribunal in Applications No.1238 to 1241 of 1986, namely Sri John Lucas and Sri T.D.Kulkarni filed fresh applications to agitate their grievances. The maintainability of the said applications was considered by a Full Bench of this Tribunal to which one of us was a party. In an order passed on 11.2.1987, the Full Bench held that the applications filed by the two aggrieved persons could not be treated as applications under section 19 of the Administrative Tribunals Act, 1985 (the Act) and that these persons may seek a review of the order passed in A.Ns's.

Copy to all concerned for information and record.

1238 to 1241 of 86 under clause (f) of sub-section (3) of Section 22 read with sub-section (1) of Section 22 of the Act. In pursuance of that order, the said two applicants have converted their original applications into a review application which has been registered as review application No. 29/87. Further the applicants in applications No. 1625(a) to (d) of 1986 have filed two separate Contempt of Court applications registered as CC Nos. 8 and 9 of 1987 in which they complain that the respondents to these applications, viz. the Additional Chief Mechanical Engineer, South Central Railway Workshop, Hubli and the General Manager, South Central Railway have not complied with the order passed by this Tribunal in these applications and should be punished for contempt of this Tribunal. Thus, in all 3 review applications and 2 contempt of court applications have been filed arising out of the decisions of this Tribunal rendered in applications No. 1238 to 1241 of 1986 and applications No. 1625(a) to (d) of 1986. As the facts involved in all these five applications are common, they are disposed of by this common order.

2. Sri M.Sreerangaiah, learned counsel for the Railways, appeared for the applicants in Review Applications No. 25 and 30/87. Sri V.K.Kulkarni, Advocate, appeared for the applicants in Review Application No. 29/87. Sri R.U.Goulay appeared for the complainants in Contempt of Court Application Nos. 8 and 9/87. For the sake of convenience, the complainants in CC Nos. 8 and 9/87 will be referred to as the original applicants. The two applicants in review applications No. 25 and 30/87 will be referred to as the original respondents, and the two applicants in review application No. 29/87 will be referred to as the new respondents since their contention is that they are adversely affected by the decision of this Tribunal in appli-



ations No. 1238 to 1241 and should have been impleaded as respondents in these applications.

3. It would be convenient at this stage to set out the facts on which applications No. 1238 to 1241 and 1625(a) to (d) were decided by this Tribunal. All the original applicants - there are 8 of them - were working as Head Clerks in different offices of the Railway Workshop of the South Central Railway at Hubli. The next promotion for a Head Clerk was to the post of Chief Clerk. Before a Head Clerk could be promoted as Chief Clerk, he had to take a written test and, if he qualified in that test, an interview. Sometime before October 1985, 10 posts of Chief Clerks had to be filled up; the original respondent No.2 issued a letter dated 9/10.10.1985 notifying that a written test for selecting persons to the 10 posts of Chief Clerks would be held on 11.10.1985 and directing that 29 persons named therein be informed that they should attend the said written test on the said date. The list of 29 persons so alerted included all the original applicants and as well as the two new respondents. The written test was duly held on 11.10.85 and thereafter 11 persons were declared to have qualified therein and became eligible for the viva voce test. All the original applicants were among these so declared qualified. Of the two respondents, John Lucas qualified in the written test and his name appeared at Serial No.2 of the list of the 11 qualified persons, but the second of the new respondents namely Sri T.D.Kulkarni was not declared qualified. The viva voce test was conducted thereafter and a panel of 9 persons was drawn up, including all the original applicants, and notified in letter dated 11.11.1985 of original respondent No.1 for appointment to the post of Chief Clerk. Sri John Lucas did not figure in this panel.

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4. The first of the two new respondents, Sri John Lucas, made a representation on 22.11.1985 stating that he was the second senior-most among the 11 persons who had qualified in the written test, had completed 32 years of service, was due for retirement on 30.6.1991 before all these empanelled for promotion, his record had been clean and in view of all this, his case for promotion to the post of Chief Clerk should be reviewed sympathetically and redress done to him. The second of the new respondents, Sri T.D.Kulkarni made a representation on 14.11.1985 claiming that he had answered all the questions in the written test satisfactorily, was confident that he would score well obtaining the required qualifying marks, but was surprised that he had not been declared qualified in the written test. He felt that his answer book had been under-valued and wanted his answer book re-examined in comparison with those of Sri John Lucas, Xavier Chouri and Kalaghatgi to whom he was not inferior. Sri Kulkarni's representation for re-valuation of his paper in the written test was rejected by the competent authority by letter dated 20/11.11.1985 in the following words :

"The competent authority has gone through your representation and does not find any reason to re-assess the answer books."

It transpires that later, representation were made to the original respondents that the question paper for the written test did not contain any objective questions and that, therefore, the paper was set in violation of the instructions dated 17.4.1984 issued by the Railway Board requiring that objective type of questions should be set to the extent of about 50% of the total marks in the written test. It appears that this matter was also discussed at the permanent negotiating machinery meeting with the representatives of the Railway Mazdoor Union who also brought

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it to the notice of the original respondents-Railways that no objective questions were set in the written test held on 11.10.1985. This was considered to be ^a procedural irregularity and so the original respondents decided to cancel the selection and the resultant panel for promotion to posts of Chief Clerk notified in letter dated 11.11.1985 of original respondent No.1. The cancellation was announced by letter dated 6/7.6.1986 of original respondent No.1 and all the original applicants were ordered to be reverted to their earlier posts. The original applicants filed applications No. 1238 to 41/86 and 1525 (a) to (d) praying that this Tribunal should quash the said letter dated 6/7.6.1986 by which the panel for promotion was cancelled and they were ordered to be reverted. Allowing applications No.1238 to 1241/86 in its order dated 17.12.1986, this Tribunal held that the Railway Board's letter of 17.4.1984 requiring that objective questions should be set to the extent of 50% of the total marks in the written test was only in the nature of ^a guideline in as much as the Railway Board had itself stated therein that objective questions may be set to that extent and that the figure of 50% was only intended as a guidance only and should not be taken as constituting an inflexible percentage. It was quite clear, this Tribunal said, that "the idea of the Board was not to ^{lay} down an inflexible prerequisite but to leave it to the discretion of the authority competent to set the question paper. This means and implies, if for any reason no question of the objective type is at all included in the question paper, it will not be a vitiating factor since the norm laid down in the letter of the Railway Board is only for guidance and has no statutory force." This Tribunal therefore quashed the impugned letter dated 6/7.6.1986 cancelling the selection of the original applicants and their inclusion in the panel for promotion to the post of Chief Clerk. To the same

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effect was the order of this Tribunal in applications No.1625 (a) to (d) : it was further observed in that case that the Board's letter of 17.4.1984 was only an executive order which cannot be given the status of a rule framed under Article 309 of the Constitution and so if the administration which issued the said order in the form of a guideline itself departed from the same, it had to be assumed that it did so by deliberate choice and having done so, it cannot go back on its action and plead later that the test was not properly held.

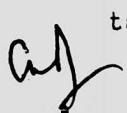
5. We may first deal with review applications No.25 and 30/87 filed by the original respondents. These applications have been filed late, but the original respondents who have filed the same have submitted that the procedure of referring the matter to various authorities and consulting the Railway Advocate took time, though action was initiated to file the review petition quite early. For the reasons stated by the original respondents in their application for condonation of delay, we condone the delay. The original respondents have in these applications reiterated that the directions contained in Railway Board's letter of 17.4.1984 were mandatory in so far as the inclusion of the objective type of questions was concerned. The official setting the paper had discretion only as to the percentage of objective questions to be set but not such an extent as not to set any objective question at all. They alleged that in so far as this Tribunal interpreted the said letter of the Board to mean that it was so flexible to include a case where no objective question was set, an error apparent from the record had crept in. We are not impressed by this contention which was reiterated by Sri Sreerangaiah. In a review, we are not expected to sit in judgement over an opinion expressed by us on the implication and scope of a document presented to us when the original application was decided. If we were to do so, we would be sitting in appeal over our own order. We have, therefore, no hesitation in

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rejecting these applications.

6. Coming to the applications alleging contempt of court filed by the original applicants, it is no doubt true that the original respondents have so far not implemented the orders passed by this Tribunal in applications Nos.1238 to 1241 and 1625 (a) to (d) of 1986. It is, however, clear from the calendar of dates furnished by the original respondents in seeking condonation of delay in filing their review applications referred to in the preceding paragraph, that they intended to seek a review of our order. Whether they were well advised or ill advised in filing the review petition is another matter. If they genuinely believed and acted on the belief that our earlier orders required to be reviewed, ^{which (b)} ~~and this~~ is evident from the fact that they did file review applications after much deliberation, they cannot be charged with contempt for not complying with our orders.

7. We now turn to the review application No.29/87 filed by the new respondents. Since they were not impleaded as respondents in applications No.1238 to 41/86 and since they complain that they have been affected adversely by the judgement rendered by this Tribunal therein, we heard their learned counsel at some length. We must straightway point out that in deciding applications Nos.1238-41, this Tribunal was concerned with the validity of the order by which the panel for promotion to posts of Chief Clerks which included the applicants therein was cancelled. For this purpose, this Tribunal had also to examine whether there was any legal infirmity in the manner in which the written test was held on 11.10.1985. The new respondents were not selected in these tests. In these review applications, the new respondents



say that if the tests had been struck down, they would have got a fresh opportunity to take the new test to be held thereafter and to get selected therein, but this is a speculative proposition. Moreover, the original applications were directed against the action of the original respondents in cancelling the results of the test and could in no way be regarded as directed against the new respondents. We are, therefore, of the view that the new respondents were not necessary parties in these applications. Apart from this, the new respondents say in this review application that the directions of the Railway Board in its letter dated 17.4.1984 did not give the authorities the option of setting a question paper with no objective question at all. This point was raised when the original applications were heard and rejected. Apart from the fact that we are not expected to reconsider the interpretation of the Board's letter by way of a review, we may also state that we are not persuaded that that interpretation was wrong.

8. Review application No.29/87 deserves to be rejected for one more very good reason. In the order disposing of application No.1238 to 1241/85 this Tribunal observed that those persons who took the written test held on 11.10.1985 without protest were estopped ^{from} ~~against~~ challenging its validity. As stated earlier in this order, both the new respondents who are the applicants in Review Application No.29/87 not only took the written test on 11.10.1985 without protest, but in their representations made thereafter they relied on their performance in that very test. John Lucas pointed out that he stood second in the written test and T.D.Kulkarni insisted

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that he had answered that test better than certain others named in his representation. The following observations of the Supreme Court in OM PRAKASH VS APILESH KUMAR, AIR 1986 SC 1043 at para 23 of the judgement squarely apply here :

"Moreover, this is a case where the petitioner in the writ petition should not have been granted any relief. He had appeared for the examination without protest. He filed the petition only after he had perhaps realised that he would not succeed in the examination. The High Court itself has observed that the setting aside of the results of examinations held in the other districts would cause hardship to the candidates who had appeared there. The same yardstick should have been applied to the candidates in the District of Kanpur also. They were not responsible for the conduct of the examination.

9. Sri V.K.Kulkarni appearing on behalf of the new respondents in Review application No.29/87 made one more point. The Railway Board, as the supreme administrative authority of the department of railways, had itself felt that the inclusion of objective type of questions in the written test was a "must" and had cancelled the test held on 11.10.85 and 11.11.85 for that reason. The Tribunal was therefore precluded from interpreting Board's letter ~~No.1/1.533/NP/1985~~ dated 17/4/1984 differently and holding that non-inclusion of any objective question did not vitiate the test. In this connection Sri Kulkarni also drew our attention to a circular (No 147) dated 14.11.1986 issued by the Personnel Branch of the South Central Railway - para 5.2. thereof - which clarified that the percentage of objective questions could be " a little more or little less" than 50% but the paper had to contain objective questions. We are not impressed with this argument. In the first place, as we have already remarked, we are not expected to sit in judgement ~~of~~ ^{on} our own interpretation of the Board's Circular dated 17/4/1984 in Review. Secondly, when the administration



which has the right to depart from its own instructions, either by varying them expressly or by actions not in conformity with these instructions, held a test which for all intents and purposes was duly authorised by it, called on its officials to take the test, announced the results and appointed the successful candidates, it cannot go back on what it did subsequently to the detriment of the candidates who were declared successful and appointed. The instructions issued on 14.11.1986, ^{were} long after the test was held ~~is~~ neither or here. This contention also has therefore to be rejected.

10. In view of the above, R.A.Nos. 25 and 30/87, 29 of 87 are rejected and contempt of court proceedings sought to be initiated in C.O.C Nos. 8 and 9 of 1987 are dropped.

11. Parties to bear their own costs.

Sd---

MEMBER (J)

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Sd---

MEMBER (A) 31/8/

True Copy

B. Venkateshwaran
DEPUTY REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE