

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

RA No.199 of 2013
IN
OA No.2976 of 2012

This the 27th day of October, 2015

**HON'BLE MR. JUSTICE L.N. MITTAL, MEMBER (J)
HON'BLE MR. SHEKHAR AGARWAL, MEMBER (A)**

Pawan Kumar & Ors.

... Applicants
(By Advocate: Shri H.P. Chakravorti with Shri M.S. Sainee)

Versus
Union of India and others

... Respondents
(By Advocate : Shri V.S.R. Krishna with Shri A.K. Srivastava)

ORDER (ORAL)

MR. JUSTICE L.N. MITTAL, MEMBER (J) :

Original applicants have filed this Review Application for review of Order dated 3.10.2013 passed by the Tribunal whereby OA 2976/2012 filed by the applicants was dismissed along with another connected OA 3208/2012.

2. The case relates to appointment of substitutes in Group 'D' posts, when process of filling up of vacancies is delayed and posts cannot be kept vacant without adversely affecting the Railway services.

3. We have heard counsel for the parties and perused the case file, including the file of the OA with their assistance.

4. Counsel for the applicants vehemently contended that some appointments were made pursuant to circular dated 17.9.2010 but the applications of the applicants were not

even considered although they also had a right to be considered. However, this grievance of the applicants has already been addressed in the Order sought to be reviewed. In this regard paras 10 and 11 of the said Order are reproduced hereunder:-

“10. As far as the present case is concerned, we are of the considered view that though the right of consideration for appointment of the Applicants as Substitutes could not have been denied to them, considering the fact that there are over 15000 such Applicants and the General Manager himself has now decided not to use his discretionary power in the matter and to get all those vacancies filled up through RRC, we are not inclined to allow this application and to give any further direction to the Respondents to consider them for such engagement. Moreover, it is seen that Respondents have already informed them that if they apply in future, pursuant to any advertisement, they will be considered along with others, in accordance with the rules. Therefore, these OAs fail and they are dismissed accordingly. There shall be no order as to costs.

11. Before we part with this order, we express our anguish as to how the discretionary power vested to the General Manager of the Railways for a genuine reason is mostly misused. The appointments are given to the favorites of the influential persons like MPs, MLAs. Even on the recommendation of his own Private Secretary such appointment are being made. Therefore, the persons so appointed are no doubt the back door entries in the Railways and such appointments are in clear violation of the provisions contained in Article 14 of the Constitution. In the above facts and circumstances, though their service may not be dispensed with but their continuance in service and their regularization in service shall be only after verifying their eligibility and subjecting them to the suitability test as in the case of posts under the 90% quota are being filled up. The Respondent Railway shall also ensure that if such appointments are required to be made in future for the exigencies of work, they shall be done in a transparent and legal manner. We also direct the Registry to send a copy of this order to the Chairman, Railway Board, Rail Bhawan, New Delhi

to see that fairness, transparency and legality in the matter of appointments of Substitutes are not compromised in future and the discretion given to the General Manager are not misused by giving the appointments to the favorites for extraneous considerations rather than for the exigency of work.”

5. The appointment of some other persons has been held to be backdoor entry as per the impugned Order and, therefore, in violation of Article 14 of the Constitution. However, on the basis of said wrong appointments, the applicants cannot claim parity under Article 14 of the Constitution. In any event, grievance now sought to be raised by way of Review Application has already been dealt with in the impugned Order. Consequently, there is no ground for reviewing the impugned Order of the Tribunal. If the applicants were aggrieved by the said Order, they could have challenged the same by filing Writ Petition in the High Court. Review Application is not the proper remedy when the grievance sought to be raised by way of review has already been dealt with in the impugned Order.

6. For the reasons aforesaid, we find no ground for reviewing the Order in question. The Review Application is misconceived and is accordingly dismissed.

**(SHEKHAR AGARWAL)
MEMBER (A)**

**(JUSTICE L.N. MITTAL)
MEMBER (J)**

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