IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

Jaipur, this the 24th day of October, 2008

RA No.21/2008 (OA No.116/2004)

CORAM:

HON'BLE MR. M.L.CHAUHAN, Member (Judicial)
HON'BLE MR. B.L.KHATRI, Member (Administrative)

Mridula Paliwal
w/o Shri Ashok Paliwal,
aged around 40 years,
r/o of Jaipur

.. Applicant

Versus

1. Union of India through General Manager,
   North Western Railway,
   Jaipur

2. Divisional Regional Manager,
   North Western Railway,
   Jaipur

3. G.P.Meena
   s/o Shri B.P.Meena,
   r/o Hasanpura, Jaipur,
   presently working in Chief Office
   Superintendent, North Western Railway,
   Jaipur

4. Ram Chandra,
   presently working as
   Chief Office Superintendent,
   North Western Railway,
   Jaipur

.. Respondents

(By Advocate: Shri Amit Mathur for resp. No.3)

O R D E R

Per Hon'ble Mr. M.L.Chauhan

This Review Application has been filed by respondent No.3 in the OA thereby praying for reviewing the order dated 7th August,2008 passed in OA No.116/2004, Smt. Mridula Paliwal Vs. Union of India and Ors.

2. The ground on which the present Review Application has been preferred is that notice was never issued to review applicant, therefore, he could not able to present his defence before this Tribunal in the Original Application and as such, the judgment was rendered without hearing the review applicant.

3. Briefly stated, facts of the case are that the original applicant has filed the aforesaid OA thereby impleading railway authorities as party-respondents. In the OA the prayer made by the applicant was regarding implementation of the order dated 9.3.2004 (Ann.A2) whereby name of the applicant find mentioned in the panel of eligible candidates prepared for promotion to the post of Chief Office Superintendent.

4. Short notices were issued by this Tribunal to the official respondents on 19.3.2004 and the matter was listed for consideration of interim prayer on 31.3.2004. The official respondents filed reply. In

the reply stand taken by the respondents was that the present OA is not maintainable as the panel dated 9.3.2004 has already been cancelled/modified vide order dated 23.3.2004 by canceling earlier panel vide order dated 23.3.2004 itself and further the persons named therein had joined in pursuance of the posting order thereof. In view of this subsequent development, the learned counsel for the applicant sought time for amending the OA. Accordingly, the matter was adjourned from time to time.

5. The original applicant filed amended OA thereby incorporating names of Shri G.P.Meena and Shri Ram Chand as respondent Nos. 3 and 4 in the array of respondents without any leave from this Tribunal and also the amendments were inserted without moving any application for amendment and without seeking permission from this Tribunal. The official respondents filed reply thereby specifically taking preliminary objections that the applicant has increased names in the array of respondents in the amended OA without there being any application for impleading them as respondents, as such, the OA is not maintainable and the applicant cannot be allowed to amend the cause title in the manner done by him. Thereafter the matter was adjourned from time to time and finally the applicant moved a Misc.Application No. 177/05. It appears that since the respondents have

objected the manner in which the amended OA has been filed by the original applicant without seeking leave from this Tribunal for the purpose of carrying out the amendment and also for impleading the parties, as such, the applicant moved MA No.177/05 for amendment in the OA thereby annexing amended OA alongwith the MA. It may be stated that in the MA No. 177/05 as well as in the amended OA, the applicant has incorporated the private respondent No. 3 and 4 without there being any permission from this Tribunal or without moving application for adding respondent Nos. 3 and 4 as party-respondents in the OA. Since in the MA No. 177/05, the applicant has not indicated the nature of amendment which he wanted to incorporate in the OA, as such, the said MA was withdrawn by the applicant, as can be seen from order dated 18.11.2005 and opportunity was granted to the applicant to file a fresh MA thereby highlighting the specific amendments which she wanted to incorporate in the OA. Subsequently, the applicant moved Misc. Application No. 38/06 highlighting the specific amendments which came up for consideration on 22.8.06 and this Tribunal after hearing the parties passed the following order:-

> "....
>
> MA No.117/05 has been filed by the applicant for seeking amendment in the OA. The applicant has preferred the OA thereby challenging the promotion of respondent No.3 and 4 which was granted to them on the basis of 'L' Type Roster issued by the Railway authorities. Learned Counsel for the

applicant further submits that this 'L' Type Roster issued by the respondents has been quashed and the similar 'L' Type Roster has been issued by the DOP&T has been made applicable. Learned Counsel for the respondents submits that this fact was very well in the knowledge of the applicant at the time of filing of the OA but he kept silent. Now he wants to modify the OA, so this amendment should not be allowed. But such type of amendment can be allowed at any stage. Accordingly the MA filed for amendment in the OA is allowed and the respondents are granted two weeks time to file reply to the amended OA...."

It may be stated here that reference to MA No.117/05 was wrongly made whereas in fact it was MA No.38/06 on which the order has been passed and instead of MA No.117/05, MA No.38/06 was required to be mentioned. It may also be relevant to mention here that in MA No.38/06, the applicant has incorporated name of respondent Nos.3 and 4 (private respondents) as party-respondents without any leave from this Tribunal. At this stage, it will also be useful to quote contents of MA No.38/06 in extenso, which thus reads:-

"That the humble applicant most respectfully submits:-

1. That the humble applicant preferred the original application before the Hon'ble Tribunal and wants to insert/amend the para 4.7 as follows:-

4.7 That the respondents are applying the railway roaster (sic) in upgradation of post of Clerical cadre i.e. Chief Office Superintendent as per the order of upgradation and restructuring dated 5.1.2004, the total strength before and after restructuring remain same i.e., 142. It is pertinent to mention as per the seniority list dated 10.01.2003 of BWSM unit applicant name find place at

no 6 and respondent no 3 and 4 find place at no 9 and 10 and they are much junior to the present applicant as per the seniority list dated 10.1.2003. A copy of the order of restructuring dated 5.1.2004 is submitted herewith is marked as Annexure A/9.

4.8 That the Railway board L type roaster (sic) is already being quashed in original application 31.3.2004 and DOPT L type roster is applicable and in case of restructuring and upgradation of cadre the reservation will not apply. But the respondents without any basis are adhering to the Railway Board L type roster.

Grounds:

5.7 That undisputedly the L type model roster of DOPT is applicable in the cadre of Chief Office Superintendent and there are 6 posts after restructuring and upgradation of Chief Office Superintendent and applicant name is at no 6 within the zone of consideration accordingly as per DOPT L type roster the 6 point is unreserved and the respondent proceeded to fill the post by applying the Railway Board roster by promoting respondent no 3 and 4 without taking into consideration the law in force. As such their action is clearly violative of Article 14 of Constitution of India and deserves to be quashed and set aside.

PRAYER:

8.4 That by appropriate writ, order, direction the respondents be directed to consider the case of the applicant for promotion for the post of chief office superintendent in BWSM unit against 6th point treating it to be unreserved with effect from 23.3.2004.

Prayer:

It humbly prayed MA filled (sic) by applicant be allowed and she be permitted to insert/amend new para 4.7 and 4.8 and ground 5.7 and prayer clause 8.4 as stated above.

…."

From the portion as quoted above and from perusal of the order passed by this Tribunal it is evident that by way of MA No.38/06 the applicant has prayed for insertion of new paragraphs 4.7, 4.8 and 5.7 of the OA and also to make additional prayer in prayer clause by way of insertion of para 8.4 only and she has neither sought any prayer for addition of new parties i.e. respondent Nos. 3 and 4 as party-respondents in the OA nor the fact of having wrongly incorporated as respondent Nos. 3 and 4 in MA No.38/06 as party-respondents was brought to the notice of the Tribunal while allowing the aforesaid MA vide order dated 22.8.2006, relevant portion of which has been reproduced hereinabove. Thus, the then Bench has not issued any notice to the so called newly added respondents who were not brought on record by the order of this Tribunal which was the requirement under law. Subsequently, the applicant filed amended OA in terms of the amendment which was to be incorporated by him as mentioned in MA No.38/06. The respondents filed reply and ultimately the matter was decided vide judgment dated 7th August, 2008, which is under review and since names of the private respondent No. 3 and 4 were being reflected in the amended OA, as such, the said typographical mistake was also carried in the aforesaid judgment.

6. The question which requires our consideration in this case is whether respondent Nos.3 and 4 who were not initially added as party-respondents in the OA, their names could have been reflected in the cause title without any specific order from the Tribunal and without any notice being issued to them. In other words, whether respondent Nos.3 and 4 can be said to be parties to the proceedings or whether proceeding qua them commenced. For this purpose, it would be relevant to quote relevant portion of Order I Rule 10 of the Code of Civil Procedure, which deals with addition and deletion of necessary/proper parties. At this stage, it will be useful to quote sub-rule (2), (4) and (5) of Rule 10, which thus reads:-

> "10. Suit in name of wrong plantiff._(1)….
>
> (2) Court may strike out or add parties._ The Court may at any stage of the proceedings, either upon or without the application of either party, and on such, terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.
> (3)….
>
> (4) Where defendant added, plaint to be amended.- where a defendant is added, the plaint, unless the Court otherwise direct, be amended in such manner as may be necessary, and amended copies of summons and of the plaint shall be served on the new defendant and if the Court thinks fit, on the original defendant.

> (5) Subject to the provisions of the [Indian Limitation Act, 1877 (15 of 1877),Sec.22] the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons.

From the above, it is clear that party cannot be deleted from the array or added to the proceedings without specific order in that behalf. Sub-Rule (4) stipulates that when such order in terms of sub-rule (2) has been passed by the Court for adding the defendant/respondents in the instant case, amendment in the plaint has to be made in such terms as may be directed by the Court and copy of the summon has to be served upon to the new defendant and also on the original defendant if the Court so think. According to sub-rule (5) proceedings shall be deemed to have been taken only on the service of summons. From the provisions as noticed above, it is evident that no such procedure was followed by the applicant, as such, incorporation of name of respondent Nos.3 and 4 by the applicant in the Misc. Application as well as in the amended OA without leave of the court is of no consequence. The fact remains that that names of respondent Nos. 3 and 4 were added as respondents in the original proceedings pending before the Tribunal by way of the aforesaid OA without any permission from this Tribunal. The summons were not issued to them, as such, they cannot be said to be party to the proceedings.

7. Now the next issue which requires our consideration is whether the review applicant who was never incorporated and who was not party in the OA and whose name has been incorporated by the applicant without specific order from the Court and whose name has been incorporated in the judgment inadvertently, thus being a case of typographical mistake, can file review application on the ground that no notice was issued to him, as such, he was condemned unheard. According to us, notices have to be issued to the respondents who are party to the proceedings. In this case the review applicant was not party to the proceedings as his name has been incorporated by the applicant in violation of the provisions contained in Order 1, Rule 10 of the Code of Civil Procedure as stated above, as such, proceedings have not been legally commenced against him as no notice was issued and served upon the review applicant. As such, the present review application cannot be accepted on the ground raised by the applicant in the Review Application. Since a typographical mistake occurred in the judgment dated 7th August, 2008 whereby names of present review applicant and one Shri Ram Chand have been incorporated as respondent Nos. 3 and 4, as such, names of these respondents shall stand deleted from the array of respondents and the Review Application is allowed to this extend only.

8. The matter can be looked into from another angle. Even if for arguments sake it is assumed that the review applicant was party to the proceedings the result would remain the same for the reasons stated hereinafter. At this stage we may notice the contentions put forth by the learned counsel for the review applicant. The learned counsel for the review applicant while drawing our attention to Order 47 Rule 1 and 2 argued that since the applicant is aggrieved party, as such, he has locus standi to file Review Application. The learned counsel for the applicant has also argued that since he will be affected by the decision passed by this Tribunal, as such, he is necessary party in the proceedings. For that purpose, he has placed reliance on the judgment in the case of Praboth Verma Vs. State of U.P. 1984 (4) SCC 251 [1984 SCC (L&S) 704]. The learned counsel for the review applicant has further placed reliance on the decision of the Apex Court in the case of Kum. Rashmi Mishra vs. MP PSC & Ors., 2006 (12) SCC 724 [JT 2006 (10) SC 187] where the Apex Court while upholding that the judgment of the High Court has declined the relief to the appellant therein on the ground that appellant though qualified but not selected had only impleaded two selected person instead of seventeen selected persons, who according to the Apex Court, were

necessary parties, as such no relief was granted to the appellant.

9. We have given due consideration to the submissions of the learned counsel for the review applicant. There is no denial to the fact that in order to do justice between the parties affected/necessary parties should be heard and the Hon'ble Apex Court has even held that even if the judgment is rendered without hearing the affected/necessary parties, that judgment is not binding on such party and such persons are not precluded from challenging the action by instituting appropriate proceedings. Thus even if the review applicant is aggrieved party in terms of Order 47, Rule 1 and 2 and has locus-standi to file Review Application still the question which requires our consideration in this case is whether in the facts and circumstances of this case, the review applicant can invoke power of review or it is open for the review applicant to challenge the order of this Tribunal in an appropriate forum by filing appeal/writ petition.

According to us, keeping in view the nature of dispute involved, we are of the view that the review applicant cannot invoke the review proceedings and only remedy available to the review applicant, if any, is to challenge the order before the higher forum. Still further, if the Review Application is allowed

and the judgment is recalled, keeping in view the nature of the controversy decided by this Tribunal, the result would remain same and it will be futile exercise to re-hear the matter again.

10. For this purpose, it is necessary to notice the controversy which has been decided by this Tribunal in the judgment under review. As can be seen from the judgment dated 7th August, 2008 as annexed with Review Application, the issue decided by this Tribunal was whether L-Type roster as issued by the Railway Board which has been quashed not only by this Tribunal but also by Jodhpur Bench of the Tribunal and even the Hon'ble High court of Rajasthan at Jodhpur in the case of Union of India through General Manager, Northern Railway vs. Rajendra Gaur, 2003 (1) SLR 533 has upheld the judgment of the Tribunal and the petitioners therein were directed to adopt the model roster as issued by the DOP&T, whether it was permissible to the Railway authorities to ignore the judgment rendered by this Tribunal which has been affirmed by the Hon'ble High Court and still make promotion on the basis of quashed roster. The matter was examined by this Tribunal on this limited ground and it was held that respondents could not have proceeded to make promotion on the basis of the quashed roster and they should have followed the model roster as issued by the DOP&T, hence the respondents were directed to prepare fresh panel after applying L-Type roster as prepared by the

DOP&T. Thus, keeping in view the nature of controversy as decided by this Tribunal in the OA the dispute primarily pertains to the applicant and the Railway authorities. The fact that the review applicant will be affected by the consequences which may flow from this judgment is not sufficient for the review applicant to invoke review jurisdiction of this Tribunal in the light of the law laid down by the Hon'ble Apex Court in the case of Jaswant Singh Lamba vs. Haryana Agricultural University and Others, (2008) 2 SCC (L&S) 161. The principle question before the Hon'ble Apex Court which arose for consideration was whether the respondent University was right in appointing respondent Nos. 4 and 5 on ad-hoc basis instead treating them on regular basis although they were selected by the Selection Committee constituted in terms of rules. In that case, the Hon'ble High Court held that respondent Nos. 4 and 5 shall be deemed in service of the respondents on regular basis from the date of their initial appointment in the year 1982 and not from the date of regularization of their services in the year 1984-85. Thus, they were held entitled for their seniority from the date of initial appointment i.e. from 11.1982. The affected persons filed Review Application before the Hon'ble High Court thereby stating that by granting seniority to respondent Nos. 4 and 5 from back date their right has been affected. The Review Petition was dismissed by

the Hon'ble High Court and the matter was carried to the Apex Court. Hon'ble Apex Court held that the principle question which arose for consideration was as to whether in peculiar facts and circumstances of the case, the appellant has any locus-standi for filing application for review of the said judgment. According to the Apex Court, the main issue was whether the appointment of respondent Nos. 4 and 5 on ad-hoc basis although they were selected by the Selection Committee constituted in terms of rules and no relief therein was claimed against the appellant. It was further held that legality of seniority list was not in question therein. Thus, the appellant was not necessary party as no relief has been claimed against them and it was respondent No.3, who was directed to consider their regular appointment w.e.f. 11.11.1982. Thus, according to the Apex Court, the seniority list was required to be revised keeping in view the enforcement of the High Court order and preparation of fresh seniority list was merely a consequential to the order of High Court. Thus, it was held that the High Court has rightly concluded that Review Petition is not maintainable and according to the Apex Court remedy, if any, available to the affected person was to file appeal.

The ratio as laid down by the Apex Court is squarely applicable in the facts and circumstances of this case. In this case, the principle question which

arose for consideration in the aforesaid OA was whether the roster which has been quashed by the competent court could have been made operative for the purpose of subsequent selection ignoring the mandate given by the Court that the respondent authorities should follow the Department of Personnel and Training roster. Thus, the dispute before the Tribunal was between the railway authorities and the original applicant. The finding given by this Tribunal regarding quashing of the panel and promotion of persons promoted vide Ann.A1 was consequential to main relief. Thus, remedy if any available to the review applicant is to agitate the matter before the Higher Forum and not by way of filing review application.

11. Even otherwise also, in case, even if for arguments sake, this Review Application is allowed and the review applicant is heard, the consequence will remain the same as quashed roster can not be made basis for promotion and it will be a futile exercise to allow the Review Application and then again pass the same judgment after hearing the review applicant. Even on this ground, the Review Application deserves to be dismissed.

12. Further, the scope of review is very limited. The power of review available to the Tribunal is the same as has been give to a court under Section 114 read

with Order 47 CPC. The power is not absolute and is hedged in by the restrictions indicated in Order 47. The power can be exercised on the application of a person on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the order was made. The power can also be exercised on account of some mistake or error apparent on the face of the record or for any other sufficient reasons. A review cannot be claimed or asked for merely for a fresh hearing or arguments or correction of an erroneous view taken earlier that is to say the power of review can be exercised only for correction of a patent error of law of fact which stares in the face without any elaborate arguments being needed for establishing it. It may be pointed out that the expression 'any other sufficient reason' used in Order 47 Rule 1 means a reason sufficient analogous to those specified in the Rule. Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47 would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment. This is what the Hon'ble Apex Court in the case of Ajit Kumar Rath vs. State of Orissa, 2002 (2) ALJ 108, has held. If the matter is considered in the light of the judgment of the Hon'ble Apex Court in Ajit Kumar Rath (supra), we are of the view that the review

applicant has not made out any case for reviewing the judgment in the light of the principle laid down by the Apex Court. In fact the review applicant wants to re-hear the matter on the issue whether quashed roster can be made operative while granting promotion. Admittedly, where the order or notification etc. of the department is quashed by the competent court, the same cannot be made operative so long as the judgment of the court is not set-aside and administrative authority cannot by executive act or otherwise ignore the judgment of the court. In this case not only different Benches of the Tribunal but even the Hon'ble High Court of Rajasthan at Jodhpur has upheld the judgment of this Tribunal whereby the roster as issued by the Railway authorities was quashed and they were directed to follow DOP&T roster. Even if the review applicant who is aggrieved by the order of this Tribunal is heard on merit, the result would remain same.

13. The matter can also be looked into from another angle. In this case review applicant is complaining violation of the principles of natural justice as the decision has been rendered against him without hearing the matter. The purpose of principles of natural justice is prevention of miscarriage of justice. In this case as already stated above, according to us, no miscarriage of justice has occurred and hearing of

review applicant on the issue decided by this Tribunal will not result in the miscarriage of justice as the result after re-hearing the review applicant would remain the same i.e. quashed roster cannot be made operative.

14. At this stage, it will be useful to quote various decisions of the Hon'ble Apex Court whereby the principle of natural justice has been diluted and two exceptions were carved out. The earlier view was that breach of principles of natural justice itself causes prejudice and no other 'de-novo prejudice' is needed to be proved. This view was subsequently deviated and two exceptions were carved out from this principle - i) if upon admitted or undisputed facts only one conclusion was possible, then in such a case principle that breach of natural justice was itself a prejudice would not apply. In other words, if no other conclusion was possible on the admitted or undisputable facts, it is not necessary to quash the order which was passed in violation of natural justice and ii) in addition to breach of natural justice real prejudice must also be proved to have been caused. Hon'ble Apex Court in the case of Ashok Kumar Sonkar vs. Union of India, 2007 (3) AISLJ 420 whereby the Apex Court has noticed its earlier decision in the case of Aligarh Mulsim University and Ors. vs. Mansoor Ali Khan, 2001 (1) SLJ 409, Karnataks State Road

Transport Corporation and Anr. Vs. S.G.Kotturappa and Anr., 2005 (2) SLJ 208 (SC) and Punjab National Bank and Ors. vs. Manjeet Singh and Anr., (2006) 8 SCC 647, whereby it was stated that principles of natural justice are not required to be complied with when it leads to an empty formality. It will not issue such direction where the result would remain the same, in view of the fact and situation prevailing or in terms of legal consequences.

15. Thus viewing the matter from any angle, we are of the view that the review applicant has not made out a case for reviewing the order and hearing the review applicant. The Review Application is accordingly disposed of in terms of finding recorded in para 7 supra.

(B.L.KHATRI)
Admv. Member

(M.L.CHAUHAN)
Judl.Member

R/