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**THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR
ORDER SHEET**

APPLICATION NO: _____

Applicant(s)

Respondent (s)

Advocate for Applicant (s)

Advocate for Respondent (s)

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

21.11.2008

RA 7/2008 (OA No. 174/2005) with MA 103/2008

None present for applicant.

Mr. Siya Ram, Proxy counsel for

Mr. T.P. Sharma, Counsel for respondents.

On the request of the proxy counsel appearing on behalf of the respondents, let the matter be listed on 25.11.2008.

(B.L.KHATRI)
MEMBER (A)

(M.L. CHAUHAN)
MEMBER (J)

AHQ

25-11-2008

Mr. S.S. Solanki, Counsel for applicant

Mr. T.P. Sharma, Counsel for respondents

Heard learned Counsel for the parties.

Order Reserved

(B.L.Khatru)
M (A)

(M.L.Chauhan)
M (J)

28/11/08
order pronounced
today in the open
Court by the
aforesaid Bench

28/11/08
C.O.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 26th day of November, 2008

CORAM :

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER
HON'BLE MR.B.L.KHATRI, ADMINISTRATIVE MEMBER

1. REVIEW APPLICATION No.4/2008

With
MISC. APPLICATION No.100/2008
IN
ORIGINAL APPLICATION No.57/2006

Shiv Singh,
Senior Gangman,
O/o Senior Section Engineer,
P.Way (South),
Kota.

... Applicant

(By Advocate : Shri S.S.Solanki)

Versus

1. Union of India through General Manager, West Central Railway, Jabalpur (MP).
2. Divisional Railway Manager (Estt), West Central Railway, Kota Junction, Kota.

... Respondents

(By Advocate : Shri Anupam Agarwal)

2. REVIEW APPLICATION No.5/2008

With
MISC. APPLICATION No.101/2008
IN
ORIGINAL APPLICATION No.58/2006

Sadan Singh,
 Senior Gangman,
 O/o Senior Section Engineer,
 P.Way (South),
 Kota.

... Applicant

(By Advocate : Shri S.S.Solanki)

Versus

1. Union of India through
 General Manager,
 West Central Railway,
 Jabalpur (MP).
2. Divisional Railway Manager (Estt),
 West Central Railway,
 Kota Junction,
 Kota.

... Respondents

(By Advocate : Shri Anupam Agarwal)

3. **REVIEW APPLICATION No.6/2008**
 With
 MISC. APPLICATION No.102/2008
 IN
 ORIGINAL APPLICATION No.464/2004

Shiv Raj Singh Solanki,
 Technician Grade-II,
 O/o SSE/TRD,
 West Central Railway,
 Kota.

... Applicant

(By Advocate : Shri S.S.Solanki)

Versus

1. Union of India through
 General Manager,
 West Central Railway,

Jabalpur (MP).

2. Divisional Railway Manager,
West Central Railway,
Kota Division,
Kota.
3. Divisional Railway Manager,
Kota Division,
West Central Railway,
Kota.

... Respondents

(By Advocate : Shri T.P.Sharma)

4. **REVIEW APPLICATION No.7/2008**
 With
 MISC. APPLICATION No.103/2008
 IN
 ORIGINAL APPLICATION No.174/2005

Vishnu Kumar Gautam,
 S/o Shri Sarnam Singh Gautam,
 R/o 76 LB Type-II,
 B.G.Railway Colony,
 Sawai Madhopur.

... Applicant

(By Advocate : Shri S.S.Solanki)

Versus



1. Union of India through
General Manager,
West Central Railway,
Jabalpur (MP).
2. Divisional Railway Manager,
West Central Railway,
Kota Division,
Kota.
3. Divisional Railway Manager,
Kota Division,
West Central Railway,
Kota.

... Respondents

(By Advocate : Shri T.P.Sharma)

ORDER

PER HON'BLE MR.M.L.CHAUHAN

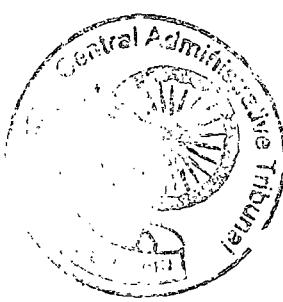
These Review Applications have been filed by the review applicants [respondents in the OA] for reviewing the orders dated 25.7.2007 (passed in OA 464/2004], 24.8.2007 [passed in OAs 57 & 58/2006] and 26.7.2007 [passed in OA 174/2005].

2. It may be stated here that OAs 57 & 58/2006 were disposed of by this Tribunal on the basis of judgement rendered in OA 464/2004. Alongwith these RAs the review applicants have also moved Misc. Applications for condonation of delay. It may be relevant to state here that earlier the review applicants/respondents in the OA had approached the Hon'ble High Court, by way of writ petition, against the judgement rendered by this Tribunal in OA 174/2005 and OA 464/2004. The said writ petitions were disposed of, vide orders dated 1.2.2008, by the Hon'ble High Court with a liberty reserved to the respondents to file review petition before this Tribunal within fifteen days and till then operation of the impugned order was stayed. Pursuant to the disposal of said writ petitions, the respondents have filed these RAs before this Tribunal on 27.2.2008. It may be stated here that the respondents had also filed writ petition against the judgement of this Tribunal passed in OAs 57 & 58/2006. Since this judgement was passed on the basis of decision rendered by this Tribunal in OA 464/2004 and the Hon'ble High Court had allowed 15 days time to the respondents to file Review Applications before this Tribunal, the writ petitions were withdrawn by the respondents with a liberty to approach this Tribunal by filing RAs. Accordingly, the RAs were filed by the respondents before this Tribunal admittedly within 30 days from the date of disposal of the writ petitions by the Hon'ble High Court. Alongwith the RAs the respondents have also moved Misc. Applications for condonation of delay. The reason

given for condoning the delay by the respondents is that they have earlier approached the Hon'ble High Court against the impugned judgement and the Hon'ble High Court had granted liberty to file RAs before this Tribunal within a period of 15 days. Accordingly, these RAs have been filed. It may be stated that in OAs 464/2004 and 174/2005, the writ petitions were disposed of on 1.2.2008. As can be seen from the certified copy of the judgement attached with the RA, application for the purpose of obtaining certified copy was presented on 1.2.2008 and the copy was delivered on 8.2.2008. The RA was filed on 27.2.2008 i.e. within 30 days, as prescribed under the rules. In OAs 57 & 58/2006, the respondents have also filed RA within 30 days. Thus, once the liberty has been given by the High Court to approach this Tribunal by way of filing RAs and the RAs have been filed within 30 days from the disposal of the writ petitions, i.e. within the time prescribed under law, we are of the view that the RAs are required to be disposed of on merit and the delay, if any, in filing the RAs, if computed from the date of disposal of the OAs, is required to be condoned in the light of the judgement rendered by the Hon'ble High Court. Accordingly, the MAs for condonation of delay stand disposed of with these observations.

3. In these four RAs common question of law is involved, hence we propose to dispose of these RAs by this common order.

4. Briefly stated, facts of the case, so far as relevant for disposal of these RAs, are that the applicants had filed the aforesaid OAs before this Tribunal thereby challenging the select list/panel prepared by the respondents in respect of Limited Departmental Competitive Examination (LDCE) quota for Group-C category. The promotion/selection involved was for the category of JE-II in the scale of Rs.5000-8000 and for the post of P.Way Supervisor in the scale of Rs.4500-7000. As per the advertisement (Ann.A/2), selection was to be made on the basis of written examination from the candidates eligible



for such selection. Accordingly, the list of eligible candidates based on vacancy position was prepared in which name of the applicants were also included. All the applicants qualified the LDCE for promotion. At this stage, it may be relevant to mention here that the said selection was to be conducted from in-service candidates only and not by way of direct recruitment from the open market. The respondents prepared the select list/panel based upon qualifying the written examination by the eligible candidates. The said panel was prepared strictly on the basis of seniority in respect of those who have qualified the written examination. Case of the applicants before this Tribunal was that once the selection had been held on the basis of written examination, the panel is to be prepared only on the basis of marks obtained by the candidates in the written examination. In other words, if a candidate, even though he may be junior-most, obtains higher marks than a person senior to him, he ought to be placed above the senior person in the panel. Whereas, case of the respondents was that mere qualifying the written examination does not ipso-facto entitle the applicants to be included in the select panel. The select list has to be prepared keeping in view the number of vacancies as well as number of candidates who have qualified the written examination based upon seniority. For that purpose, the respondents have placed reliance on the circular of Railway Board dated 16.11.98 as well as the para-materia provisions contained in para-219 of the IREM. This Tribunal while noticing the contention raised by the parties held that the select list is to be prepared amongst the successful candidates whosoever gets higher position in the written examination. Grievance of the review applicants by way of these RAs is that the judgement rendered by this Tribunal will have far reaching consequences as it is the consistence policy of the Railway that for the purpose of promotion through selection in respect of LDCE, the criteria as laid down in the Railway Board's circular dated 16.11.98 has to be followed, which provides that the final panel will be drawn up from amongst those securing 60% marks in the professional ability and 60% marks in the aggregate, in the order of seniority, provided that those

securing a total of more than 80% marks will be classed as outstanding and placed on the top of the panel in order of seniority. The review applicants have further submitted that this Tribunal has placed undue emphasis on the notification whereby the posts were advertised, which stipulated that the selection has to be made only on the basis of written examination. The review applicants have explained that the word 'only written examination' in the notification was inserted in terms of the circular dated 7.8.2003, whereby it was clarified that the selection which was earlier had to be made on the basis of written examination and viva-voce is dispensed with and it is only the written examination on the basis of which selection will be held henceforth. Thus, it was in that context the word 'written examination only' was mentioned in the advertisement. Thus, according to the respondents, this is a case of error apparent on the face of record and the Tribunal has totally ignored the Railway Board's circular dated 16.11.98, which stipulates the procedure where the selection has to be made on the basis of merit and the select list has to be prepared amongst the qualified candidates in the manner stipulated therein. The respondents have further stated that for the purpose of selection to LDCE category the persons who are eligible for consideration consists of various categories i.e. four grades below the grade for which the selection is made and in case the interpretation as given by this Tribunal is accepted, this will defeat the very purpose inasmuch as a person who is four grade below in the administrative hierarchy in case he qualified the test alongwith a person who is immediately below in the grade in which the selection is made, will supersede such person, which will defeat the very purpose of the selection. The review applicants have further argued that passing of a written test is a different thing than the name to be incorporated in the select list which has to be prepared on the basis of guidelines/procedures adopted by the department. Thus, according to the respondents, the Railway Board's circular No. 263/98 dated 16.11.1998 cannot be totally ignored. Learned counsel for the review applicants also argued that the judgement rendered by this Tribunal cannot be

sustained on the ground that the affected parties whose names have been incorporated in the select list have not been impleaded as respondents in the OA. It is on the basis of these pleas that the review applicants have sought review of the aforesaid judgement.

5. On the contrary, the submission made by the learned counsel for respondents/applicants in the OA is that the review applicants have not made out any case for reviewing the judgement in terms of the provisions contained in Order 47 Rule 1 of the CPC, which is attracted in the instant case. At the most, it may be a case where this Tribunal has wrongly interpreted the provisions. As such, the same cannot be made basis for reviewing the judgement. The remedy, if any, lies before the review applicants was to agitate the matter before the Hon'ble High Court by way of writ petition, which procedure they had adopted but the writ petition was subsequently withdrawn with a liberty reserved to them to file a review application. Regarding impleading the affected party as one of the respondents in the OA, the contention of the learned counsel for the applicants is that since the dispute relates between the applicants and the railway administration, as such it is not necessary to incorporate the selected persons as respondents in the OA. It is further stated that in one of the OAs i.e. in OA 464/2004, the applicant has impleaded one of the affected persons i.e. Shri Amar Singh as party respondent. As such, this is a sufficient compliance.

6. We have heard learned counsel for the parties and gone through the material available on record.

7. It cannot be disputed that power to review an order/judgement is contained under Section 22 (3) (f) of the Administrative Tribunals Act, 1985, which inter-alia prescribes the procedure as available to the civil court to review its judgement/decision. In other words, the ground on which review can be sought has been enumerated in Order 47 Rule 1 of the CPC, which provides that review can be sought on three

specified grounds namely (i) discovery of new and important matter or evidence which after exercise of due diligence was not within the applicant's knowledge or could not be produced by him at the time when the decree was passed, (ii) mistake or error apparent on the face of record, and (iii) for any other sufficient reason.

8. As can be gathered from the facts, as stated above, the respondents/review applicants are seeking review of the judgement on the ground that there is a mistake or error apparent on the face of record. According to us, as can be noticed from the facts stated above, it is not a case of an error apparent to face of records rather the review applicants want to review the judgement on the premise that this Tribunal has not decided the matter correctly thereby ignoring the Railway Board instructions dated 16.11.1998 which were applicable in the facts and circumstances of this case. Thus, according to us, it is a case where the matter has not been correctly decided by this Tribunal as per the assertion made by the review applicants. There is a clear distinction between an erroneous decision and an error apparent on the face of record. While the first can be corrected by the higher forum, the latter one can only be corrected by exercise of review jurisdiction. A review application has a limited purpose and cannot be allowed to be an appeal in disguise. Thus, we are of the view that the review applicants have not made out any case for reviewing the impugned judgement.

9. Further contention of the respondents/review applicants that since the judgement was rendered by this Tribunal without hearing the affected parties, as such the matter can be reviewed on this ground also, is without basis. In case the judgement was rendered by this Tribunal without hearing the affected parties, in that eventuality it is the affected person who can be termed as an aggrieved party in terms of Section 114 of CPC and it was for them to invoke such jurisdiction by filing a review application. Thus, according to us, this plea is not available to the respondent department. The matter on this

point is also no longer res-integra. In almost identical circumstances the Apex Court in the case of Jaswant Singh Lamba v. Haryana Agricultural University and others [2008 (2) SCC (L&S) 161] has held that review by the interested/affected party is not permissible. However, such person can challenge the judgement by filing an appeal. Thus, for the forgoing reasons we are of the view that the review applicants have not made out any case for reviewing the judgement. In case the matter has not been correctly decided by this Tribunal by ignoring the instructions of the Railway Board dated 16.11.1998, the respondents/review applicants are not remediless and the matter can be agitated before the higher forum and certainly, in our considered view, the power of review cannot be exercised which would amount to re-hearing the matter on merit, which is not the scope of review as contemplated under Order 47 Rule 1 of the CPC.

10. With these observations the review applications are dismissed.

(B.L.KHATRI)
MEMBER (A)

(M.L.CHAUHAN)
MEMBER (J)

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Certified That This is a True and
Accurate Copy of the Judgment/Circular

For the Hon'ble Central Board of
Railway Enquiry

Copies of the Judgment/Circular
are sent to the Hon'ble Central Board of
Railway Enquiry