

20-5-82 at 11.45 AM

Presented by
S.S. Chandrasekhar
Advocate
Guntur

plea
S. S. Chandrasekhar
2/15

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH, BANGALORE.

CONTEMPT PETITION No. 8 /1987

in

Application No. 1238/86 to
1241/86

BETWEEN

1. V.R. Kalghatgi, aged 47
working as Head Clerk, Office
of the Carriage Shop, S.C.
Railway Workshop, Hubli,
Dist. Dharwar.
2. R. Subramanyan, aged 46 years
working as Head Clerk, Boiler shop
South Central Railway, workshop,
Hubli, Dist. Dharwad.
3. Rangarajan, aged 47 years,
working as Head Clerk, Yardship
S.C. Railways Workshop, Hubli,
Dist. Dharwad.
4. A. Appunni Kutti, aged 43 years,
working as Head Clerk, Erecting Shop
S.C. Railway Workshop, Hubli,
Dist. Dharwad.

... Complainants/Applicants.

AND

1. The Additional Chief Mechanical
Engineer, South Central Railway
Workshops, Hubli, Dist. Dharwad
2. The General Manager, South Central
Railways, Secunderabad, (A.P)

.. Respondents/Respondents.

UNDER SECTION 17 OF THE ADMINISTRATIVE TRIBUNAL
ACT, 1985

The Complainants submit as under:

1. The Address of the Complainants is that of their counsel Sri R.U.Goulay, B.A. LL.B. Advocate, 90/1, 2nd Block, Thyagarajanagar, Bangalore-28.
2. The Addresses of the Respondents are those as mentioned in the cause title above.
3. The Complainants had filed Application No.1238/86 to 1241/86 before this Tribunal which came to be allowed by the Judgment dated 17-12-86 as could be seen from Annexure "A". According to this order the selection of these Complainants to the post of Chief Clerks had been held to be valid.
4. The Complainants were as a fact posted as Chief Clerks and they were working as such in different Shops until an Endorsement came to issued by the Railways stating that they proposed to hold a fresh examination and the persons already promoted as Chief Clerks were required to be reverted. Immediately, the Complainants herein filed Applications before this Tribunal and this Tribunal was pleased to grant interim order of stay of the reversions as could be seen from the records. In spite of this interim order of stay of the reversions sought to be given effect to against these Applicants (Complainants) the

Department continued to have an adamant attitude of maintaining the statusquo and treating the complainants herein as holding the posts of Head clerks even though they were functioning as Chief Clerks. However, the Complainants herein waited for the disposal of the Applications themselves instead of precipitating matters. Even after the judgment of this Tribunal and representation given by the Applicant as per Annexure "B" the Respondents have not obeyed order of the Tribunal and treating the Applicants/Complainants herein as working as Chief Clerks. This deliberate action on their part is really contempt of the order of this Tribunal and action is required to be taken against them for disobedience of the order of this Tribunal. The fact that they did not give respect to the interim order of stay during the pendency of the Application and ~~after the fact that they do not~~ want to implement the order of this Tribunal even though it is made in December 1986, the attitude is clearly contemptuous and requires to be taken serious view of the disobedience of the orders made by the Tribunal. Hence, under the circumstances, it is requested to take action against the Respondents for contempt of the Court for disobedience of the order of this Tribunal.

Bangalore.

R. Jaganneth

Dated. 9- 5- 1987 ADVOCATE FOR COMPLAINANT

A -

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH, BANGALORE.

Contempt Petition No. _____ /87

in

Applications No. 1238 to 1241/86

BETWEEN.

V.R. Kalghatgi, major,
working as Head Clerk,
office of the Carriage Shop
S.C. Railways Workshop Hubli ... Complainants.
and Others.

~~xxx~~

A N D

The Additional Chief Mechanical
Engineer, S.C. Railway workshops, Hubli
and Another. ... Respondents.

AFFIDAVIT VERIFYING THE PETITION.

I, R. Subramanyan, aged 46 years resident of Hubli,
now at Bangalore do hereby state on solemn affirmation
as under:

1. I am one of the Complainants in the above case
I know the facts of the case and I am swearing to this
affidavit for myself and on behalf of the other
Complainants as I am authorised to do so.
2. The statements made in paras 1 and 2 of the
Application accompanying this affidavit are true to
the best of my knowledge, information and belief
and I believe them to be true.
3. I state that the enclosures Annexure "A" and "B"
enclosed the petition are true copies of the originals.

Bangalore.

Dated. 9-5-1987

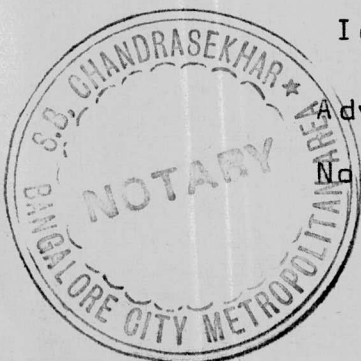
Identified by me

Advocate,

No. of corrections.

Dependent

Solemnly affirmed before me
9.5.87 at Bangalore on 9th day of May 1987
S.B. Kandaswamy
Notary, Bangalore.



- 5 -

Annexure A

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH BANGALORE

DATED THIS THE 17TH DECEMBER 1986

Present : Hon'ble Shri Ch. Ramakrishna Rao - Member (J)

Hon'ble Shri L.H.A. Rego - Member (A)

APPLICATION Nos. 1238 to 1241/86

- | | | | |
|--------------------|---|--------------------------------|--------------|
| 1. V.R.Kalghatgi |) | Head Clerks | |
| |) | South Central Railway Workshop | |
| 2. R.Subramanyan |) | Hubli | |
| |) | | |
| 3. Rangerajan |) | | |
| |) | | |
| 4. A.Appurni Kutti |) | | - Applicants |

(R.U.Goulay, Advocate)

and

1. The Additional Chief Mechanical Engineer
South Central Railway Workshop, Hubli.
2. The General Manager,
South Central Railways, Secunderabad - Respondents

(M.Sreerangaiah, Advocate)

These applications came up for hearing before this Tribunal and Hon'ble Member (J) Shri Ch. Ramakrishna Rao made to-day the following:

O R D E R

The applicants were working as Head Clerks ('HC') in the South Central Railway Workshop, Hubli ('SCR'). Based on the results of a written test and viva voce, the applicants were promoted as Chief Clerkson different dates (Annexures IV and V). Subsequently, they were reverted to the posts of Head Clerks by Rl vide Office order dated 6/7/86-86 (Annexure VI) without assigning any reason. The applicants have challenged this order of reversion in these applications. u

2. Shri R.V.Goulay, learned counsel for the applicants submits that the respondents action in reverting his clients from the post of Chief Clerk to Head Clerk without assigning any reason or giving any notice to applicants is contrary to the rules of natural justice. Sri Sreerangiah, learned counsel for the respondents submits that there was some irregularity in the selection of the applicants to the posts of Chief Clerks; that the South Central Railway Mazdoor Union ('Union') brought to the notice of the R1, that objective type of question papers were not set for the test held on 11-10-85 in which the applicants qualified, and in view of the procedural irregularity the applicants were reverted.

3. Shri Goulay in reply submits that the candidates who appeared for the examination did so without protest and subsequently failed. They should, therefore, not be allowed any relief on the ground of a so-called irregularity in setting the question paper. The proper course they should have followed was not to appear at all at the examination due to the basic infirmity in the setting of the question paper.

4. We have considered the rival contentions carefully. We find considerable force in the submissions made by Shri Goulay. In the circumstances, we have no doubt that the candidates who approached the respondents through the Union are estopped from contending that the question paper was not of the objective type, since they did not raise the objection at the time of the examination but laterafter

the results were declared. Further, the guidelines given in the Railway Board's letter dated 17-4-1984, a relevant portion of which is extracted below is for guidance only:

" It has now been decided that wherever a written test is held for promotion to the highest grade selection post in a category, objective type questions may be set for about 50% (fifty percent) of the total marks or the written test. The remaining questions could continue to be of the (conventional) narrative type. It may be made clear here that the figure of 50% for objective type of questions is intended to be for guidance only, it should not be taken as constituting an AN INFLEXIBLE PERCENTAGE." (emphasis applied)

From the above, it is quite clear, that the idea of the Board was not to lay down an inflexible percentage 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.

5. In view of the foregoing, we have no hesitation in quashing the impugned order dated 6/7-6-86 of the first respondent (Annexure VII). In the result the applications are allowed. No order as to costs.

Sd/-
Member (J)

Sd/-
Member (A)

- True Copy -

THIS IS THE DOCUMENT REFERRED TO AS ANNEXURE A
IN THE AFFIDAVIT OF R. Subramanian

S. J. Chandra
NOTARY, BANGALORE.

Amme B

From,

Hubli
Dated: 15/4/87

R. SUBRAMANIAN
Head Clerk,
Boiler Shop/UBLS

To

The Chief Mechanical Engineer,
S.C.Rly. Workshop,
Hubli.

Respected Sir,

Sub: Restoration as Chief Clerk
in scale Rs. 550/750 RSRP

Ref: Central Administrative
Tribunal Bangalore order
of 17/12/86

- - - -

The Honourable Central Administrative Tribunal
Bangalore has passed an order on 17-12-86 in that
I should be restored as chief clerk in scale Rs. 550/750
RSRP and so far no action has been taken in pursuance
of the decision taken by the Honourable Central
Administrative Tribunal Bangalore.

Under the circumstances, if I am not restored
as Chief Clerk in scale Rs. 550/750 before 30-4-87
I am constrained to approach the Central Administrative
Tribunal Bangalore for "Contempt of Court".

Thanking you,

Yours faithfully,

Sd/-
(R. SUBRAMANIAN)

/ copy /

THIS IS THE DOCUMENT REFERRED TO AS ANNEXURE.....

THE AFFIDAVIT OF.....

R. Subramanian
C. J. Kulkarni
BANGALORE



Before The Central Adm.
In the High Court of Karnataka at Bangalore

C.C.C No 8 of 1987

Appellant/s Petitioner/s
Plaintiff/s Complainant/s
Decree-Holder/s Applicant/s

Vs

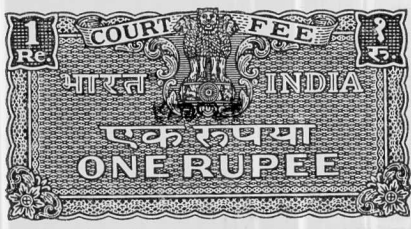
Defendant's Respondent/s
Accused/Judgment-Debtor/s
Opponent/s

Sri V. R. Kalphutgi
2 attys

The Additional
Chief Mechanical
Engineer S.C. Railway

I/We V. R. Kalphutgi & attys

Nos. _____ the Applicant
in the above matter hereby
Sri R.U. GOULAY, B.A., LL.B., Advocate, Thyagarajanagar
to appear act and for me/us in the above matter and to conduct
the same and all interlocutory or miscellaneous proceedings
the same or with any decree or orders passed therein appeals arising
therefrom and also in proceedings for review of
leave to appeal Supreme Court, and to obtain return of any document
or to receive any money which may be payable to me/us in the



2. I/We hereby authorise him/them on my our behalf to execute
any decree or order therein and to appear to act and to plead in
any appeal preferred by any other party from any decree or order

3. I/We further agree that if I/we fail to pay the fees agreed upon or to give
due instructions at all stages he/they is/are at liberty to retire from the case and
recover all amounts due to him/them and retain all my/our papers and moneys
till such dues are paid.

Executed by me/us this 7th day of May 1987 at Hubli

1) [Signature]
2) [Signature]
3) [Signature]
4) [Signature]

5) [Signature]
6) [Signature]
7) [Signature]
8) [Signature]
Signature/s

Executants are personally known to me and signed before me
Satisfied as to identity of Executant's Signature.

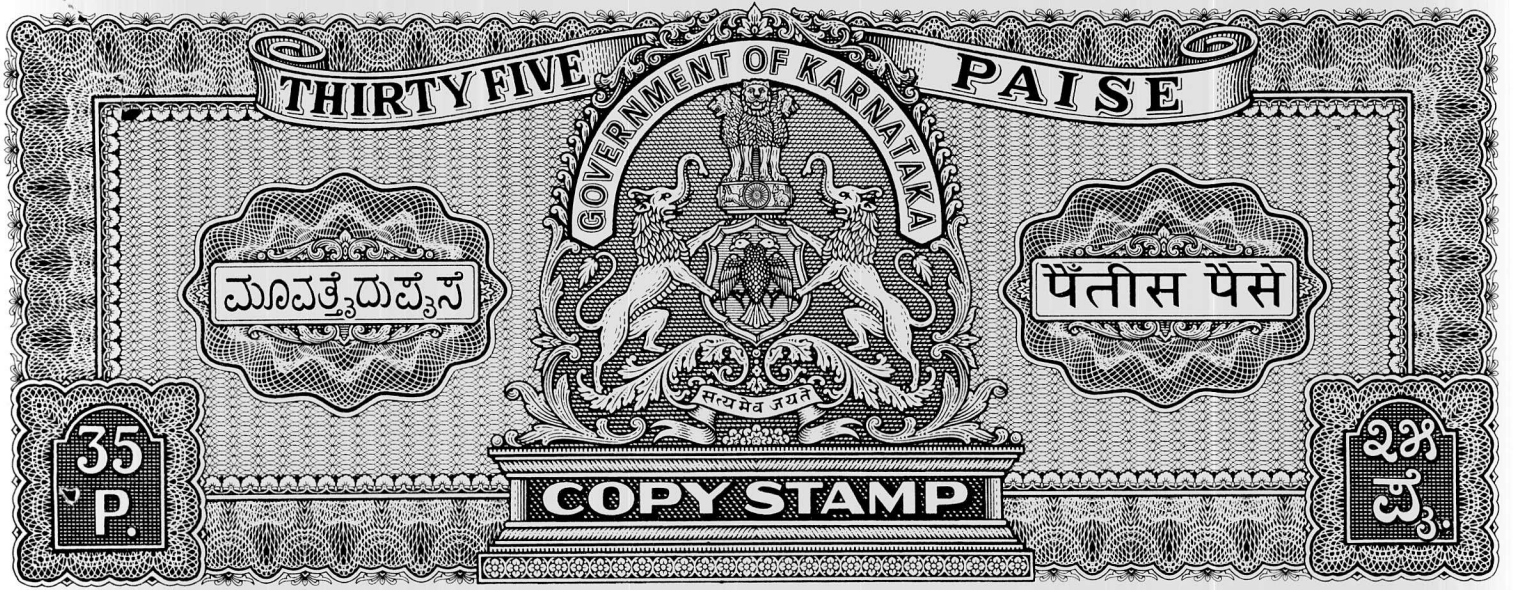
(where the executant is illiterate/blind or unacquainted with the language of vakalat)
Certified that the contents were explained to the executants in my presence
in _____ language known to him/them who appeared perfectly to understand
the same and have signed in my presence.

Accepted

ADDRESS FOR SERVICE

Sri R. U. Goulay. B.A., LL.B.,
ADVOCATE
90/1, 2nd Block, Near Ganesh Mandir
Post Office Road, Thyagarajanagar
BANGALORE-560028

Advocate for [Signature]
Date 14/5/87



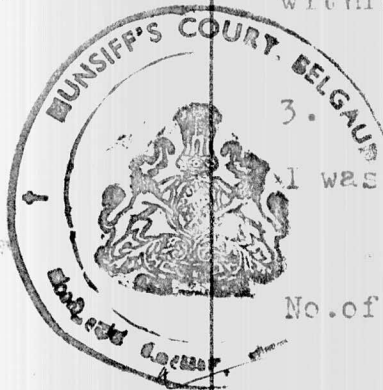
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A f f i d a v i t

Herein I, Mustaqahomed ghaikh, age Major, Occupation: Business, resident of Belgaum, to-day at Belgaum, do hereby state on solemn affirmation and make the affidavit as under:

1. I am opponent in the top noted petition and as such fully conversant with the facts and circumstances of the case.
2. That this Hon'ble Court has been pleased to allow the petition of the petitioner U/s 8 29(1)(a) of the K.R.C., conditionally that I should pay or deposit the arrears of rent determined by this Hon'ble Court within month from the date of the order.
3. That I am poor and financially very weak and I was preparing myself for payment of arrears of rent as

No. of cores. *and*



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.

....2

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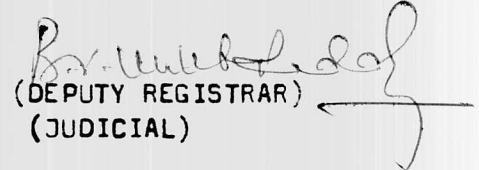
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9. Sri.John Lucas,
R/o. Railway Quarters,
1294/A, Down Chawals, Hubli.
10. Sri.T.D.Kulkarni,
R/o.1305/UBL, Railway Quarters, Meshvapur, Hubli.
11. Sri.V.K.Kulkarni, Advocate,
981, 4th (M) Block,
Rajajinagar,
Bangalore-10.
12. Sri.Y.Venkateswar Rao, 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 31st 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.

Applicants.

(Sri M.Sreerangaiah)

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.Sadashivarao, working as Head Clerk in O/o the ACME, South Central Railway, Hubli.

Respondents.

(Sri R.U.Goulay)

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.

Applicants.

(Sri V.K.Kulkarni)

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.Venkatashwar Rao, Head Clerk, O/o ACME/UBLS, S.C.Rly Workshop, Hubli.

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

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

WJ

7. V.R. Kalghatgi, Head Clerk, O/o Carriage Shop, SCR Workshop, Hubli.
8. R. Subramaniam, Head Clerk, O/o Boiler Shop, SCR Workshop, Hubli.
9. S. Rangaraja, Head Clerk, O/o Yard Shop, SCR Workshop, Hubli.
10. V. Narashimulu, 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.

... Applicants.
(Sri M. Sreerangaiah)

vs.

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, Yardship, 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 Cler, O/o ACME, SCR, Hubli.

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

7. Xavier Chourie, Chief Clerk, -do- .

8. P.s. Sadashivaram, Chief Clerk, -do-

Applicants in
CC No. 9/87.

vs.

(Sri R.U. Goulay)

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

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

Respondents in
CC Nos. 8 & 9/87.

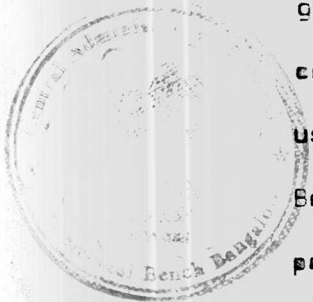
(Sri M. Sreerangaiah)

Caf

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

O R 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.No's.



Amf

1238 to 1241 of 1986 and 1625(a) to (d) of 1986.

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-

mf

cations 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 become eligible for the viva voce test. All the original applicants were among those 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.

Chs

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 Kaleghatgi 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 20/25.11.1985 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 1625 (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 ^a 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} to the 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 ^{as} 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

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 is} ~~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 No.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



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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 1241/86 this Tribunal observed that those persons who took the written test held on 11.10.1985 without pretest 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 pretest, 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 AHILESH 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. L/1535/NP/101/85~~ ^{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 14.11.1985 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 ^{on} ~~of~~ 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 14.11.1985, long after the test was held ^{were} ~~is~~ neither at nor 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 CDC Nos. 8 and 9 of 1987 are dropped.

11. Parties to bear their own costs.

Sd---

MEMBER (J)

Sd---

MEMBER (A) 31/87

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True Copy

B. V. Venkatesh
DEPUTY REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE
3/9/87