

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
.....

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

Dated: 27-10-87

APPLICATION NO. 314 /87 (F)

W.P.No. _____

APPLICANT

Vs

RESPONDENTS

Shri E.R. Parthasarathy

The Chief Personnel Officer, SC Railway,
Hubli & another

To

1. Shri E.R. Parthasarathy
C.A. to Addl Chief Mechanical Engineer
South Central Railways
Hubli
Dharwad District
2. Shri Chandrakant Goulay
Advocate
90/1, 2nd Block
Thyagarajanagar
Bangalore - 560 028
3. The Chief Personnel Officer
South Central Railway
Secunderabad (A.P.)

4. Shri V. Subramanian
Confidential Assistant
Office of the Divisional
Railway Manager
South Central Railway
Hubli
Dharwad District
5. Shri M. Srirangaiah
Railway Advocate
3, S.P. Buildings, 10th Cross
Cubbonpet Main Road
Bangalore - 560 002

Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~XXX~~/

~~XXXXXXXXXXXX~~ passed by this Tribunal in the above said application
on 21-10-87.

RECEIVED 5 copies 28/10/87

Diary No. 1367/CB/87

Issued Date: 30.10.87

Encl: as above.

DEPUTY REGISTRAR
(JUDICIAL)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE.

Dated: the 21st day of October, 1987.

Present

SHRI Ch. RAMAKRISHNA RAO .. HON'BLE MEMBER(J)

SHRI L.H.A. REGO .. HON'BLE MEMBER(A)

APPLICATION NO.314 OF 1987 (F)

E.R.Parthasarathy, Major,
C.A. to Addl.Chief Mechanical Engineer,
S.C.Railways, Hubli, Dist.Dharwar. .. Applicant

(Shri R.U.Goulay, Advocate for the applicant)

-vs.-

1. The Chief Personnel Officer,
South Central Railway,
Secunderabad (A.P.)
2. V.Subramanian, Major,
working as Confidential Assistant,
in the office of the Divisional-
Railway Manager, S.C.Railways,
Hubli. .. Respondents.

(Shri M.Srirangaiah, Counsel for Railways for R-1)

Application under Sec.19 of the Administrative
Tribunals Act, coming on for hearing this day, Shri L.H.A.
REGO, HON'BLE MEMBER(A), made the following:

O r d e r

The main prayer of the applicant in this case
is, to direct Respondent (R) 1, to grant him the benefit
of promotion in the pay scale of Rs.550-900 in the post



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of

of Stenographer with effect from 7-12-1980 i.e., the date on which R-2, his junior, was promoted to his post.

2. The salient facts of the case are as follows: The applicant was at the material time working as a Stenographer in the grade of Rs.425-700 at Guntakal in the South Central Railway.

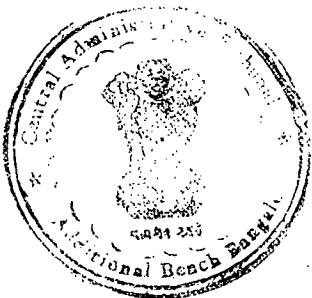
3. The posts of Stenographers in the South Central Railway are borne on the Zonal cadre. There are two other higher grades, carrying ^{de} pay scales of Rs.550-750 and Rs.550-900, in the post of Stenographers.

4. On 14-10-1980, two posts of Stenographers were vacant, in the grade of Rs.550-900, one in the office of the Divisional Railway Manager, Hubli Division (DRM/UBL, for short) and the other in that of Additional Chief - Mechanical Engineer, Hubli Workshop (ACME/UBLS, for short). Shri P.W.Kharangate, the ~~Seniormost~~ most eligible Senior - Stenographer at Hubli, was posted in the office of the DRM/UBL on 5-11-1980, in the said post (designated as Confidential Assistant - "CA" for short) who joined on 14-10-1980 and retired on 31-7-1983.

5. Shri N.Venkataraman, the next seniormost Senior Stenographer was similarly posted on 5-11-1980 in the office of the ACME/UBLS, but he declined promotion on 29-11-1980. As a result, DRM/UBL promoted by his order

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dated 3-12-1980 (Annexure-B), R-2, the locally available Stenographer in this vacancy, on an ad hoc basis, owing to administrative exigency.

6. The applicant was 39 places lower in rank than R-2, in the category of employees (OC) other than the scheduled caste (SC) and scheduled tribe (ST) employees in the Combined Seniority List of Stenographers in the grade of Rs.425-700 as published on 25-3-1986. In addition to the above 39 OCs, SC and ST employees too were eligible for promotion on roster point basis. Between the period from 1980 to 1984, the above two posts of CA in the pay scale of Rs.550-900 were filled in, in administrative interest intermittently, from among seniormost eligible Stenographers, according to the instructions of R-1 and all of them were senior to the applicant. The relevant details are furnished in paras 3(iii) and (iv) of the reply of R-1 to the application.

7. Before the applicant was promoted to the grade of Rs.550-900 and posted as CA, in the Office of the ACME/UBL on 7-11-1984 according to his turn, he was serving as a Stenographer in the grade of Rs.550-750 in Guntakal Division. The applicant states, that only after he joined in the office of the ACME/UBL, he came to know that R-2, his junior, was promoted as CA, in the grade of Rs.550-900 in the year 1980, according to Annexure-B. Thereon, he says, he submitted a written representation on 16-3-1985 (Annexure-D) to



ACME/UBLS, followed by another, dated 7-10-1985 to R-1 (Annexure-E), the last one being ^{addressed} ~~endorsed~~ to the General Manager, South Central Railway, Secunderabad on 13-3-1987 (Annexure-F). The applicant states, that as he had not received a reply to anyone of his above representations, even though he was granted ^a personal interview by the General Manager, South Central Railway, Secunderabad, he was compelled to approach this Tribunal, through the present application for redress.

8. Shri Chandrakant R.Goulay, learned Counsel for the applicant, who appeared on behalf of his Senior, Shri R.U.Goulay, contended, that the Department ought to have considered the case of his client, for promotion to the post of CA, in the grade of Rs.550-900 at Hubli, on the date, R-2 was promoted to that grade in 1980, as he was decidedly senior to him; that as this post was borne on the Zonal cadre, the claim of his client for promotion thereto, could not have been overlooked merely because he was working at Guntakal, which was violative of Articles 14 and 16 of the Constitution; that while R-2 and his client were first appointed to the Stenographers' grade of Rs.425-700, more or less at the same time in 1965, R-2 was promoted to the grade of Rs.550-900, on 7-12-1980 skipping the intermediate grade of Rs.550-750, which was tantamount to granting him virtually, double promotion, in discrimination against the applicant who was senior to

him



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him, and who came to be promoted to the grade of Rs.550-900 only with effect from 29-11-1984 ^{is} nearly 4 years after R-2 was promoted to this grade; and therefore, the applicant who has been unjustly deprived of this legitimate opportunity of promotion to the grade of Rs.550-900 as CA, with effect from 7-12-1980, when R-2, his junior, came to be promoted to that grade, should be restored the benefits of this promotion from that date with all consequential financial ~~benefit~~ ^{benefit} *only*.

9. At the outset, Shri Sreerangaiah, learned Counsel for R-1, submitted, that the application was barred by limitation as it was filed as long as after 7 years from the date of ad hoc promotion of R-1 i.e., 3-12-1980, according to Annexure-B. Countering this Shri Goulay clarified, that the applicant came to know for the first time, towards the end of November 1984, when he joined at Hubli, on promotion to the grade of Rs.550-900, that R-2 who was his junior, was promoted to this grade, as far back as in 1980 and that his repeated representation to the authorities concerned, the last of which was on 13-3-1987 (Annexure-F) ^{evoked} ~~looked~~ no response. He therefore pleaded, that the application was not hit by limitation. Shri Sreerangaiah controverted this plea of Shri Goulay stating, that the applicant was duly given a reply, to his various representations, by his Controlling Officer, namely, ACME/UBLS on 30-9-1985, 4-11-1985 and 29-4-1987. Even assuming that the applicant became aware in November 1984, of the promotion of R-2



(in 1980, as CA in the grade of Rs.550-900), nothing prevented him to approach this Tribunal promptly after his second representation dated 7-10-1985 (Annexure-E), but instead of doing so, he is seen to have remained passive upto 13-3-1987 i.e., for nearly 1 year and 4 months, when he is said to have addressed a final representation to the General Manager, South Central Railways, ostensibly as a cover-up to surmount the bar of limitation. The applicant has not even filed an application for condonation of delay. Nevertheless, the application before us was admitted, as a special case, in order to ensure justice, taking an overall view of the endeavour made by the applicant to seek redress from the authorities concerned. In view of this, we ^{do} ~~negate~~ the preliminary objection raised by Shri Sreerangaiah, in regard to limitation.

10. Rebutting the other contentions, Shri Sreerangaiah, argued that R-2 was posted as CA, in the grade of Rs.550-900 by DRM/UBL in the office of the ACME/UBLS, by his order dated 3-12-1980 (Annexure-B) purely on an ad hoc basis, as Shri N.Venkataraman, who was next seniormost and eligible Senior Stenographer in the grade of Rs.550-750 and who was posted in the said post, on 5-11-1980, had declined promotion on 29-11-1980. Shri Sreerangaiah submitted, that the applicant was 39 places junior to Shri N.Venkataraman who had declined promotion as above, in 1980, and therefore could not rightfully claim promotion to the said post

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on a regular basis. The DRM/UBL, he said, had in administrative exigency, filled in this post locally, on a purely ad hoc basis as aforementioned, by promoting R-2.

11. Shri Sreerangaiah pointed that the posts of CAs in the grade of Rs.550-900, in the office of the DRM/UBL and ACME/UBLS had fallen vacant on several occasions, for various reasons, between the years 1980 and 1984 and these vacancies were filled in, each time from among the seniormost eligible persons (all of whom were senior to the applicant) as directed by R-1. He explained that as no "fixation benefit" was admissible in the case of promotion from the grade of Rs.550-750 to that of Rs.550-900, some of the senior employees did not avail of the benefit of this promotion. Owing to this disincentive, he said, that some of the seniors declined this avenue of promotion and such of those who had initially accepted the promotion, later requested for repatriation to their parent unit. The employees therefore, who had to be considered for promotion in these vacancies, before the turn of the applicant who was far too junior, were based in various stations dispersed all over the South Central Railways.



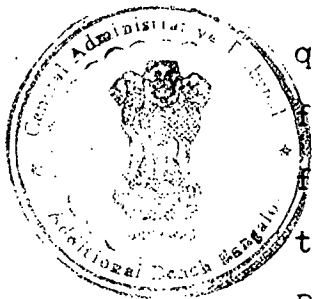
12. Shri Sreerangaiah stressed, that the applicant was nowhere on the horizon, for regular promotion as CA in the grade of Rs.550-900 in 1980, as he was way down in seniority in the Gradation List of Stenographers.

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He was at no time superseded when promotions were granted on a regular basis to this post. His turn for such promotion on the basis of seniority and merit he said, came for the first time towards the end of 1984 and he was accordingly promoted as CA, in the grade of Rs.550-900 with effect from 29-11-1984 and posted to Hubli. In the meanwhile, he said, the vacancies in question in Hubli, were filled in as an ad hoc measure in administrative interest and exigency.

13. We have examined the rival contentions carefully. We are convinced that the applicant has had no time been superseded in regard to grant of regular promotion as CA in the grade of Rs.550-900 on the basis of seniority and merit. R-2 was promoted to this post at Hubli, according to the order dated 3-12-1980(Annexure-B) by DRM Hubli, purely on an ad hoc basis, as stated in that very order along with the background. The applicant was working at Guntakal at the time, distant from Hubli and was placed below in the seniority (as many as 39, in the Gradation List at the relevant time). By no stretch of imagination, therefore, could the applicant lay his claim for the post of CA in question in the grade of Rs.550-900 in 1980 and that too for an ad hoc appointment, when he was serving at Guntakal, far remote from Hubli. To say the least, we would describe this claim of the applicant as unmerited and fanciful. Besides, no injustice has been caused to the applicant in



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the matter of regular promotion to this post.
It is thus clear that the applicant is nurturing
an imaginary grievance.

14. In the premise, we find the application
wholly devoid of merit and therefore dismiss the
same. No order as to costs.

Sd/-

MEMBER(J) 21.10.87

Sd/-

MEMBER(A) 21.10.87

- True copy -



For *[Signature]*
DEPUTY REGISTRAR 27/10
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 25 OCT 1988

REVIEW APPLICATION NO. 9 /88
IN APPLICATION NO. 314/87(F)
W.P. NO.

Applicant(s)

Shri E.R. Parthasarathy
To

V/s

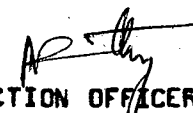
Respondent(s)

The Chief Personnel Officer, South Central Rly,
Secunderabad & another

1. Shri E.R. Parthasarathy
Confidential Assistant to
Chief Workshop Manager
South Central Railway Workshop
Hubli - 580 020
2. Shri R.U. Goulay
Advocate
90/1, II Block
Post Office Road
Thyagarajanagar
Bangalore - 560 028
3. The Chief Personnel Officer
South Central Railway
'Rail Nilayam'
Secunderabad (A.P.)
4. Shri V. Subramoniam
Confidential Assistant to
Divisional Railway Manager
South Central Railway
Hubli - 580 020
5. Shri M. Sreerangaiah
Railway Advocate
3, S.P. Building, 10th Cross
Cubbenpet Main Road
Bangalore - 560 002

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~STAY~~/INTERIM ORDER
passed by this Tribunal in the above said application(x) on 14-10-88.


SECTION OFFICER
~~DEPUTY REGISTRAR~~
(JUDICIAL)

Encl : As above

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE.

DATED THIS THE 14TH DAY OF OCTOBER, 1988.

PRESENT:

Hon'ble ~~Sri~~ L.H.A. Rego,

.. Member(A)

And:

Hon'ble ~~Sri~~ Ch. Ramakrishna Rao,

.. Member(A).

REVIEW APPLICATION NUMBER 9 OF 1988

[ON O.A.NO. 314 OF 1987 (F)]

E.R. Parthasarathy,
Confidential Assistant to Chief
Workshop Manager,
S.C. Railway Workshops,
Hubli - 580 020.

.. Applicant.

(By Sri R.U. Goulay, Advocate)

v.

1. Chief Personnel Officer,
South Central Railway,
'Rail Nilayam',
Secunderabad.
2. V. Subramanian,
Confidential Assistant to
Divisional Railway Manager,
South Central Railway,
Hubli - 580 020.

.. Respondents.

(By Sri M. Sreerangaiah, Advocate.)

This application having come up for hearing, this day, Hon'ble ~~Sri~~ L.H.A. Rego, Member(A) made the following:

ORDER

In this Review application, filed under Section 22(3) of the Administrative Tribunals Act, 1985, the applicant states, that in the original Application No. 314 of 1987 (F), he had prayed for relief, by fixation of pay, on par with that drawn by Respondent (R)-2, who is junior to him. We had dismissed the original Application as wholly devoid of merit. The relevant portion of that order is extracted below:

"13. We have examined the rival contentions carefully. We are convinced that the applicant has had no time been superseded in regard to grant of regular promotion as CA in the grade of Rs. 550-900 on the basis of seniority and merit. R-2 was promoted to this post at Hubli, according to the order dated 3-12-1980 (Annexure-B) by DRM, Hubli, purely on ad hoc basis, as stated in that very order along with the background. The applicant was working at Guntakal at the time, distant from Hubli and was placed below in the seniority (as many as 39, in the Gradation List at the relevant time). By no stretch of imagination, therefore could the applicant lay his claim for the post of CA in



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question in the grade of Rs.550-900 in 1980 and that too for an ad hoc appointment, when he was serving at Guntakal, far remote from Hubli. To say the least, we would describe this claim of the applicant as unmerited and fanciful. Besides, no injustice has been caused to the applicant in the matter of regular promotion to this post. It is thus clear that the applicant is nurturing an imaginary grievance.

14. In the premise, we find the application would devoid of merit and therefore dismiss the same. No order as to costs."

2. Sri R.U.Goulay, learned counsel for the review-applicant contended, that his client is entitled to relief as above, as otherwise, he would suffer perpetual injustice, owing to his junior viz., R-2, drawing higher emoluments than he, in the post of Confidential Assistant ('CA' for short), in the then pay scale of Rs.550-900, now revised to Rs.1640-2900, with effect from 1-1-1986. Referring to Annexure-I to the review-application, to show the disparity in emoluments, drawn by his client vis-a-vis R-2, he asserted, that the disparity was substantial and would perpetuate, to flagrant disadvantage of his client, as compared to R2, who was his junior. He argued, that it was unfair to deny the applicant this financial benefit, which was not inconsiderable, as it was the statutory duty of the Department, to offer him the first opportunity of ad hoc promotion, in the post of CA, at Hubli in 1980, in preference to R-2, his junior, which he would have readily accepted, even though he was posted at Gulbarga."

3. He then invited our attention, to a series of Circulars, issued by the Railway Board, New Delhi, on 1-4-1981, 27-6-1983 and 28-8-85 (Annexures 4 & 5 and 3 & 2 respectively), prescribing guidelines, in regard to ad hoc appointments and promotions, inter alia laying emphasis on the instructions, that ad hoc appointments and promotions, should not be allowed to continue for unduly long, [&] beyond a period of 3 to 4 months and that only senior persons, according to their suitability, should be appointed/~~and~~ promoted, with the approval of the Chief Personnel Officer of the concerned Railways, in regard to regular vacancies.

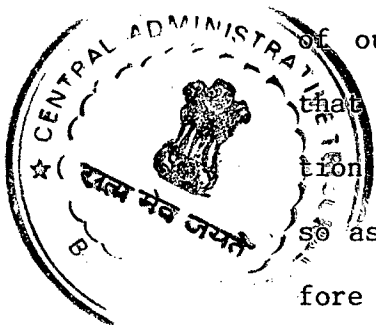
4. In this context, Sri Goulay affirmed, that the vacancy in the post of CA, which had occurred in 1980 at Hubli and in which R-2 (who was junior to the applicant) was appointed/promoted, on an ad hoc

basis, was a regular vacancy and therefore, pleaded, ^{that} that / vacancy ought to have been filled in, by following the regular procedure, with due regard to the Seniority List prevalent, in the feeder cadre. But, instead, he alleged, R-2 was appointed/promoted in this vacancy, in violation of the above procedure and the Seniority List then current, as a result of which, irreparable harm was caused to the applicant.

5. In view of the above facts and circumstances, Sri Goulay earnestly pleaded, for review of the order made by us, in Original Application No. 314 of 1987.

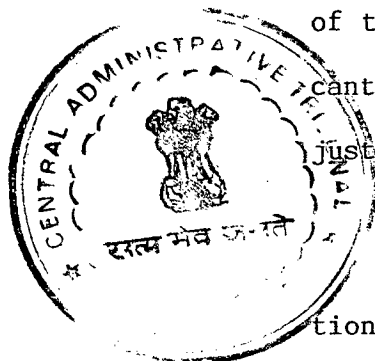
6. R-1 has filed his reply, resisting this review-application. R-2 was neither present nor represented by counsel.

7. Appearing for R-1, Sri M. Sreerangaiah, learned counsel contended at the threshold, that the review-application was barred by limitation, as it was inordinately delayed and that, that apart, the review-applicant had come up now, with a new prayer in review, which was not urged in the original application, and the grounds too now urged, were not advanced either in the written pleadings, relating to or at the time of hearing the original application. He argued with vehemence, that the additional grounds now urged, did not constitute discovery of new and important matter of evidence, which after exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him, when the order was made in the original application, according to Order XLVII of the Code of Civil Procedure. Besides, he contended, that there was no mistake or error apparent, on the face of the record, so as to justify review of our order, in the original application. Furthermore, he submitted, that I.A.No.I filed by the review-applicant on 1-3-1988, for condonation of delay was cursory and did not furnish cogent and valid reasons, so as to constitute sufficient cause, to condone the delay. He therefore urged, that the review-application was liable to be dismissed summarily, in view of the foregoing.



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8. We shall first deal with the above preliminary objections raised by Sri Sreerangaiah. The Order in the Original Application No.314 of 1987, was passed by us on 21-10-1987. According to Rule 17 of the Central Administrative Tribunal (Procedure) Rules,1987, the applicant should have filed the review application, within 30 days, from the date of the order, in the original application, of which the review is sought. Accordingly, the review-application ought to have been filed before this Tribunal, by 20-11-1987, while it has actually been filed on 5-2-1988 i.e., after a delay of 78 days, which is inordinate, as it is more than two and a half times, the period stipulated according to Rule 17 ibid. It is pertinent to point out here, the abnormal delay of 1 year and 4 months, into which the applicant had lapsed, while filing Original Application No.314 of 1987 itself, vide: para 9 of our Order dated 21-10-1987, on that application. Nevertheless, we had condoned that delay as a special case, taking an overall view of the endeavour made by the applicant, to seek redress from the authorities concerned. This should have been a pointer to the review-applicant, to guard against recurrence of the like but unfortunately inertia on his part has persisted, this time, in exceeding more than two and a half times, the period stipulated for filing the review-application, as aforementioned. We need hardly express, that law dislikes delay - lex reprobat moram and again, law assists the wakeful and not the sleeping - lex vigilantibus non dormientibus subvenit. However, as it is stated that the record of the case was misplaced, in the office of the counsel for the applicant resulting in delay in filing the application, we consider it just and proper, to condone the delay.



9. In our view, there is force in the other preliminary objection raised by Sri Sreerangaiah namely, that the prayer ~~now~~

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seem to have represented at the relevant time.

13. In the result, we find no merit in the review-application and, therefore, dismiss the same, at the admission stage itself, with no order as to costs.

Sd/-

MEMBER (A)

14.10.88

Sd/-

MEMBER (B) 14.10.88

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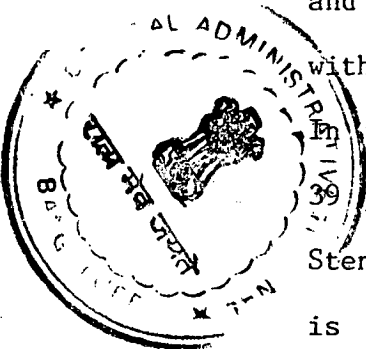
R. Singh 25/10/88
SECTION OFFICER

CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

who does not speak, when he ought to, shall not be heard, when he desires to speak (much later) - qui tacet consentire videtur. This maxim²⁴, truly applies in this case.

11. It needs to be realised, that a review cannot be taken recourse to, as a matter of routine, merely with the object of correcting, an allegedly erroneous view, taken earlier but only with a genuine object, of rectifying a patent error of fact and/or law on the face of the record. Such is not the case in the review-application before us, as all material facts and issues, in the original application were duly noticed and examined by us, only whereafter, that application was disposed of, by our order dated 21-10-1987. In fact, the tenor or the review-application reveals, that the applicant desires, that evidence be reappraised and the case re-examined by us on merits by way of an appeal. Such a course is clearly impermissible, as this Tribunal, cannot substitute itself as a forum of appeal, against its own judgment.

12. Even then, out of deference to the earnest and sedulous endeavour, on the part of Sri Goulay, to argue the matter in review before us, we have duly examined the various contentions urged by him, in this review-application. From the details furnished by Sri Sreerangaiah, in regard to the vacancies filled in, in the post of CA in question (Annexure-R1), we do not find any mala fides or colourable exercise of administrative power but are satisfied, that the post was filled in, in administrative exigency and interest, on an ad hoc basis, as and when the vacancy arose, in accordance with law, and within the scope and ambit of the Rules and instructions in force, without disturbing the seniority of the applicant, vis-a-vis R-2. In this context, it is relevant to note, that none of the nearly 39 persons, who were senior to the review-applicant, in the cadre of Stenographer, are seen to have been aggrieved on this account. It is also relevant, that R-2, even prior to his appointment/promotion as CA, on an ad hoc basis, was drawing higher pay, than the review-applicant, by virtue of advance increments, on which the latter does not



now made and the grounds advanced too, are radically different as compared to the original application. In the original application, the prayer was for grant of benefit of promotion to the applicant as Stenographer, in the pay scale of Rs.550-900, with effect from 7-12-1980 (i.e., the date on which, R-2 his junior, was promoted as CA on an ad hoc basis) on parity⁴ with ~~xx~~ R-2. Nowhere, either in the original application or in the course of the hearing of that application, did the counsel for the applicant, enlarge on the difference of pay, between the applicant and R-2, postwise and datewise, as he now seeks to do. Comparison of Annexure-1 in the review-application and Annexure-A, in the original application, is revealing. Annexure-A, is the only crucial document of comparative service particulars, furnished by the applicant, vis-a-vis R-2, in the original application and it is ominously silent on pay details. The Tribunal therefore, in the absence of pleadings and vital and relevant details in regard to pay in the original application, as now furnished in the review-application, could not have given a proper direction, in regard to fixation of pay of the applicant, vis-a-vis R-2, in the original application and that too, for want of a specific prayer. It is apparent, that the applicant is treading new ground now, as an after-thought in the review-application, which was not traversed by him in the original application, which is clearly impermissible in a review application.

10. The applicant had also not advanced, any argument on the correctness or otherwise, of the ad hoc appointment/promotion of R-2, as CA, on the basis of a string of Circulars, from the Railway Board New Delhi (vide: para 3) which he has now produced. These are not confidential ⁴ instructions or documents and therefore, were well within the knowledge and reach of the applicant, being instructions of a general nature and could have been easily produced by him, at the time of hearing of the original application, had he exercised due diligence and really meant to argue the matter at that time. Manifestly, this is an after-thought. It is a well-known maxim, that a person who

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