

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 455/97

Date of Decision: 25/3/98

S.N.Jayade & 4 Ors.

Applicant.

Shri T.D.Ghaissas

Advocate for
Applicant.

Versus

Union of India & 2 Ors.

Respondent(s)

Shri S.C.Dhawan

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. M.R.Kolhatkar, Member(A)

Hon'ble Shri.

(1) To be referred to the Reporter or not?

(2) Whether it needs to be circulated to other Benches of the Tribunal?

abp.

M.R.Kolhatkar

(M.R. KOLHATKAR)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GULE STAN BLDG. NO.6, PRESCOT RD, 4TH FLR, FORT.,

MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. 455/97.

DATED THIS 25TH DAY OF MARCH, 1998.

CORAM : Hon'ble Shri M.R. Kolhatkar, Member (A).

1. S.N.Jayade, Casual Progressman(T.S), RE, Nagpur.

2. G.G.Katti Casual Progressman(T.S), RE, Nagpur.

3. S.M.Choudhary, Casual Progressman(T.S), RE, Nagpur. APPLICANTS

4. B.R.Atre, Casual Progressman(T.S), RE, Nagpur.

5. S.D.Naik, Casual Progressman(T.S), RE, Nagpur.

C/o. Shri V.L.Narsimham, B-1,
Indranil Apartments,
Red Cross Road,
Civil Lines,
Nagpur-1.

By Advocate Shri T.D.Ghaisas.

V/s.

1. Union of India through General Manager,
Central Railway,
Mumbai CST, Mumbai.

2. Union of India through General Manager,
Railway Electrification, CORE,
Allahabad.

3. Divisional Electrical Engineer(RE)/
Nagpur.

... Respondents.

By Advocate Shri S.C.Dhawan.

I O R D E R I

I Per Shri M.R. Kolhatkar, Member (A) I

The applicants in this OA are all diploma holders.

They were initially appointed on daily rated basis as Casual Skilled Artisan; and on completion of 360 days of continuous

service, they were granted the grade of Rs.950-1500.,

afterwards they were promoted to the higher grade of

1200-1800 in which they are working. The applicants belong

to the CORE (Central Organisation of Railway Electrification)., in Nagpur Division

having been rendered surplus/ they are at present working however

at Vijaywada. Their seniority as progressman is/being

maintained by the Nagpur Division.

at para 8(a)

2. The prayer of the applicants/ is to restrain the

respondent No.3 by order of injunction not to transfer the applicants from Project to Project before their absorption. This prayer has been given up at the admission stage. The prayer pressed is to restrain the Respondents from calling the recruitment of diploma holders through RRB and direct them to absorb these surplus diploma holders against such vacancies declared from time to time. For this purpose, the applicant relies on the following judgements of the Tribunals:-

1. OA.No.359/89 - Satish Kumar Sharma & Ors. v/s. Union of India & Ors. decided by CAT, Jabalpur Bench on 19/8/91.

2. OA.No.388/95 - G.S. Kushwaha & Ors. v/s. Union of India & Ors. decided by CAT, Jabalpur Bench on 29/2/96.

AND subsequent order in CCP-52/96 dated 27/1/97.

3. OA.No.1063/93 - Madhusudhan Patra & Ors. v/s. Union of India & Ors. decided by CAT, Calcutta Bench on 13/3/97.

3. According to the Counsel for applicant, several benches of the CAT have directed the respondents to conduct a special screening for such diploma holding casual workers and to absorb them in appropriate grade(s) in Group- 'C'.

4. Learned Counsel for respondents has opposed the OA. According to him the applicants are basically Project Casual Labourers. Keeping in view the fact that they are diploma holders and keeping in view /^{the} Supreme Court decisions, the Railway Board has already issued comprehensive instructions to cover their cases ^{vide} circular dated 9/4/1997 which reads in part.

"3. The question of regularisation of the casual labour working in Group 'C' scales has been under considerations of the Board. After careful consideration of the matter, Board have decided that the regularisation of casual labour working in Group 'C' scales may be done on the following lines:-

i) All casual labour/substitutes in Group 'C' scales whether they are Diploma Holders or have other qualifications, may be given a chance to appear in examinations conducted by RRB or the Railways for posts as per their suitability and qualification without any age bar.

- ii) Notwithstanding (i) above, such of the casual labour in Group 'C' scales as are presently entitled for absorption as skilled artisans against 25% of the promotion quota may continue to be considered for absorption as peon.
- iii) Notwithstanding (i) and (ii) above, all casual labour may continue to be considered for absorption in Group 'D' on the basis of the number of days put in as casual labour in respective units."

5. The grievance of the applicant is they are being absorbed as Group 'D' / (3(iii)) but the counsel for respondents states that options 3(i) and 3(ii) are also available to the applicants but he emphasises that for availing of these modes of recruitment, there must first of all be vacant posts and secondly the recruitment will take place strictly in accordance with the advertisements issued by the Railway Recruitment Board as directed by Railway Board.

6. The Learned counsel for respondents produces before me the judgement of Hon'ble Supreme Court in the case of Smt. Pyari Maaih & Ors. v/s. Union of India & Ors decided on 3/5/89, ^{vide civil appeal No. 1267/88 & Ors.} in which the Hon'ble Supreme Court observed as below:-

" Learned counsel appearing on behalf of the respondents agrees that the petitioners will be given an opportunity to appear before the Railway Recruitment Board for their selection to posts in accordance with their suitability and qualification for such posts. In such selection, there will be no question of age bar. So long as such an opportunity is not given, the respondents are restrained to terminate the services of the petitioners. The Writ petitions are disposed of as above. There will be no order as to costs."

7. The Learned Counsel for respondentss states that this Tribunal may not give any direction contrary to the direction given by Hon'ble Supreme Court. According to him what the Railway Administration are required to do in terms of in/ Supreme Court judgement is to give an opportunity to advertised applicants for selection to posts according to suitability and qualifications and there will be no question of age bar. But beyond this the Railway Administration cannot go especially if the action proposed is not in accordance

with the rules.

8. Learned counsel for applicant has referred to the letter dated 28/1/97 addressed by General Manager, Railway Allahabad Electrification in para-C of which it is proposed

"(C) To overcome the problems of regularising services of these diploma holders c/ labours, Rly. Bd's may approve their cases as a special case with one time dispensation in terms of stipulations given in Rly. Bd's letter No.E(NG)II/88/CL/MTP/ 133 dated 9/12/91 and direct the Railways concerned and RRB to hold their suitability test as a one time dispensation against direct recruitment quota of the Rlys/New Zones in accordance with their suitability and qualifications without imposing any age bar. The services of these diploma holders c/labours will be very helpful for better qualifies of work where Electrification has been introduced as they are well conversant with the Rly. working specifically in TRD/TRS department."

for

9. Thus the proposal made is/asking the Railways to consider their cases as a special case with one time dispensation against direct recruitment quota. The learned counsel for respondents/states that ^{however} this letter is only a proposal and so far as Railway Administration policy is concerned, it is reflected in the Railway Board circular dated 9/4/97. According to him, to ~~the~~ extent the directions are given ~~xxxxxx~~ beyond the purview of the circular dated 9/4/97 ^{they} will not be in accordance with the rules.

10. The Learned Counsel for Applicant refers to the scheme of S.E (South Eastern Railway) which is quoted in the Jabalpur Bench judgement and the Tribunal has given following direction.

"Accordingly, we direct the respondents to consider the regularisation of the applicants in the post, of Inspector of Works Grade-III by giving them an effective opportunity to appear before the Railway Recruitment Board for regular selection. As an alternative, we direct them to consider extending to the applicants the same treatment as has been meted out to similarly placed persons by the South Easter Railway. These directions shall be complied with within three months of communication of this judgement."

11. Counsel for applicant states that what he prays is that the Railway Administration may be directed to have a separate screening to regularise the applicants as was directed by Jabalpur Bench.

12. Jabalpur Bench proceeded in terms of Supreme Court judgement. It was delivered prior to the Railway Board instructions dated 9/4/97. On a careful perusal of instructions, it is seen that it is envisaged that all casual labour/ substitutes in Group 'C' scales whether they are Diploma holders or have other qualifications may be given a chance to appear in examinations conducted by RRB or the Railways for posts as per their suitability and qualification without any age bar. Thus there is an alternative to RRB selection in the Railway Board circular vide use of the term "RRB or the Railways" which should conduct examinations for posts as per their suitability and qualifications.

13. It is therefore clear that the Railway Board instructions do not rule out the possibility of holding a special screening test by the concerned Railways if there are a large number of diploma holders. It appears to me that the direction given by Jabalpur Bench was quite in conformity with Railway Board instructions. I therefore do not see any difficulty in giving a direction to the respondents as in the Jabalpur Bench judgement referred to above.

14. I therefore dispose of the OA by passing the following order:-

The respondents may consider regularisation of the applicants to appropriate Group 'C' posts according to their suitability and qualifications. While the applicants are free to appear for tests conducted by RRB, respondents may also take a review of available vacancies and available diploma holders working as casual labourers particularly those working in the grade of adhoc progressman and if the situation warrants as an alternative hold a supplementary screening test which will be

open to the applicants. It is made clear that the standard of supplementary screening test should be in no way inferior to the standard of the tests conducted by RRB. Action in terms of these directions should be taken within a period of four months from the date of passing of the order.

abp.

M.R.Kolhatkar
(M.R. KOLHATKAR)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

R.P.NO.44/98 in OA.NO.455/97

Pruned this the 26th day of Nov 1998

CORAM: Hon'ble Shri D.S.Baweja, Member (A)

Union of India & Ors. Applicants

By Advocate Shri S.C.Dhawan

v/s.

S.N.Jayade & Ors. Respondents

By Advocate Shri T.D.Ghaisas

O R D E R

(Per: Shri D.S.Baweja, Member (A))

This Review Application has been filed by the respondents seeking review of order dated 25.3.1998 in OA.NO.455/97.

2. The Hon'ble Member who constituted the Single Member Bench and decided the OA. has since retired. In view of this, another Bench was constituted and therefore the matter was listed for preliminary hearing. Notice was issued to the applicants in the original application. The applicants have filed reply to the review application. Arguments heard of Shri T.D.Ghaisas, learned counsel for the applicant and Shri S.C.Dhawan, learned counsel for the respondents. The review application has been filed on 9.7.1998. The order is dated 25.3.1998 and therefore the review application has been filed late as per Rule 17 of CAT (Procedure) Rules, 1987. The respondents have filed a Misc. Application for condoning the delay in filing of

the review application indicating the reasons for delay. The Full Bench as per order dated 17.3.1989 in the case of Nand Lal Nichani & Ors. vs. Union of India & Ors. has decided that Tribunal has the power to condone the delay in the filing of a review application where a "sufficient cause" is made out to the satisfaction of the Bench. I have carefully gone through the reasons advanced for delay in filing the present review application and I am inclined to condone the delay in filing the review application. Accordingly, the Review Application has been considered and matter was heard after condoning the delay.

3. The Hon'ble Supreme Court through several judgements has laid down the parameters under which the power of review can be exercised. In this connection, reference is made to one of the judgement in the case of Aribam Taleshwar Sharma vs. Aribam Pishak Sharma & Ors. AIR 1979 SC 1047, where their Lordships have observed that the power of the review may be exercised on the discovery of the new and important matter or evidence which after the exercise of the 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 also be exercised where some mistake or error apparent on the face of the record is found. However, power of review may not be exercised on the ground that the decision was erroneous on merits. In the

case of M/s. Thungabhadra Industries Ltd.

vs. The Government of Andhra Pradesh, AIR

1964 SC 1372, the Hon'ble Supreme Court

has held in Para 11 as under :-

"..... A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out."

In the recent judgement in the case of Surjit

Singh & Ors. vs. Union of India & Ors., JT 1997

(6) S.C. 32, the Hon'ble Supreme Court has held that when a patent error is brought to the notice of the Tribunal, the Tribunal is duty bound to correct, with grace, its mistake of law by way of review of its order/directions.

4. Keeping in view the grounds laid down by Hon'ble Supreme Court which may call for a review of order, the present review application has been considered.

5. The respondents have sought the review of the order dated 25.3.1998 on the plea that there is an error on the face of the record in interpreting the instructions contained in the Railway Board's order dated 9.4.1997 as the words

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in the Circular "or the Railways" is in
(a)
terms of Rule 109of the Indian Railway
Establishment Manual is not a separate or
an alternative mode of recruitment to that
of Railway Recruitment Board. In this
connection, the respondents have brought on
record ~~with~~ the review application a copy
of the Railway Board's letter dated 22.8.1997
which has been addressed to the General
Secretary of one of the recognised Union
wherein the meaning of the words "or the
Railways" has been clarified with reference
(a)
to the provisions of Para 109of Indian Railway
Establishment Manual. The applicants in the
review application, i.e. the respondents in the
OA, have pleaded that they could not produce the
said letter during the hearing of the OA, as this
letter was not in the knowledge of the Railways.
It is further stated that the Railways came to
know only when the reference was made to the
Railway Board after the order of the Tribunal
dated 25.3.1998 was received. It is further
submitted that if the clarification indicated
by the Railway Board in the letter dated 22.8.1997
is taken into consideration, the order dated 25.3.1998
giving direction for holding selection by the
Railways should have been not given as it is in
conflict with the provisions of the rules. The
respondents states that the Tribunal has passed
that
the order interpreting the Railway Board Circular
dated 9.4.1997 gives ~~an~~ alternative^{mode} of recruitment
~~to~~ the Railways in addition to Railway Recruitment

Board. Keeping these facts into focus, the respondents submit that the order dated from patent 25.3.1998 suffers error apparent on record and therefore deserves to be reviewed.

6. As stated earlier, the applicants in the original OA. have filed reply to the review application controverting the grounds taken by the respondents in the review application. The applicants have strongly objected to reference to letter dated 22.8.1997 stating that the same has been addressed to the Union and not to the Railways and cannot ~~form~~ form the basis for review of the order. It is further contended that this letter refers only to Group 'C' Artisan staff who are not diploma holders and therefore this letter has no relevance to the judgement and order passed by the Tribunal. It is further submitted that provisions of Para 109^(a) of Indian Railway Establishment Manual are only guidelines and instructions and do not have any statutory force. The applicants, therefore, plead that the review application has no merit and the same deserves to be dismissed.

7. On going through the order dated 25.3.1998, it is noted that direction contained in Para 14 are based on the interpretation of Para 3 (i) of Railway Board's letter dated 9.4.1997. It would be appropriate here to reproduce the relevant portion of Railway Board's letter as under :-

"3.(i) All casual labour/substitutes in Group 'C' scales whether they are Diploma Holders or have other qualifications, may be given a chance to appear in examinations conducted by RRB or the Railways for posts as per their suitability and qualification without any age bar."

8. In Para 12 of the order dated 25.3.1998, the words "or the Railways" as laid down in the Railway Board's letter, ~~and extracted above,~~ provide an alternative to selection through Railway Recruitment Board. Based on this interpretation, it has been directed that the respondents may review the available vacancies and hold a supplementary screening test as an alternative to Railway Recruitment Board's selection and give chance to the applicants for screening. The respondents have brought on record a copy of the Railway Board's letter dated 22.8.1997 which is addressed to the General Secretary of one of the recognised Union. In this letter, the Railway Board has explained the scope of term "or Railways" stating that this refers to recruitment in certain Artisan category where Railway Board ~~has~~ specifically approved the direct recruitment ^{to be} made by the Railways without the agency of the Railway Recruitment Board referring to provisions in Para 109 (a) of Indian Railway Establishment Manual. Referring to ^{this} clarification as ~~indicated~~ by the Railway Board, the present review has been filed application stating that there is an error apparent in interpretation of the Railway Board's Circular. Before going into the merit

of this contention, the objections raised by the applicants with regard to the authenticity of the Railway Board's letter dated 22.8.1997 and the legality of the provisions of Indian Railway Establishment Manual as indicated earlier will be gone into. The applicants during hearing strongly contested ~~the consideration of the review petition~~ placing reliance ~~on~~ the Railway Board's letter which has been addressed to the recognised Union and not to the respondents. Keeping this in view, the respondents were directed to file an affidavit as to how the letter addressed to the Union has been received by the respondents. The respondents have filed the affidavit and have indicated as to how this letter was brought to their notice by the Railway Board when reference was made with regard to the order dated 25.3.1998. Keeping in view what is brought ~~in~~ affidavit, I am inclined to find ~~any~~ force in the contention of the applicants. The letter has been issued by the Railway Board may be ~~it is~~ addressed to the Union but it is in context of Railway Board's letter dated 9.4.1997. Since this letter was brought to the notice of the respondents on a reference made to the Railway Board, the respondents could rely upon the same and make a plea for review of the order. The second contention of the applicant that the provisions in Para 109 (a) of Indian Railway Establishment Manual have no statutory force as these provisions are by way of guidelines

only is not tenable. The provisions in the Indian Railway Establishment Manual based on the instructions issued by the Railway Board have statutory force and therefore the order, if any, passed has to be kept in view the provisions of rules in Para 109 (a).

9. Now coming to the merits, as indicated earlier, the directions given in Para 14 of the order dated 25.3.1998 are based on interpreting that the words "or Railways" providing an alternative to the recruitment process which has to be done by the Railway Recruitment Board for the various categories. On careful reading of Para 3 (i) of Circular dated 9.4.1997, it is noted that the casual labour/substitutes in Group 'C' are to be given chance without age bar to appear in the examination conducted by Railway Recruitment Board or by the Railways meaning thereby that the examinations ~~to be~~ to be conducted as per the scope of recruitment laid down ~~for~~ the Railway Recruitment Board or the Railways. It does not imply that the words "or Railways" is an alternative to Railway Recruitment Board. It is precisely the clarification furnished by the Railway Board in the letter dated 22.8.1997. The clarification indicated by the Railway Board does not modify the instructions laid down in letter dated 9.4.1997 but only clears the doubts, if any,

with reference to provisions of Para 109(a) of Indian Railway Establishment Manual.

Para 109 (a) clearly provides that for certain categories, the Railway Board has specifically authorised the Railways to do the recruitment in Group 'C'. The recruitment is normally to be done in all categories by the Railway Recruitment Board. As is clear from the Railway Board's letter and Para 109(a), the

Railways are authorised to do the recruitment directly to Artisan category in Group 'C'. Therefore, in terms of the Railway Board's letter dated 9.4.1997, casual labour/substitutes in Group 'C' scales whether they are Diploma Holders or have other qualifications, may be given a chance to appear in examinations Railways in addition to conducted by the Railway Recruitment Board.

Since the directions in the order dated 25.3.1998 in Para 14 are based on interpretation of Para 3(i) of Railway Board's letter dated 9.4.1997, in view of the observations made earlier, it is quite obvious that the interpretation made in the order is not in line with the orders contained in the Railway Board's letter dated 9.4.1997 and what is provided in Para 109 (a) of Indian Railway Establishment Manual. Keeping this in view, I am inclined to accept the contention of the respondents that there is an error apparent on the face of the record with regard to the interpretation of the Railway Board's letter dated 9.4.1997. As held by the Hon'ble Supreme Court in the case of Surjit Singh & Ors. vs. Union of India & ors. referred to

earlier, the Tribunal is duty bound to correct if any patent error brought to the notice of the Tribunal by way of review of its order or direction. I have, therefore, no hesitation to hold that the review application filed by the respondents has merit and the review of the order is called for.

10. It is noted from the order dated 25.3.1998 that the earlier order of Jabalpur Bench had been noted ~~stating that it had proceeded~~ the judgement of Hon'ble Supreme Court in the case of Smt. Pyari Maaih & Ors. vs. Union of India & Ors., as referred to in Para 6 of the order. The order under reference dated 25.3.1998 was based on instructions issued by the Railway Board dated 9.4.1997. From Para 6 of the order, it is noted that similar issue was before the Hon'ble Supreme Court and the observations made by the Hon'ble Supreme Court are reproduced in the order. Keeping in view what is held by the Hon'ble Supreme Court, the directions in Para 14 are modified as under :-

The respondents are directed to give opportunity to the applicants to appear before Railway Recruitment Board for their selection to the posts in accordance with their suitability and qualifications without any age bar.

The applicants shall also be given opportunity for selection for the

categories in Group 'C' against which the Railway is authorised to do the recruitment directly without any age bar, if the applicants so desire. This direction will be without any prejudice to the case of applicants being considered for absorption in Group 'C' against 25% of promotion quota if they are willing as provided in Para 3 (ii) of Railway Board's letter dated 9.4.1997.

11. The Review Application is disposed of accordingly. No orders as to costs.

D.S. Baweja
(D.S. BAWEJA)
MEMBER (A)

mrj.