

**Central Administrative Tribunal
Principal Bench, New Delhi**

R.A. No.134/2015 in O.A. No.642/2014

Tuesday, this the 3rd day of November 2015

Hon'ble Mr. A.K. Bhardwaj, Member (J)
Hon'ble Mr. V.N. Gaur, Member (A)

1. Union of India through its Secretary
Ministry of Railways
Rail Bhawan, New Delhi
2. The Chief Operating Manager
Head Quarter Office
Allahabad, UP
3. The General Manager (P)
North Central Railways
Head Quarter Office
Allahabad, UP

..Review Applicants

(Mr. Satpal Singh, Advocate)

Versus

Sarwar Ali (Aged about 45 years)
s/o late Mr. Ishtiyag Ali
r/o Chief Controller
Railways, Agra, UP

..Respondent /Applicant in OA

(Mr. Nitin Bhardwaj, Advocate)

O R D E R (ORAL)

Mr. A.K. Bhardwaj:

In the Original Application No.642/2014 filed under Section 19 of the Administrative Tribunals Act, 1985 the applicant questioned the letter dated 23.01.2014 whereby he was called to participate in the selection for promotion from Group 'C' to Group 'B' post of AOM against 70% quota. The plea raised by the applicant to question the letter was that once he had already qualified the written examination and viva voce test for 2009-11

selection he could not have been subjected to same selection again. The respondents (review applicants) had not called the applicant to participate in 2005-07 selection, as he was low in the seniority list and subsequently in terms of the Order of this Tribunal, upheld by the Hon'ble High Court of Delhi and the Hon'ble Supreme Court, his seniority position in Group 'C' was changed, thus he had become entitled for consideration for promotion to Group 'B' post in the year 2005-07. This Tribunal allowed the Original Application with a view that once the applicant had already passed the selection against the vacancy year 2009-11, there could be no reason to subject him to another selection for his promotion against the vacancy year 2005-07. The view taken in paragraphs 14 to 16 of the Order reads thus:-

“14. The question that is to be answered is whether the applicant has to appear a fresh for assessing fitness for promotion to the Group 'B' post, once he has already appeared in such a test in 2011 and secured marks above the qualifying marks. In 2006, the applicant was not called to participate in the selection examination for the Group 'B' posts on the ground that his name did not appear in the seniority list of the officers in the grade of Rs.6500-10500, even though he was in the higher scale of Rs.7450-11500. Later, in 2011, he was allowed to participate in the selection process for Group 'B' posts and he secured qualifying marks in the written, viva voce and record of service. The respondents did not include his name in the panel on the ground that he was at Sl. No.12 while only 5 vacancies were available. The respondents had not contended that the applicant did not qualify in the written test/viva voce examination held in 2011. After Hon'ble High Court of Delhi had passed the order in WP (C) No.10011/2009 on 18.07.2011, this ground would be no more valid. It is also obvious that had the respondents decided to implement the order of the Hon'ble High Court, the selection test held on 17.12.2011 would have been a part of the action taken to implement the order of this Tribunal and the Hon'ble High Court of Delhi. Again, had the respondents considered the applicant as senior to those in the grade of Rs.6500-10500, his name would have appeared in the panel prepared after the selection examination held in 2011. The respondents, therefore, cannot now take a view that because of their wrong action of not giving him the appropriate seniority and not including him in the panel, would imply that the applicant had not qualified in the selection/examination of 2011.

15. In our view, a selection examination is meant to test the suitability of the officers for appointment/promotion to a higher post. Once a person has cleared such an examination, there is no justification for asking him to appear in another examination simply because the respondents decided not to implement the order of the Tribunal and the Hon'ble High Court, passed much before the selection examination.

16. In view of the foregoing discussion, we quash and set aside the letters dated 13.01.2014 and 23.01.2014 and direct the respondents to treat the applicant as having qualified the assessment for promotion to Group 'B' post on the basis of the performance in the examination held in 2011 and consider his appointment to Group 'B' post in terms of the orders of this Tribunal dated 05.12.2008 and Hon'ble High Court of Delhi dated 18.07.2011. The respondents shall pass appropriate orders and communicate the same to the applicant, within a period of two months from the date of receipt of a copy of this order."

2. In the present application, for review of the Order of the Tribunal, the respondents (review applicants) espoused that once the applicant had not participated in the selection for promotion from Group 'C' to 'B' held for the vacancy year 2005-07, this Tribunal could commit an error in giving direction to the respondents (review applicants) to give promotion to the applicant without being subjected to the written examination.

3. The controversy raised in the Review Application is same, as was raised in the Original Application. In the guise of present Review Application, the respondents (review applicants) have tried to re-argue the matter. The plea raised by them does not fall within the realm of review proceedings. 4. It is *stare decisis* that after passing the Order, the Tribunals and Courts become *functous officio*. Only exception to such principle is review, which is permissible only on limited grounds, i.e., there being an error apparent on the face of record, some documents, which could not be brought to the notice of the Court despite due diligence, are

found and brought on record or any other sufficient reason. We do not find any of the yardsticks fulfilled/satisfied in the present Review Application.

4. In **Union of India v. Tarit Ranjan Das**, 2004 SCC (L&S) 160, the Hon'ble Supreme Court has viewed as under:-

“13. The Tribunal passed the impugned order by reviewing the earlier order. A bare reading of the two orders shows that the order in review application was in complete variation and disregard of the earlier order and the strong as well as sound reasons contained therein whereby the original application was rejected. The scope for review is rather limited and it is not permissible for the forum hearing the review application to act as an appellate authority in respect of the original order by a fresh order and rehearing of the matter to facilitate a change of opinion on merits. The Tribunal seems to have transgressed its jurisdiction in dealing with the review petition as if it was hearing an original application. This aspect has also not been noticed by the High Court.”

5. The Review Application is found devoid of merit and is accordingly dismissed. No costs.

(V.N. Gaur)
Member (A)

(A.K. Bhardwaj)
Member (J)

November 3, 2015

/sunil/