

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

(2)

RA 205/2005
in OA 2342/2003

New Delhi, this the 30th day of August, 2006

**Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Shri N.D. Dayal, Member (A)**

1. Shri Chander Kumar
S/o Late Shri Sutk Dayal
Working as Sr. Clerk Under CAO (C)
Kashmere Gate, Delhi.
2. Shri Charanjit Singh
S/o Late Shri Chaman Lal
was working as Sr. Clerk under
Dy. Chief Engineer (C), N. Rly.,
SE Road, New Delhi through
Legal Heirs: -

(i) Smt. Kanta Rani
(ii) Shri Raj Kumar
(iii) Shri Vinod Kumar
(iv) Shri Sharad Kumar

...Review applicants

(By Advocate Shri K.K. Patel)

VERSUS

Union of India through

1. The General Manager
Northern Railway
Baroda House, New Delhi - 1.
2. Deputy Chief Personnel Officer/MPP
Headquarters Office, Baroda House
New Delhi.
3. Divisional Railway Manager
Northern Railway, State Entry Road
New Delhi.
4. Shri Jhelum Singh, S/o Shri Pritam Singh
working as Office Superintendent Grade-II
in the DRM's office, Northern Railway
under Divisional Superintending Engineer-II
New Delhi.

...Respondents

(none present)

ORDER (ORAL)

Shri N.D. Dayal.

This RA 205/2005 has been filed in OA 2342/2003 by the two applicants in
that OA with the prayer that the order dated 9.8.2005 passed in the OA may be

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reviewed. During the hearing, notice was issued to the opposite parties who have filed their counter reply to the RA. Due to the demise of applicant No.2 during the pendency of the RA, MA 1005/2006 was filed to implead the legal heirs, which was allowed on 29.8.2006.

2. In the OA, the applicants had sought quashing of the impugned order dated 9.8.2003 and sought assigning of seniority from the date their junior Shri Jhelum Singh had been promoted as MCC in the grade of Rs.950-1500 along with consequential benefits. The directions passed by the Tribunal were as under: -

"7. We have heard the counsel for the parties and gone through the documents placed on record. We find that the short question is the date from which Respondent No.4 was regularly appointed. For this purpose, we called for the service book and find that the Respondent No.4 was first appointed on 15.2.1968 in Jind Junction as Permanent Way Khalasi and AEN Jind confirmed him on the same post on 15.2.1969. From the Service Book, it is, therefore, clear that Shri Jhelum Singh (Respondent No.4) was confirmed earlier than the applicants. Appearing in screening held on 15.06.1972 to 17.06.1972 does not change this fact. He should not have been asked to appear in the screening on 15.06.1972 to 17.06.1972. The respondents have admitted that respondent No.4 had been called for the screening by mistake, as he had already been confirmed on 15.2.1969."

8. In view of above, the OA being without merit stands dismissed. No costs."

3. In the RA, the applicants have listed many judgments and stated that no findings were given by the Tribunal with reference to the same but no further discussion is forthcoming. They have pointed out that Annexure P-6 of the OA showed the vacancy position of the clerks. But it has been submitted by the respondents that there are no clear vacancies in the Construction Organization, which is a work charged establishment, and as such question of promotion on ad hoc basis against clear vacancies in Construction Organization does not arise. The applicants have argued that Shri Jhelum Singh was a substitute Khalasi and referred to the Rules and Circulars in some detail. Thereafter, the contents of the service book have also been referred to contend that Shri Jhelum Singh was not a Permanent Way Khalasi.

4. It is noticed from the order passed by the Tribunal that the service book had been called for and the question of date of regular appointment was

gone into keeping in view the submissions made by both sides before finding the application to be without merit. Besides, it needs no emphasis that the matter of assigning of seniority would arise only after the question of appointment or promotion is settled.

5. The scope of review is limited and such application has to satisfy pre-requirement conditions similar to the conditions laid down in Rule (1) of Order 47 of the Civil Procedure Code. The rule states:

"(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."

6. However, the power of review may not be exercised on the ground that the decision was erroneous on merits since in a review, the Tribunal is not sitting in appeal over its own order as per the Apex Court judgment in the case of *Smt. Meera Bhanja v. Smt. Nirmala Kumari Choudhury AIR 1985 SC 455*. The Hon'ble Supreme Court referred to their observations in an earlier case reported in *AIR 1960 SC 137 Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Turumale* that

"An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior Court to issue such a writ."

7. Further it is not permissible to facilitate a change of opinion on merits by a fresh re-hearing of the matter as held by the Apex Court in *UOI v. Tarit Ranjan Das* reported in 2004 (2) ATJ SC 190.



8. In view of the above, we are not persuaded that any sufficient grounds have been made out so as to warrant interference by invoking the review jurisdiction. RA is, therefore, dismissed but without any order as to costs.



(N.D. Dayal)
Member (A)



(Shanker Raju)
Member (J)

/Vikas/