

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the ²⁶ day of November, 2009

CORAM:

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

**1. REVIEW APPLICATION NO. 15/2009
IN
ORIGINAL APPLICATION No.129/2007**

Anandera Prakash Madnawat
s/o Damber Singh Madnawat,
r/o Chopra Farm Gali No.05,
Dadwara Kota, presently Senior Goods Train
Driver at Kota.

.. Applicant

Versus

1. Union of India
through the Secretary to Govt.
Ministry of Railway,
Shastri Bhawan,
New Delhi.
2. The General Manager,
Western Central Railway,
Jabalpur,
Madhya Pradesh.
3. The Divisional Railway Manager,
Western Central Railway,
Kota Division, Kota
4. The Senior Divisional Electric Engineer (Personnel), Estt.
Western Central Railway,
Kota Division, Kota
5. The Traction Running Operator,
Western Central Railway,
Kota Division, Kota
6. Rambharosi C. s/o Sh. Chottu mal G.,
r/o near Kamal-Niwas, Ramchandrapura,
Chhawani, Kota.

7. Raghu Raj Sikarwar s/o Shri Ranveer Singh,
r/o Chopra Farm, last House of street No.02,
Dadwara, Kota Junction, Kota.
8. Mohan Lal S. s/o Sh. Sadhu Singh,
r/o Near Khumharon Ki Hathai,
Chawani, Kota
9. Bhura Lal Meena s/o Sh. Moti Lal Meena,
r/o Pratap Colony, Rangpur Road,
Kota Junction, Kota.
10. Babu Lal Ahirwal s/o Sh. Ram Kishan Ji,
r/o Adersh Nagar, Rangpur Road,
Kota Junction, Kota.
11. Kamal Singh K. (Senior Loco Pilot),
c/o the Chief Traction Crew Controller,
Gangapur City (TRO), Western Central Railway,
Distt. Sawai Madhopur.
12. Rajan Singh R. (Senior Loco Pilot),
c/o the Chief Traction Crew Controller,
Gangaputty City (TRO), Western Central Railway,
Distt. Sawai Madhopur.
13. Usman Ali Ansari s/o Sh. Kallu Ji,
r/o Talehati, Kaithun,
Kota Junction,
Kota
14. Vijay Kumar Sheshodiya
s/o Sh. Harpal Singh,
r/o Chopra Farm, Street No.05,
Dadwara, Kota Junction, Kota.
15. Mukesh Upadhyaya s/o Sh. Prem Chandra,
r/o P.No.05, Friend Colony, Macheis Factory,
Dadwara, Kota Junction, Kota.
16. Nazim Hussain s/o Sh. Tahir Hussain,
r/o Mansarovar Colony,
Nainwa Road, Bundi.
17. Subhash Nayak s/o Sh. Damodar Nayak,
r/o Station Road, Bhimganj Mandi,
Kota Junction, Kota.
18. Rameshwer Dayal Meena s/o Sh. G.L. Meena,
r/o P.No.01, Near Shiv Mandir, Subhash Colony,
Khaidli Phatak, Kota.
19. Manoj Kumar Meena s/o Bhajan Lal Meena,
r/o Mahatma Gandhi Colony, Mala Phatak,
Kota Junction, Kota.

20. Pushpendra Kumar Jain s/o Sh. Amolak Chand Jain,
r/o Sangani Sadan, Bhawani Cinema,
Sawai Madhopur City.
21. Bhagwan Singh Chouhan (Senior Loco Pilot),
c/o The Chief Traction Crew Controller,
Gangapur City (TRO), Western Central Railway,
Distt. Sawai Madhopur.
22. Santosh Kumar Sharma s/o Vishambhar Dayal Sharma
R/o 37, Raju Kirana Store, Adresh Colony,
Mala Road, Kota Junction, Kota.
23. Mohan Lal N. s/o Sh. Narayan,
r/o Behind Dev Narayan Temple & Civil Line,
Khan Gawadi, Nayapura, Kota.
24. Brij Narayan Singh s/o Sh. Jai Narayan Singh,
r/o 04-F, Mahaveer Nagar-III, Kota
25. Babu Lal R. (Senior Loco Pilot),
c/o The Chief Traction Crew Controller,
Gangapur City (TRO), Western Central Railway,
Distt. Sawai Madhopur.
26. Vasu Dev Singh s/o Sh. Shree Ram Singh,
r/o Mahaveer Colony, Rangpur Road,
Kota Junction, Kota.
27. Ram Pal M. s/o Sh. Mohan Pal Singh,
r/o H.No.1016, Main Road Gali No.03,
Chopra Farm, Dadwara, Kota Junction,
Kota.
28. Murari Lal Meena s/o Sh. Ram Swaroop Meena,
r/o P.No.33, Chopra Farm, Adresh Colony,
Dadwara, Kota Junction, Kota.

... Respondents

**2. REVIEW APPLICATION NO. 16/2009
IN
ORIGINAL APPLICATION No.124/2007**

Mohd. Jamal
s/o Sh. Mohd. Ibrahim,
r/o Tullapura, Nai Basti,
Kota Junction, Kota,
presently Assistant Foreman in the
office of City Chief Train Controller, Kota.

[Signature]

.. Applicant

Versus

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through the Secretary to Govt.
Ministry of Railway,
Shastri Bhawan,
New Delhi.
2. The General Manager,
Western Central Railway,
Jabalpur,
Madhya Pradesh.
3. The Divisional Railway Manager,
Western Central Railway,
Kota Division, Kota
4. The Senior Divisional Electric Engineer (Personnel), Estt.
Western Central Railway,
Kota Division, Kota
5. The Traction Running Operator,
Western Central Railway,
Kota Division, Kota
6. Rambharosi C. s/o Sh. Chottu mal G.,
r/o near Kamal-Niwas, Ramchandrapura,
Chhawani, Kota.
7. Raghuraj Sikarwar s/o Shri Ranveer Singh,
r/o Chopra Farm, last House of street No.02,
Dadwara, Kota Junction, Kota.
8. Mohan Lal S. s/o Sh. Sadhu Singh,
r/o Near Khumharon Ki Hathai,
Chawani, Kota
9. Bhura Lal Meena s/o Sh. Moti Lal Meena,
r/o Pratap Colony, Rangpur Road,
Kota Junction, Kota.
10. Babu Lal Ahirwal s/o Sh. Ram Kishan Ji,
r/o Adersh Nagar, Rangpur Road,
Kota Junction, Kota.
11. Kamal Singh K. (Senior Loco Pilot),
c/o the Chief Traction Crew Controller,
Gangapur City (TRO), Western Central Railway,
Distt. Sawai Madhopur.
12. Rajan Singh R. (Senior Loco Pilot),
c/o the Chief Traction Crew Controller,
Gangaputty City (TRO), Western Central Railway,
Distt. Sawai Madhopur.

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13. Usman Ali Ansari s/o Sh. Kallu Ji,
r/o Talehati, Kaithun,
Kota Junction,
Kota
14. Vijay Kumar Sheshodiya
s/o Sh. Harpal Singh,
r/o Chopra Farm, Street No.05,
Dadwara, Kota Junction, Kota.
15. Mukesh Upadhyaya s/o Sh. Prem Chandra,
r/o P.No.05, Friend Colony, Macheis Factory,
Dadwara, Kota Junction, Kota.
16. Nazim Hussain s/o Sh. Tahir Hussain,
r/o Mansarovar Colony,
Nainwa Road, Bundi.
17. Subhash Nayak s/o Sh. Damodar Nayak,
r/o Station Road, Bhimganj Mandi,
Kota Junction, Kota.
18. Rameshwer Dayal Meena s/o Sh. G.L. Meena,
r/o P.No.01, Near Shiv Mandir, Subhash Colony,
Khaidli Phatak, Kota.
19. Manoj Kumar Meena s/o Bhajan Lal Meena,
r/o Mahatma Gandhi Colony, Mala Phatak,
Kota Junction, Kota.
20. Pushpendra Kumar Jain s/o Sh. Amolak Chand Jain,
r/o Sangani Sadan, Bhawani Cinema,
Sawai Madhopur City.
21. Bhagwan Singh Chouhan (Senior Loco Pilot),
c/o The Chief Traction Crew Controller,
Gangapur City (TRO), Western Central Railway),
Distt. Sawai Madhopur.
22. Santosh Kumar Sharma s/o Vishambhar Dayal Sharma
R/o 37, Raju Kirana Store, Adresh Colony,
Mala Road, Kota Junction, Kota.
23. Mohan Lal N. s/o Sh. Narayan,
r/o Behind Dev Narayan Temple & Civil Line,
Khan Gawadi, Nayapura, Kota.
24. Brij Narayan Singh s/o Sh. Jai Narayan Singh,
r/o 04-F, Mahaveer Nagar-III, Kota
25. Babu Lal R. (Senior Loco Pilot),
c/o The Chief Traction Crew Controller,
Gangapur City (TRO), Western Central Railway,
Distt. Sawai Madhopur.
26. Vasu Dev Singh s/o Sh. Shree Ram Singh,

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r/o Mahaveer Colony, Rangpur Road,
Kota Junction, Kota.

27. Ram Pal M. s/o Sh. Mohan Pal Singh,
r/o H.No.1016, Main Road Gali No.03,
Chopra Farm, Dadwara, Kota Junction,
Kota.
28. Murari Lal Meena s/o Sh. Ram Swaroop Meena,
r/o P.No.33, Chopra Farm, Adresh Colony,
Dadwara, Kota Junction, Kota.

... Respondents

**3. REVIEW APPLICATION NO. 17/2009
IN
ORIGINAL APPLICATION No.130/2007**

Vishnu Dutt Rawat
s/o Late Sh. Bhanwar Lal Rawat,
r/o 05, Pratap Nagar, Ganesh Bhag Road,
Devpura, Zila Bundi,
at present Plot No.C-21,
Mahaveer Nagar-03, Kota, presently
working as Senior Goods Train Driver
at Kota.

.. Applicant

Versus

1. Union of India
through the Secretary to Govt.
Ministry of Railway,
Shastry Bhawan,
New Delhi.
2. The General Manager,
Western Central Railway,
Jabalpur,
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4. The Senior Divisional Electric Engineer (Personnel), Estt.
Western Central Railway,
Kota Division, Kota
5. The Traction Running Operator,
Western Central Railway,
Kota Division, Kota

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6. Rambharosi C. s/o Sh. Chottu mal G.,
r/o near Kamal-Niwas, Ramchandrapura,
Chhawani, Kota.
7. Raghu Raj Sikarwar s/o Shri Ranveer Singh,
r/o Chopra Farm, last House of street No.02,
Dadwara, Kota Junction, Kota.
8. Mohan Lal S. s/o Sh. Sadhu Singh,
r/o Near Khumharon Ki Hathai,
Chawani, Kota
9. Bhura Lal Meena s/o Sh. Moti Lal Meena,
r/o Pratap Colony, Rangpur Road,
Kota Junction, Kota.
10. Babu Lal Ahirwal s/o Sh. Ram Kishan Ji,
r/o Adersh Nagar, Rangpur Road,
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Kota
14. Vijay Kumar Sheshodiya
s/o Sh. Harpal Singh,
r/o Chopra Farm, Street No.05,
Dadwara, Kota Junction, Kota.
15. Mukesh Upadhyaya s/o Sh. Prem Chandra,
r/o P.No.05, Friend Colony, Macheis Factory,
Dadwara, Kota Junction, Kota.
16. Nazim Hussain s/o Sh. Tahir Hussain,
r/o Mansarovar Colony,
Nainwa Road, Bundi.
17. Subhash Nayak s/o Sh. Damodar Nayak,
r/o Station Road, Bhimganj Mandi,
Kota Junction, Kota.
18. Rameshwer Dayal Meena s/o Sh. G.L. Meena,
r/o P.No.01, Near Shiv Mandir, Subhash Colony,
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19. Manoj Kumar Meena s/o Bhajan Lal Meena,
r/o Mahatma Gandhi Colony, Mala Phatak,
Kota Junction, Kota.
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r/o Sangani Sadan, Bhawani Cinema,
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r/o P.No.33, Chopra Farm, Adresh Colony,
Dadwara, Kota Junction, Kota.

... Respondents

**4. REVIEW APPLICATION NO. 18/2009
IN
ORIGINAL APPLICATION No.125/2007**

Har Govind G.
s/o Sh. Galaba,
r/o & c/o Jamna Kanjar Ka Makan,
Near Samudayik Bhawan,
Hussain Nagar,
Kota Junction, Kota, presently

Senior Goods Train Driver at Kota.

.. Applicant
VERSUS

1. Union of India
through the Secretary to Govt.
Ministry of Railway,
Shastry Bhawan,
New Delhi.
2. The General Manager,
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3. The Divisional Railway Manager,
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Western Central Railway,
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9. Bhura Lal Meena s/o Sh. Moti Lal Meena,
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c/o the Chief Traction Crew Controller,
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17. Subhash Nayak s/o Sh. Damodar Nayak,
 r/o Station Road, Bhimganj Mandi,
 Kota Junction, Kota.
18. Rameshwer Dayal Meena s/o Sh. G.L. Meena,
 r/o P.No.01, Near Shiv Mandir, Subhash Colony,
 Khaidli Fhatak, Kota.
19. Manoj Kumar Meena s/o Bhajan Lal Meena,
 r/o Mahatma Gandhi Colony, Mala Phatak,
 Kota Junction, Kota.
20. Pushpendra Kumar Jain s/o Sh. Amolak Chand Jain,
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 c/o The Chief Traction Crew Controller,

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Dadwara, Kota Junction, Kota.

... Respondents

ORDER BY CIRCULATION

By way of this common order, we propose to dispose of these Review Applications as common question of facts and law is involved.

2. These Review Applications have been filed by the applicants against the order/judgment dated 10.12.2008 whereby this Tribunal had dismissed the OAs filed by the applicants. The judgment of this Tribunal was challenged by the Review Applicants by filing Separate DB Writ Petition before the Hon'ble High Court. However, the Hon'ble High Court disposed of the Writ Petitions by a similar & separate order dated 24.08.2009 on the following terms:-

"After arguing the matter to some length, learned counsel for the petitioner wants to withdraw this Writ Petition with liberty to file review petition before the Central Administrative Tribunal in view of the Circulars issued by the Railway Board on 27.8.2003 and 2.9.2005.

The Writ Petition is dismissed as withdrawn with liberty aforesaid."

3. Pursuant to the order passed by the Hon'ble High court, the applicants have filed these Review Applications for reviewing the

aforesaid order 10.08.2008 on the ground that selection carried out by the respondents as per Railway Board Circular No. E(No) 2003/PM7/10 dated 06.08.2005 (Annexure A/3) is contrary to the Railway Board order/circular dated 27.08.2003 and 02.09.2005 which stipulates that selection for the post of Passenger Driver should be by way of positive act of selection and should normally consists of written test and viva voce whereas as per Railway Board Circular dated 06.08.2005 (Annexure A/3), such selection has to be made only on the basis of viva-voce after prescribed promotional course. It is further averred that the Circular dated 27.08.2003 and 02.09.2005 could not be brought to the notice of this Tribunal.

4. We have given due consideration to the submission made by the applicants in the Review Applications. We are of the view that the present Review Applications cannot be entertained in the facts and circumstances of the case. As can be seen from the material placed on record and averments made in the OAs, the grievance of the applicants was regarding the panel dated 30.03.2007 (Annexure A/1) and promotion issued to 15 persons on the post of Passenger Driver based on panel (Annexure A/1) vide order dated 05.04.2007 (Annexure A/2). Such grievance was made on the ground that the aforesaid orders were issued in violation of provisions as laid down by the Government of India, Ministry of Railways, Railway Board and conveyed vide order dated 06.08.2005 (Annexure A/3). As can be seen from Para 1 of the aforesaid circular, prior to the issuance of the aforesaid circular, written test was made mandatory for selection to the post of Goods Driver/Passenger Driver and such selection has to be made by a positive act of selection as per instructions dated

07.08.2003. In Para No. 2 of the Circular, reasons for departing with the criteria as laid down in earlier circulars issued by the respondents where selection to the post of Goods Driver as well as Passenger Driver was to be held by positive act of selection and written test was mandatory has been given. Thereafter, the respondents by way of this policy decision have prescribed revised procedure for filling up the post of Passenger Driver in Para No. 3, which thus reads as under:-

"3. The matter has been considered carefully by the Ministry of Railways after obtaining views of the Railways. It has been decided that while written test may be continued for promotion as Goods Driver for promotion as passenger Driver selection may be on the basis of viva-voce after passing prescribed promotional course. (emphasis supplied).

At this stage, it will be useful to reproduce Para No. 4 of this Circular, which prescribes that revised procedure will be made in respect of vacancies in respect of selection notified on or after the date of issuance of the letter dated 06.08.2005 and thus reads as under:-

"4. The revised procedure for filling up the posts of passenger Drivers will be applicable to selections notified on or after the date of issue of this letter."

5. As already stated above, the grievance of the applicant in the OA filed before this Tribunal was that procedure as prescribed in the Circular dated 06.08.2005 (Annexure A/3), relevant portion of which has been reproduced above has not been correctly followed while preparing the panel for promotion to the post of Passenger Driver (Annexure A/1) and giving appointment to 15 persons based on that panel (Annexure A/2). It has never been the case of the applicant in the earlier OA that respondents could not have resorted to revised procedure for filling up the post of Passenger Driver based on viva-

voce after passing the prescribed promotion course thereby dispensing with the mandatory requirement of written test, which is necessary for selection to the post of Passenger Driver as has been raised by the applicants in these Review Applications based on Circulars dated 27.08.2003 and 02.09.2005. Thus in the garb of Review Applications, the applicants cannot be permitted to plead entirely different case which has not been set up in the OA. The applicants are precluded to raise such contention on the principle of constructive res-judicata. It was open for the applicants to challenge the procedure of selection as stipulated in Railway Board Circular dated 06.08.2005 (Annexure A/3) whereby the selection for the post of Passenger Driver was to be made on the basis of viva-voce and not on the basis of written test as well as viva-voce. Having not done so, the Review Applicants cannot be permitted to raise entirely a new case which is contradictory to the case set up by the applicants in the earlier OAs. In the earlier OAs, the applicants have not made grievance regarding revised procedure for filling up the post of Passenger Driver on the basis of viva-voce test. As already stated, the grievance of the applicants was regarding not following the procedure, as stipulated in the policy of Railway Board dated 06.08.2005 (Annexure A/3). In these cases, the applicants want re-hearing of the case entirely on different grounds which they have not pleaded in the OA, which course is not permissible for them while exercising the power of Review. Further the case of the applicants does not fall within a principle as called out by the Apex Court in the case of **State of West Bengal & Others vs. Kamal Sen Gupta & Another**, 2008(2) SCC (L&S) 735 whereby in Para No. 35 of the judgment, the Apex Court has laid the following principles:-

"35. The principles which can be culled out from the above noted judgments are:

- (i) The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/analogous to the power of a civil court under Section 114 read with Order 47 Rule 1 CPC.
- (ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.
- (iii) The expression "any other sufficient reason" appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.
- (iv) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(f).
- (v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.
- (vi) A decision/order cannot be reviewed under Section 22(3)(f) on the basis of subsequent decision/judgment of a coordinate or larger Bench of the tribunal or of a superior court.
- (vii) While considering an application for review, the tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.
- (viii) Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court/tribunal earlier.

6. Thus in view of the law laid down by the Apex Court, as reproduced above, we are of the firm view that the applicants have not made out any case for reviewing the judgment passed by this Tribunal. Rather in the garb of Review Applications, the applicants want re-hearing of the matter on merit entirely on different grounds, which they have not pleaded in the OA, which the applicants cannot be permitted to raise in view of the principle of constructive res-judicata.

If such a course if adopted, it will amount to abuse of the process of the court, which is not permissible in law.

7. Accordingly these Review Applications are dismissed by circulation.

8. In view of what has been stated above, no order is required to be given on the Misc. Applications for condonation of delay filed alongwith the Review Applications.


(B.L. KHATRI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

AHQ