

**CENTRAL ADMINISTRATIVE TRIBUNAL,**  
**JABALPUR BENCH,**  
**JA BALPUR**

**Review Application No.75 of 2005**  
**(in O.A.No.238 of 2005)**

**Jabalpur this the 11th day of May, 2006.**

**Hon'ble Dr.G.C.Srivastava, Vice Chairman**  
**Hon'ble Ms. Sadhna Srivastava, Judicial Member**

Kedar Dubey, aged about 59 years  
S/o Shri Pati Raj Dubey, J.E.I  
(Diesel) West Central Railway,  
Diesel Shed Itarsi, resident of  
R.B.II 364 "A" Azad Nagar, New  
Yard, Itarsi (M.P.)

**-Applicant**

(By Advocate – Shri L.S.Rajput)

**V E R S U S**

Union of India, Through

1. General Manager, West Central Railway, "Indira Market" Near Railway Station, Jabalpur (M.P.) 482001.
2. Divisional Railway Manager, West Central Railway, Habibganj Bhopal (M.P.) 482001

**-Respondents**

**O R D E R(Oral)**

**By Dr.G.C.Srivastava, Vice Chairman.-**

This review application has been filed under section 22(3)(f) of the Administrative Tribunals Act,1985 read with rule 17 of the Central Administrative Tribunal (Procedure)Rules,1987 in respect of order dated 17-11-2005 passed in O.A.No.238/2005. The prayer is that on review, the order may be modified to the extent that the applicant is entitled for consideration for promotion as S.E.

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(Diesel) Grade Rs.6500-10500 (RSRP) by modified selection procedure under the scheme of restructuring of cadre with effect from 01-11-2003 with all consequential benefits.

2. O.A.No.238/2005 was filed by the applicant claiming the following main relief:

“(b) Direct the respondents to first fill up the upgraded posts including existing and chain/ respondent (sic – resultant) vacancies of SE(D) Engine Wing in Grade Rs.6500-10500 by modified selection with all consequential benefits flowing from Ann. A-4 holding that applicant is entitled for consideration for the said post.

(c) Quash the impugned notification dated 19-01-2005 (Ann.A-1) being ab-initio void and direct the respondents to hold any regular selection only after filling up the upgraded posts by modified selection”.

The Tribunal in its order dated 17-11-2005 found that the OA had no merit and was accordingly dismissed.

3. The plea of the applicant in the review application is that the said order is required to be reviewed on the following grounds:-

- (i) The respondents in the OA did not comply with the order of the Tribunal dated 28-09-2005 asking for details with regard to the number of existing posts in the grade where the applicant is working i.e. the Engine Wing on the post of J.E.Grade-I Rs.5500-9000 (RSRP).
- (ii) The Tribunal did not take into consideration two letters of the Railway Board dated 03-06-2004 and 23-07-2004, which were filed by the applicant along with the written arguments to show that upgraded posts including existing and general/resultant vacancy are to be filled by modified selection.
- (iii) Although the case of SE(D) Engine Wing (Loco) and that of SE (Electrical Wing) are identical, posts of SE(Elect.)

had been filled up by modified selection, but the same consideration has been denied for SE(Diesel) Loco wing. This is a case of hostile discrimination which deserves consideration in the review application being the case of an error apparent on the face of record.

- (iv) The respondents have not given the correct position of the staff strength in their reply dated 24.5.2005 in as much as some temporary posts whose term was extended up to 31-03-2006 were not included.

4. We have heard the learned counsel for the applicant and perused the records of OA 238/2005.

5. It is well settled that review proceedings are not by way of an appeal and review cannot be asked for correction of an erroneous view taken earlier (**Thungabhadra Industries Ltd Vs. The Govt. of Andhra Pradesh**, AIR 1964 SC 1372). A review petition can be entertained only on the ground of error apparent on the face of record and not on any other ground. The apex Court has observed in the case of **Smt.Meera Bhanja Vs. Nirmala Kumar Choudhury**, AIR 1995 SC 455 that an error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long drawn process of reasoning on points where there may conceivably be two opinions.

6. In this review application, the applicant has sought for review of the order of the Tribunal on three main grounds, namely, (i) discovery of new and important documents (letters of Railway Boards filed along with written arguments in the OA); (ii) error apparent on the face of record – hostile discrimination between the case of SE (Diesel) Engine Wing Loco and S.E.(Electrical Wing);

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and (iii) Other sufficient reason - non-inclusion of temporary posts while working out the staff strength.

7. A perusal of the order of the Tribunal dated 17-11-2005 shows that the actual position of the sanctioned strength was shown by the respondents in a chart, and annexure A-3 on which the applicant relied, was specifically controverted by the respondents in their reply. The learned counsel for the applicant argued that while working out the sanctioned strength and the number of posts already filled up, the respondents did not take into account the chain/resultant vacancies and temporary posts which were ordered to be continued. The Tribunal has given a clear cut finding based on the information submitted by the respondents that the existing sanctioned posts and the revised sanctioned posts in respect of SE (D) Loco remained the same and, therefore, no new posts became available as a result of restructuring. Consequently, the modified method of selection was not required to be adopted.

8. Regarding the alleged discrimination, the Tribunal did consider this issue and expressed its agreement with the order dated 13-07-2005 passed by the Tribunal in O.A.No.287/2004, (Kamal Singh and others Vs. Union of India), which was stated to be based on similar facts. The learned counsel for the applicant argued at length about two letters of the Railway Board which, as stated by him, were enclosed by him along with the written arguments and have now been enclosed again with the review application. These documents do not appear anywhere in the pleadings raised by the applicant in the OA and, there was no request on behalf of the applicant to take these documents on record. Hence at this stage, the applicant cannot pray for review on the basis of these documents, which, as stated by him, he could not "lay hands on the relevant instructions on the subject" during

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the course of the proceedings before the Tribunal in OA 238/2005 and, therefore, did not form part of the pleadings of OA 238/2005.

9. In view of the above discussion, we are of the view that the order dated 17.11.2005 passed by the Tribunal in OA 238/2005 does not suffer from any error apparent on the face of record and no case for its review has been made out.

10. The review application is accordingly rejected.

  
(Ms. Sadhna Srivastava)  
Judicial Member

  
(Dr. G.C. Srivastava)  
Vice Chairman

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पृष्ठांकन सं ओ/न्या.....जबलपुर, दि.....

पतिलिपि अर्पण दिनांक:-

- (1) सचिव, उच्च न्यायालय काय दफ्तर, जबलपुर
- (2) आवेदक श्री/श्रीमती/शु.....के कार्यालय
- (3) प्रत्यर्थी श्री/श्रीमती/शु.....के कार्यालय
- (4) न्यायालय, न्यायाधीश, न्यायाधीश न्यायाधीश

सूचना एवं आवश्यक कार्यवाही हेतु

उप रजिस्ट्रार

Shri L. S. Rajput H C  
Shri Ch. N. Banerjee H C  
2/11/06

Issued  
20/6/06