

Central Administrative Tribunal
Principal Bench: New Delhi

RA No. 16/2000 In OA 764/94
MA No. 81/2000

New Delhi this the 18th day of September, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member (J)
Hon'ble Mr. V.K. Majotra, Member (A)

(39)

1. Union of India,
Through its Secretary,
Department of Company Affairs,
Ministry of Law, Justice and
Company Affairs, Shastri Bhawan,
New Delhi.
2. The Official Liquidator,
Department of Company Affairs,
A-2, WZ Barracks,
Kasturba Gandhi Marg,
New Delhi.

...Review Applicants

(By Advocate: Shri S.M. Arif)

Versus

Shri R.P. Vimal
167, D.D.A. Janta Flats,
Nand Nagri, Delhi-110093.

...Respondent

(By Advocate: Shri D.S. Chaudhary)

ORDER (Oral)

By Smt. Lakshmi Swaminathan, Member (J)

This review application has been filed by the Union of India (respondents in OA No.764/94) for recalling the Tribunal's order dated 6.9.99 in OA 764/94 by allowing the R.A. and to re-hear the OA on merits. MA 81/2000 is filed for condoning the delay in filing the Review Application.

2. We have heard Shri D.S. Chaudhary, learned counsel for the original applicant and Shri S.M. Arif, learned counsel for the review applicants.

3. While referring to MA for condonation of delay, Shri S.M. Arif, learned counsel has referred to the grounds taken by the respondents in the additional affidavit filed by them on 11.7.2000. He

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has submitted that after a copy of the order against which review has been filed has been furnished to the Department by the applicant, which was diarised on 27.9.99, further steps had been taken and decision obtained from the competent authority to file the present review petition. Thereafter, the review application was prepared by the learned counsel and filed on 19.11.99. He has relied on the following decisions of the Tribunal in the cases of (i) **Union of India Vs. N. Jagga Rao & Others** (1989(5)SLR 453 CAT-Calcutta Bench); (ii) **V.R. Lohakare Vs. Union of India & Others**((1991) 18 ATC 303 CAT-New Bombay); and (iii) **Jagmohan Vs. Union of India** ((1989) 11 ATC 616 CAT - New Delhi). He has submitted that in these cases the Tribunal has held that it is necessary to examine the facts in each case and due regard has to be given to the functioning of the Government in examining the proposal for filing the review application as well as the procedural difficulties the Government Department faces in such matters at different levels. He has submitted that in the present case the concerned officers of the Department have considered the matter as expeditiously as possible and, therefore, he has stated that the prayer of the respondents for condoning the delay may be allowed in the interest of justice. He has also submitted that the delay in filing the review application is not deliberate or intentional.

4. On the merits of the R.A, Shri S.M.Arif, learned counsel has drawn our attention to pages 13 &

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14 of the R.A i.e. Annexure-5 of the Model Roster for Reservation of SCs and STs where vacancies are to be filled by promotion. The said annexure refers to the Ministry of Home Affairs OM dated 22.4.1970 and DOP&T O.M. dated 29.4.1975. Point No. 25 of the said Roster is earmarked for 'Unreserved' category. In the OA, the applicant had annexed Appendix-6 of the Model Roster (40 Points) for reservation of SCs and STs regarding posts to be filled by direct recruitment on All-India basis otherwise than by open competition. This Appendix also refers to the same Ministry of Home Affairs OM dated 22.4.1970 and DOP&T O.M. dated 29.4.1975. In this Appendix, point No.25 is shown as reserved for Scheduled Castes.

5. On a perusal of the judgment of the Tribunal dated 6.9.99, it is clear that the Tribunal had placed reliance on Appendix-6 of the Model Roster as annexed by the applicant in which Point No. 25 is earmarked for a SC candidate. Thereafter, the directions have been given on this basis. Shri S.M.Arif, learned counsel has submitted that unfortunately the respondents have not controverted the averments made by the applicant by filing the correct annexure which according to him is Annexure-5 - Model Roster (Pages 13-14 of the paper book in RA). He has fairly submitted that this has been done due to inadvertence and carelessness on the part of the Departmental officials as the correct documents were neither given to him nor filed in the Court before the aforesaid order of the Tribunal was passed. He has submitted that Annexure-5 of the Model Roster deals with the reservation roster for SCs and STs for filling up

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vacancies by promotion, which is the situation in the present case and not the position for filling up vacancies by direct recruitment on All India basis or otherwise than by open competition which is dealt with by Appendix-6 relied upon by the applicant.

6. The other main ground taken by the learned counsel for the review-applicants is that there were only two vacancies and in terms of the procedure laid down under the DOP&T's OM of 12.10.90, only persons upto serial no.10 in the seniority list as per the extended zone of consideration, could have been considered. Applicant Shri R.P. Vimal is at Serial No. 22 of the Seniority List and, therefore, he could not be considered even as per the extended zone of consideration against the SC/ST quota. For these reasons, learned counsel has submitted that the Tribunal's order dated 6.9.99 may be recalled and the OA heard on merits again.

7. Shri D.S. Chaudhary, learned counsel has opposed the prayer both on the ground of limitation in filing the RA as well as on merits of the case. According to him, the respondents have not disclosed sufficient grounds to condone the delay and secondly there is no reason shown by the respondents why they could not have placed on record the correct documents i.e. Annexure-5 of the Model Roster which they have now placed as relied upon document in RA-16/2000. He has, therefore, submitted that there is no error apparent on the face of record in the Tribunal's order justifying allowing the prayer for recalling the order of the Tribunal; and also that there is no good reason for condoning the delay in filing this review
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application.

8. We have carefully considered the pleadings and submissions made by the learned counsel for the parties.

9. From the grounds set out in MA-81/2000 read with the additional affidavit filed by the respondents and having regard to the observations and decisions of the Tribunal referred to above relied upon by Shri S.M. Arif, learned counsel, we find sufficient reasons have been given by them justifying condoning the delay in filing the R.A. Further, we are of the view that this is a case which justifies accepting the prayer for condoning the delay in the interest of justice.

10. On a perusal of the Tribunal's order, in particular paragraph-2 of the order dated 6.9.99, it is clear that the Tribunal has relied on Appendix-6 of the 40 point Model Roster annexed by the applicant in which roster point No. 25 is shown as earmarked for a SC candidate. However, in view of Annexure-5, Model Roster of 40 point for filling up vacancies by promotion which has now been brought to our attention, we are unable to state that the contention of the review-applicants that there is an error apparent on the face of record is incorrect. We are also satisfied that the provision of Annexure-5 of the 40 point Model Roster, dealing with vacancies to be filled by promotion is to be applied to the facts of the present case. Under this Annexure, point No. 25 is shown as an "unreserved" point. Therefore, in the facts and circumstances of the case, and again in the interest of justice, since the applicant is admittedly

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a SC candidate, his claim for consideration for promotion to Grade-II of Company Prosecutor from Grade-III against roster point No.25, as a S.C. candidate against an unreserved point in the Reservation Roster, cannot be accepted.

11. For the reasons given above, MA-81/2000 and RA 16/2000 are allowed. Accordingly the Tribunal's order dated 6.9.99 in OA-764/94 is recalled.

12. At the request of learned counsel for the applicant, list the OA 764/94 for hearing on merits on 29.11.2000.

V.K.Majotra
(V.K.Majotra)
Member (A)

Lakshmi Srinivasan
(Smt.Lakshmi Swaminathan)
Member (J)