

CENTRAL ADMINISTRATIVE TRIBUNAL

Principal Bench

R.A. No.145 of 1996

M.D. No. 1317 M.A. No. 2313 of 1996

M.A. No. 2063 of 1996

in

O.A. No. 2231 of 1992

New Delhi, dated this the 25th APRIL 1997

HON'BLE MR. S.R. ADIGE, MEMBER (A)

HON'BLE DR. A. VEDAVALI, MEMBER (J)

(30)

1. Shri Raghbir Singh,
S/o Shri Narpat Singh,
R/o G-2274 Netaji Nagar,
New Delhi-110023.

2. Shri Bhajan Singh,
S/o late Shri Shankar Singh,
R/o 39-B, Begumpur Park,
Malviya Nagar,
New Delhi-110017.

3. Shri S. Mazumdar,
C/o Communication Section,
DCPW, Block 9, C.G.O. Complex,
Lodhi Road,
New Delhi-110003.

... APPLICANTS

By Advocate: Shri K.S.Ahluwalia

VERSUS

1. U.O.I. through
the Ministry of Home Affairs,
Directorate of Coordination,
Police Wireless,
Block No.9, C.G.O. Complex,
Lodhi Road,
New Delhi.

2. The Director,
Directorate of Coordination,
Police Wireless,
Block No.9,
C.G.O. Complex,
Lodhi Road,
New Delhi.

3. Shri S. Vedachalam,
Wireless Supervisor,
C/o Dy. Director,
CPRTI, Upper Ridge Road,
New Delhi.

4. Shri M.J. Andhbre,
Wireless Supervisor,
C/o Extra Assistant Director,
Inter State Police Wireless Station,
Police Wireless Headquarters,
Malabar Hills, Bombay.

5. Shri A.K.Sutradar,
Wireless Supervisor,
C/o Station Superintendent,
Inter State Police Wireless Station,
Janta Bhawan,
Dispur, Assam.

... RESPONDENTS
By Advocate: Shri M.K.Gupta

JUD ORDER

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

(31)

Applicants seek review of judgment dated 11.12.95 in O.A. No. 2231/92.

2. In that O.A. applicants had sought

- (i) setting aside Office order Part II (58/91) dated 26.3.91;
- (ii) declaring that applicants were senior to Respondents No.3 to 5 on the post of Wireless Supervisor; and
- (iii) direct official respondents to consider them for the post of Sr./Supervising Officer.

3. After completion of pleadings that O.A. was heard in the presence of both parties during the course of which our attention was invited by Respondents' counsel to the C.A.T. Bangalore Bench's judgment dated 9.9.93 in O.A. No. 181/92 V. Shivanna Vs. Director, Police Telecommunication & Ors. in which an identical prayer for quashing impugned order dated 26.3.91 was considered on merit and dismissed. No materials were shown to us during hearing to suggest that the said judgment in Shivanna's case (Supra) not become final. As admittedly grant of had reliefs (ii) & (iii) were dependant on grant of relief (i), and in the light of the judgment in Shivanna's case (Supra) it was not possible to grant relief (i), the O.A. was dismissed.

4. Against that order dated 11.12.95 applicants filed SLP No. 8760/96 in Hon'ble Supreme Court which was dismissed on 19.4.96

R

with the following orders:

62

"It is stated that the case of the petitioners is not covered by the Order dated 9.9.93 passed by the Bangalore Bench in O.A. No.181/92. If that be so, the petitioners should have filed review application instead of filing a petition under Art. 136 of the Constitution. If a review application is filed within 30 days from to-day it shall not be dismissed on the ground of delay. We make it clear that we are not expressing any opinion whether the case of the petitioners is covered by the aforesaid order or not."

5. On 13.5.96 applicants filed the present R.A., and after issuing notice to respondents, completion of pleadings both sides were heard.

6. Review applicants admit that eligibility for promotion from Wireless Operator to Wireless Supervisor is dependant on possession of 5 years service and passing of Grade I Test. They also do not deny that Respondents No.3,4 & 5 had completed 5 years service in 1983 and had also passed the Grade I Test in 1983 while review applicants themselves passed the Grade I Test in 1985/86. Despite that they contend that as per their seniority R-3 to 5 were rightly left out during consideration for promotion by DPCs conducted between April, 1983 and 1990 and therefore the official respondents acted wrongly in holding review DPCs and granting them notional promotions w.e.f. 24.12.83 vide impugned orders dated 26.3.91 and thus making them senior to the review

33
applicants who were granted promotions from 1986/87.

7. On the other hand in Shivanna's case (Supra) where the self same order dated 26.3.91 was impugned, the CAT Bangalore Bench had approved the action of the official respondents in holding review DPCs to consider cases of SC/ST persons and others for the reasons unknown had not been considered by the earlier DPCs at the relevant time, despite availability of vacancies (including reserved vacancies). That judgment repelled the challenge to the impugned order dated 26.3.91, whereby these persons had been given notional promotion as Wireless Supervisors from the relevant dates depending upon the availability of vacancies and the date of their completing 5 years service/passing Grade I Exam. It is relevant to note that R-6 & 7 in Shivanna's case (Supra) are review Respondents 3 & 5 in the present R.A., and the fact that review applicant No.2 Bhajan Singh has been given notional promotion on 31.12.86 which is subsequent to the notional promotion granted to R-3, 4 & 5 (in 1983) and thus ranks junior to them in the promotional post of Wireless Supervisor, has been noted in the body of the ^{1st} judgment itself.

8. In Shivanna's case (Supra) the CAT Bangalore Bench repelled the challenge to the impugned order dated 26.3.91 and dismissed the O.A. It was open to the review applicants to have got themselves impleaded in that O.A. but they did not do so. If they were aggrieved by the judgment in Shivanna's case (Supra) it was open to them to have prayed for a review if the grounds came within the scope and ambit of Section 22(3)(f) A.T. Act read with Order 47 Rule 1 C.P.C. but they did not do that either. Nor did they file an appeal as a third party against that judgment in the Hon'ble Supreme Court. In the absence of any material shown by them during hearing of O.A. No.2231/92 to suggest that the said judgment had not become final, we had held that as a Coordinate Bench we were absolutely bound by the same and the ratio of that judgment was fully applicable to the facts of the case. Allowing O.A. No.2231/92 would in effect have meant upsetting the law laid down in Shivanna's case (Supra). Accordingly we had dismissed the O.A.

9. Nothing has been brought to our notice which warrants our taking a different view and the grounds taken in the R.A. do not bring it within the scope and ambit of Sec. 22(3)(f) A.T. Act read with Order 47 Rule 1 C.P.C. under which a judgment/decision/order of the Tribunal can be reviewed.

(35)

10. During the course of completion of pleadings in the R.A., review applicants had filed M.A. No. 2063/96 seeking a direction to respondents to dispose of their representations dated 26.7.96 and 30.8.96 against the review DPCs and consequent refixation of their seniority. As the R.A. is being rejected for reasons explained above M.A. No.2063/96 requires no orders separately.

11. During the aforesaid period, review applicants also filed M.A. No.2313/96 alleging that official respondents had filed a tampered copy of the Bangalore Bench's judgment in Shivanna's case at the time O.A. No.2231/92 was heard to secure a favourable order. Official respondents vehemently deny this allegation and point out that the alleged tampered copy of Shivanna's judgment was in fact annexed to the R.A. by the review applicants themselves (Annexure 5 to RA), and official respondents believing it to be a true copy of that judgment in good faith annexed it with their reply to the R.A., Official Respondents point out that their good faith is borne out by the fact that there was really no need for them to have filed that copy of the judgment with their reply to the R.A. and yet they did so.

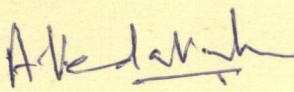
2

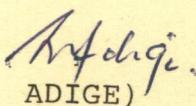
(36)

12. The alleged tampering relates to the omission of the words "they were not considered by the DPC due to some unknown reasons" in line 21 at page 4 and the substitution of the word 'refixed' by 'fixed' in line 28 of that page in Shivanna's judgment.

13. A comparison of the copy of the judgment annexed by the applicants to their R.A. with the copy enclosed by review respondents with their reply to the R.A., and the comparison of both these copies with the copy of the judgment annexed with respondents reply to M.A. No.2243/95 which appears to be the authentic copy reveals that the omissions referred to in paragraph 12 above occur both in review applicants' copy annexed with their R.A. as well as official review respondents copy annexed with their reply to the R.A., and under the circumstances review applicants contention in M.A. No.2213/96 that official review respondents had deliberately filed a tampered copy of the judgment in Shivanna's case to mislead the Tribunal is rejected.

14. For the aforesaid reasons R.A. No.145/96 together with M.As No.2063/96 and 2313/96 are rejected.


(DR. A. VEDAVALLI)
Member (J)
/GK/


(S.R. ADIGE)
Member (A)