

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.****R.A. No. 38/2016****In****O.A. No. 511/2013****Date Of Decision: 16th November, 2018.****CORAM: HON'BLE SHRI. R. VIJAYKUMAR, MEMBER (A).
HON'BLE SMT. RAVINDER KAUR, MEMBER (J).**

- 1) Union of India through
The General Manager,
Central Railway,
Headquarters Office,
CST, Mumbai- 400 001.
- 2) Chief Workshops Manager,
Matunga Workshops,
Central Railway,
Matunga, Mumbai- 400 019.

....Petitioners.**(Respondent Nos. 1 & 2 in OA)****(By Advocate Shri V D Vadhavkar)****Versus**

1. Shri Akhilesh M. Upadhyay,
S/o Mukund Lal Upadhyay,
Aged about 42 years (date of birth: 30-09-1971), Working as Technician Grade II under CWM Matunga Workshops, Central Railway, Matunga-400 019.
Residing at: Block No. B1, Janakpuri Cooperative Housing Society, Katrap, Badlapur(E)- 421 503, Mob:- 9503685280.
2. Mr. A.C. Muralidhran,
Working as Tech.I,
Under Chief Works Manager,
Matunga Workshops, Central Railway,
Matunga, Mumbai- 400 019.
3. Mr. Sunil Kumar Singh,
Working as Tech.III,
Under Chief Works Manager,
Matunga Workshops, Central Railway,
Matunga, Mumbai- 400 019.

4. Mr. Vijay Bahadur Pannalal,
Working as Tech.III,
Under Chief Works Manager,
Matunga Workshops, Central Railway,
Matunga, Mumbai- 400 019.

**...Respondents (Original
Applicant and Private respondents in OA)**

(By Advocate Shri D V Saroj)

Reserved on : 26.10.2018

Pronounced on : 16.11.2018

ORDER

PER:- R. VIJAYKUMAR, MEMBER (A).

This Review Application has been filed on 28.10.2016 seeking review of the orders passed in the OA No. 511/2013 decided on 14.07.2016.

2. The Review Petitioners state that they received a copy of the order through their advocate on 06.08.2016 and therefore, this Review Application should have been filed by 06.09.2016. However, it was filed after a delay of 52 days for which they have sought condonation of delay and have filed MA No. 896/2016 for this purpose. They have stated that the delay is solely on account of the administrative exigencies by which the matter had to be examined in the policy and legal sections in the Headquarters Office of

the respondents at Mumbai after it was detected that there was an error in arriving at the marks obtained by the various candidates in the written exam.

3. Considering the reasons and circumstances cited in this Miscellaneous Petition, the delay was condoned by the Bench when the matter was heard on 22.02.2017. An MP No. 896/2016 to file additional documents of relevant question papers and answer sheets was also allowed. Notice was dispatched to the applicant on 11.09.2018 and also to private respondents to file their reply and the matter was finally heard on 05.10.2018 when review respondents(Original applicant) was represented by a new counsel who was heard on the matter and requested time and then the case was reserved for orders after which respondents were asked to produce the correct answer copy used for revaluation for which they have given a brief version containing the answers for the corrected portions used in revaluation.

4. The main argument submitted for the

review is that there is an error apparent on the face of record in that this Tribunal had considered that the applicant had correctly answered a few questions whereas he was not entitled to marks for deleting a previous answer and providing a fresh answer against the objective question. This was based on the instructions contained in the examination question paper and answer sheet according to which under Instruction No.6 as below:

"no corrections of any type are permitted in the answer to objective type questions. In case any correction is made, that answer shall not be evaluated at all. The correction may be any of the following types the list is illustrative and not exhaustive viz (a) Cutting, (b) Overwriting, (c) Erasing, (d) Scoring of a ticked answer in multiple choice and ticking another answer and (e) Modifying the answer sheets in any way."

5. Further, the Revaluation Committee had excluded question no. 3(vii) for revaluation for all candidates and had made an endorsement in the revaluated tabulation sheet but this had not been taken note of by the Tribunal in its orders. As a result, the relative position of the applicant and other

candidates did not represent a true result of the written test.

6. The scope of review is quite limited and one of the requirements for review is to establish that there is an apparent error in the face of the record which alters the very character of justice that is expected to be the result of an order of this Tribunal.

7. The applicant and the others in this group have approached this Tribunal expecting an even-handed approach to provide them fair treatment. This may provide benefit or may even go against the applicant or any other particular candidate especially those who have been impleaded as respondents by the applicant in the original application. However, that cannot stand in the way of providing justice to the parties concerned. In the present case, the calculation and errors made in the initial evaluation have, in the final conclusion of this Tribunal not yielded a fair result and it is necessary to bring to bear the corrections that the review petitioner has now brought to notice.

8. During the hearing, learned counsel for review petitioner referred to the answer sheet of the original applicant in which he had given the answers as below:

Question No.	Answer of Applicant	Correct Answer	Marks
1(iii)	1.220	1.215	Zero
1(vi)	C-122 inch	3155mm C-122 inch	Zero
1(vii)	400±50 RPM	400 RPM	Zero
2(c)	Rail India Technical and Economic Services	Rail India Technical and Economic Services	One
3(vii)	FALSE	FALSE	Question deleted.

9. Therefore, the applicant received one mark more than his original evaluation and therefore got 71 marks and not 73 marks as indicated as marks obtained in revaluation for the consideration of this Tribunal. The deletion of one question was evidently due to its vague character because it asked if Shri Arun P Tupe was CWM whereas the correct name was Arun R Tupe. In this case, the applicant had cut an answer 'True' and then written 'False' for which he would have even otherwise, in terms of instructions, received

zero marks. In the event, no candidate received marks for this question.

10. The learned counsel for Respondent (original Applicant) in Review Petition submitted as below:

"at the time of examination in his answer sheet question number 3 answer number 7 there is cut mark but the respondent immediately requested to examiner to endorsed/or signature the same but examiner refused to sign/endorsed and stated that it will be given full marks and no signature or endorsement is required on the answer sheet. The respondent was under apprehension that full marks will be given in question no.3(7)."

11. Further, he has noticed the following errors in evaluation for the other candidates as below:

Respondent No. & Name	Question No.	Error
3, Shri M C Murlidharan	3(2)	Overwriting
4, Shri Sunil Kumar Singh	2(b) 3(i)	Overwriting The word 'No' has been deleted and replaced by FALSE (Galat)
5, Shri Vijay Bahadur Pannalal	2(b), 2(d), 5(vii) & 5(viii)	Overwriting

12. The cases pointed out by the learned

counsel have been seen against the respective answer sheets. For respondent No.3, the answers for this section have been noted in English in sentence form for 'False' and in capital form for 'True'. In question 3(2), the overwritten portion shows the first letter as 'T' but other letters are clearly 'al..' and this has been deleted and replaced by 'False'. This would be a matter for the official respondents to decide with reference to their instructions. In the case of respondent No.4, one mark has been given for deleting the word 'development' and replacing with 'design' which again needs to be considered by the respondents. For Question No.3(i), there is clearly no error and a deletion of 'No' and replacement by 'False' does not suggest any violation of instructions which respondents may also examine with reference to their intentions and instructions. For respondent No.5, the deletion of the word 'Yes' in Hindi is trivial and merely a formatting issue. For question No.2(d), the applicant used the

'Rail' in English which he deleted and then replied in Hindi which is also of a trivial nature and does not affect the integrity of the answer. The overwriting mentioned against question No. 5(vii) at page 95 of the answer sheet is to write the answer in the middle of the question which has been repeated by the candidate and this has been deleted which is clearly not an error. In the case of question No. 5(viii) at page 95, the spelling error in the question has been corrected whereas the answer remains untouched and is again a trivial objection. In the circumstances pointed out by Review Petitioners, it is apparent that would be some alteration in the marks obtained by the various candidates. It is noted from the original result that there are as many as ten candidates who obtained 58-66.5 marks out of 80 marks allotted for the written test. Any changes of even one mark will therefore alter this composition of candidates and the result, especially for those candidates at the margin who could have been considered for selection.

13. In the circumstances, the orders in the OA are modified to the extent of directing the respondents to revalue and recheck the results of the answer sheets of all the candidates strictly in accordance with the instructions and by reference to the answer key including the aspect of the excluded questions and then to display the result of the candidates and obtain their acknowledgment thereafter. The candidates in the top ten ranks shall also be provided a fixed date and time to verify their answer books and to satisfy themselves that they have been awarded marks correctly for answers that they have correctly answered with reference to the instructions and have been refused marks for answers they have answered wrongly or in disobedience of instructions. Further, this exercise shall be carried out within four weeks and the statements published including for date of examination by the top ten candidates of their answer books within one week thereafter. Further, if any candidate wishes to file a written

objection, he should be permitted within the notification declaring result, to file his objections within a week after inspection of answer book and these objections, if any, shall be disposed of by a reasoned and speaking order to each of the candidates within two weeks' thereafter. With the above modification, this Review Petition is allowed without any order as to costs.

(Smt. Ravinder Kaur)
Member (J)

(R. Vijaykumar)
Member (A)

Ram.