

(Reserved on 07.03.2018)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

(THIS THE 23rd DAY of March, 2018)

**HON'BLE DR. MURTAZA ALI, MEMBER (J)
HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A)**

Civil Misc. Review Application No. 330/00035/2013

In
Original Application No. 550 OF 2013

Alongwith

Original Application No. 435 of 2013

And
Original Application No. 170 of 2013.

1. Sita Ram Singh, S/o Ram Janam Singh, Aged about 38 years, presently working as Technician II, Rail Spring Karkhana, Sithauli, Gwalior.
2. Dinesh Kumar Maurya, S/o R.S. Maurya, Aged about 42 years, presently working as Technician II, Rail Spring Karkhana, Sithauli, Gwalior.
3. Satya Prakash Srivastava, S/o Raghuwar Dayal Srivastava, Aged about 47 years, presently working as Technician I, Rail Spring Karkhana, Sithauli, Gwalior.
4. Raj Gopral Yadav, S/o Raghuwar Dayal Yadav, Aged about 47 years, presently working as Technician I, Rail Spring Karkhana, Sithauli, Gwalior.
5. Naresh Kumar Gupta, S/o P.N. Gupta, Aged about 44 years, presently working as Technician II, Rail Spring Karkhana, Sithauli, Gwalior.

.....applicants

V E R S U S

1. Union of India through General Manager, North Central Railway, Head Quarter, Subedarganj, Allahabad.
2. Chief Workshop Manager, Rail Spring Karkhana, North Central Railway, Sithauli, Gwalior.
3. Senior Personnel Officer, Rail Spring Karkhana, North Central Railway, Sithauli, Gwalior.

4. Bala Ram Rajak, S/o Shri Champat Lal Rajak, Aged about 36 years, working as Senior Technician (MCM), Rail Spring Karkhana, North Central Railway, Sithauli Vihar Colony, Tubewell Road, Khati Baba, Jhansi.
5. Arvind Saxena, S/o Shri R.S. Saxena, Aged about 40 years, presently working as Technician II MW, Rail Spring Karkhana, North Central Railway, Sithauli, Gwalior, R/o 3, Gandhi Nagar, Dharmachine BHEL, Jhansi, U.P 284129.
6. Heera Lal, S/o Sri Mathura Prasad, presently working as Technician II, Rail Spring Karkhana, Sithauli, Gwalior.

.....Respondents

Advocate for the Applicants :- Shri Ashish Srivastava

Advocate for the Respondents:- Shri A. Tripathi (for Respondent No. 1 to 3)

O R D E R

Delivered by Hon'ble Mr. Gokul Chandra Pati, Member (A)

This review application is directed against the order dated 14.08.2013 passed by this Tribunal in O.A No. 550/2013 alongwith with two other O.As mainly on following grounds: -

- i. The applicants of this Review Application (referred hereinafter as 'applicants') as well as other eligible candidates had made complaints about the procedure for selection process, for which a vigilance inquiry was ordered by the Railway authorities. The vigilance department after investigation reported serious irregularities and bias on the part of the officers conducting the selection process and recommended for quashing the same. Accordingly, the Railways had stopped the selection process. But the applicants in the O.A. (who are the private respondents in this Review Application) did not disclose this fact before the

Tribunal and in view of the impugned order dated 14.08.2013, they managed to revive the selection process which was stopped because of vigilance report.

- ii. There were some discrepancies in the service record of some private respondents to this Review Application, like for the respondent No. 6 and in spite of such discrepancies they were considered for the selection. It was also the complaint of the applicant that they were not relieved in time to appear in the examination.
- iii. Wrong facts were placed before this Tribunal while the O.A. was being considered. As a result, all the relevant facts have not been considered while passing the impugned order.

2. Facts in brief are that the applicants of this Review Application are presently working as Technician under the Railways who had issued a Notification dated 23.01.2012 for selection to the post of Apprentice Mechanical (J.E) under 25% quota vacancy. This notification provided for pre-promotional coaching to reserved category candidates before they appear in the said examination. The applicants had applied for such pre-coaching training. Date for written examination was fixed and the authorities went ahead in the selection process. In the meantime, some candidate/employees including the applicants had alleged certain irregularities in the process. Some of the SC/ST candidates submitted a complaint that their training was not as per the syllabus of the examination proposed to be held. In view of these complaints, an enquiry was conducted by vigilance and the selection process was stopped although the selection process was

over. The candidates, who were included in the select list approached this Tribunal in O.A No. 550/2003 alongwith two other O.As challenging the decision to stop the selection process. The present applicants being interested parties due to whose complaint the respondents have decided to stop the selection, were not included as respondents in the said O.As which were adjudicated by this Tribunal and disposed of vide order dated 14.08.2013 with following direction : -

“15. The process of reassessment of service records of such candidates who have cleared the written test and assessment of their personal suitability be carried out within four months from the date of receipt of a certified copy of this order. The respondents are restrained from issuing any fresh notification for three vacancies (2 Gen. 1 SC) of the post of Apprentice Mech. (JE) under 25% LDCE quota till the entire exercise is carried out and the result thereof declared. All the above O.As are disposed of accordingly. No costs.”

3. This Review Application was heard on 07.03.2018. Shri Ashish Srivastava, learned counsel for the applicants argued that the applicants are necessary parties who should have been impleaded in the O.A. But they were not impleaded deliberately by the applicants of the O.A. and the proceedings went on behind the back of the present applicants. He mentioned that the applicants could not know about the proceedings before the Tribunal initiated by selected candidates for which they could not approach this Tribunal in time. He further submitted that the order dated 14.08.2013 has been passed without considering the entire facts relating to the selection process like the nature of complaints, result of vigilance enquiry and decision to stop the selection. He accordingly, justified that the order dated 14.08.2013 being defective and passed without considering entire facts is liable to be modified by exercising the power available to this Tribunal to

review the order. He also submitted a copy of the judgment dated 15.1.2014 of Hon'ble Allahabad High Court, where in a similar case, it was directed that the petitioners be included as respondents in the O.A. which is to be heard afresh.

4. Shri A. Tripathi, learned counsel for respondents submitted that the selection process as per the order of this Tribunal has been already over and the order dated 14.08.2013 has been complied by the Railways. He further submitted that with and the review application is not maintainable under the law.

5. We have considered the contentions made in the Review Application as well as the arguments of the counsel for the applicant.

6. We note that the scope of reviewing the order of this Tribunal is limited to the grounds as mentioned in the Order 47 Rule 1 of the CPC. A review application can only be entertained on the ground of error apparent on the face of record. In a number of cases, Hon'ble Apex Court has held that this Tribunal cannot reprise the issues afresh. In the case of **State of West Bengal And Others v. Kamal Sengupta and another reported in (2008) 8 SCC 612**, Hon'ble Supreme Court has laid down following eight factors to be kept in mind for review, which are as under:

- “(i). *The power of the Tribunal to review is akin to order 47 Rule 1 of CPC read with Section 114.*
- “(ii). *The grounds enumerated in order 47 Rule 1 to be followed and not otherwise.*
- “(iii). *“that any other sufficient reasons” 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 the record.*
- (v). *An erroneous decision cannot be corrected under review.*
- (vi). *An order cannot be reviewed on the basis of subsequent decision / judgment of coordinate Larger bench or a superior Court.*
- (vii). *The adjudication has to be with regard to material which were available at the time of initial decision subsequent event / developments are not error apparent.*
- (viii). *Mere discovery of new / important matter or evidence is not sufficient ground for review. The party also has 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 earlier before the Tribunal.”*

7. The Hon'ble Apex Court in the case of **Rajendra Kumar and others Vs. Rambhai and others – (2007) 15 SCC 513** has dealt with the question of review and its maintainability and has held as under: -

“6. *The limitation on exercise of the power of review are well settled. The first and foremost requirement of entertaining a review petition is that the order review of which is sought, suffers from any error apparent on the face of the order and permitting the order to stand will lead to failure of justice. In the absence of any such error, finality attached to the judgement/order cannot be disturbed.*

8. In the case of **Inder Chand Jain (Dead) through Lrs, Vs. Motilal (dead) through Lrs. Reported in (2009) 14 SCC 663** the Hon'ble Apex Court held as under:-

“..10. *It is beyond any doubt or dispute that the review court does not sit in appeal over its own order. A re-hearing of the matter is impermissible in law. It constitutes an exception to the general rule that once a judgment is signed or pronounced, it should not be altered. It is also trite that exercise of inherent jurisdiction is not invoked for reviewing any order.*

Review is not appeal in disguise.

In Lily Thomas v. Union of India [AIR 2000 SC 1650], this Court held :

"56. It follows, therefore, that the power of review can be exercised for correction of a mistake and not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated an appeal in disguise."

9. In this case, the applicants remained silent during the course of the adjudication of the O.A. before this Tribunal, although the applicants' counsel claimed that they came to know only when the selection process was revived after passing of the impugned order. Further, although the Review Applicant was filed within time way back in 2013, but this was not pressed to be urgently taken up to stop the selection process.

10. The following issues arise in this Review Application:

- (i) Whether the applicants who were not the parties in the O.A. can move a review application;
- (ii). Whether sufficient justification have been brought out in under the law for consideration of the Review Application.

11. Regarding issue No. 1 it is stated that power of review to be exercised by the Tribunal flows from Section 22 (3)(f) of the Administrative Tribunals Act 1985 which states that the review power of this Tribunal has to be exercised as per the provisions of CPC. Order 47 Rule 1(1) of the CPC states as under: -

"1. Application for review of judgment – (1) Any person considering himself aggrieved –

- (a). by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,
- (b). by a decree or order from which no appeal is allowed, or
- (c). by a decision on a reference from a Court of Small Causes,

and who, from 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 decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order."

From above, it is clear from above provision that any aggrieved person can move a Review Application and it is not restricted only to the parties in the O.A.

12. Main ground taken by the applicants in the Review Application is that the Tribunal has passed the order dated 14.08.2013 without considering the entire facts. It is seen from the order dated 14.08.2013 of this Tribunal that all relevant facts relating to case have been considered while passing the order. Vide para 7 of the said order, the issue about the complaints and the vigilance enquiry which had revealed procedural lapses as well as discrimination in the selection of JE 25% LDCE quota conducted on 17.04.2012 were mentioned. The Tribunal had also perused the original vigilance enquiry report submitted before the Court and following observations were made in the order dated 14.08.2013 :

"11. We have particularly perused the original vigilance enquiry report as submitted before us vide File No. 2012/05/0133/PC/VI/C/OTH. The allegation of any kind of irregularity in conducting the written examination was carried out by the Vigilance wing of office of respondents on 27.08.2012. A total of 27 irregularities were alleged to have been committed. These allegations were inquired into with regard to participation in the written examination and conducting of the same. It was held by the Inquiry Officer that the complains received through the Union are not born out. There were some recommendations for future course of

action but nothing serious enough to warrant the cancellation of the entire written examination.....”

13. In view of above, it cannot be said that all the facts relating to the case have not been considered by the Tribunal while passing the order. Regarding the point that the applicants being essential parties were not impleaded in the O.A. is also not acceptable, since as noted in the order dated 14.08.2013, as per the vigilance inquiry report, no serious irregularity was observed to justify cancellation of the entire written examination, which is contrary to the submissions of the applicants in the Review Application. The Review Application has not mentioned anything about their complaint except for the complaint about inadequate training provided to them by the authorities. It is not their case that the applicants have been superseded or they are adversely affected due to serious irregularities committed. Hence, the applicants cannot claim to be essential parties in the O.As disposed of by this Tribunal vide the order dated 14.08.2013.

14. Other points mentioned in the Review Application are not apparent error or new facts as required under Rule 1 of Order 47 of the CPC in the light of the principles laid down the Hon'ble Apex Court in the cases discussed above.

15. In view of the above, we do not find any merit in the review application which is liable to be dismissed. Accordingly, the Review Application No. 35 of 2013 is dismissed. No costs.

MEMBER (A)

MEMBER (J)

Anand...