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Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 142 of 1994

Allahabad this the 04th day of April, 2002

Hon'ble Mr. Justice R.R.K. Trivedi, V.C.
Hon'ble Mr. C.S. Chadha, Member (A)

Virendra Kumar Pandey, Son of Shri Rama Kant
Pandey, Resident of 786, Dariyabad, Allahabad.

Applicant

By Advocate Shri R.C. Sinha

Versus

1. Union of India through its Secretary, Ministry of Railways, Rail Bhawan, New Delhi.
2. Railway Board, Through its Chairman, Rail Bhawan, New Delhi.
3. Railway Service Commission, Through its Chairman Allahabad.
4. General Manager, Northern Railway, Baroda House, New Delhi.

Respondents

By Advocate Shri A.K. Gaur

O R D E R (Oral)

By Hon'ble Mr. Justice R.R.K. Trivedi, V.C.

By this O.A. under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for a direction to the respondents to appoint the applicant as Guard Grade 'C' in pursuance of the examination held on 22.02.81. The applicant has



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also prayed that he may be given benefit of the Judgment dated 28.09.90 passed by the Lucknow Bench of this Tribunal in T.A.No.05/89.

2. In short the submission of the applicant is that from the Judgment of Lucknow Bench of this Tribunal it is clear that the last candidate who was appointed on the basis of selection had secured only 160 marks, but he was appointed. Considering this illegality the relief was granted to one of the petitioner namely Abid Ali who had secured 205 marks in written and viva voce.

3. Shri A.K. Gaur, learned counsel for the respondents r-aised a preliminary objection that this O.A. is highly time barred and the applicant is not entitled for the relief. He has submitted that the Judgment of the Tribunal was given on 28.09.90. After this Judgment the applicant for the first time has filed the representation on 14.12.1993 i.e. after more than 3 years of the Judgment and filed this O.A. in this Tribunal on 28.01.1994. Shri A.K. Gaur has relied on the Judgment of the Hon'ble Supreme Court in the case of 'State of Karnatka Vs. S.M. Kota-Yayya and Others 1996 S.C.C.(L&S), Secretary to Govt.of India and Others Vs.S.M.Gaikwad 1995 Supp.(3)S.C.C.231 , Ramesh Chandra Sharma Vs.U.C. Kamal and Others 2000 S.C.C.(L&S) 53, State of Punjab and Others Vs.Surinder Kumar and Others 1992 S.C.C.(L&S) 345. Learned counsel for the applicant on the other hand submitted that the

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applicant filed representation claiming appointment when Abid Ali petitioner no.2 was given appointment and there is no delay. The applicant approached the respondents immediately after knowing the decision. Learned counsel for the applicant has placed reliance on the Judgment of Ahmedabad Bench of this Tribunal in the case of N.K. Patel and Others Vs. U.O.I. and Others 1990 14 A.T.C. 581.

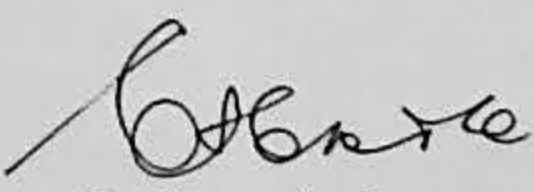
4. We have carefully considered the submission of counsel for the parties. However, we are not satisfied that the long and inordinate delay has been explained sufficiently. As already stated, the examination took place in the year 1981. The applicant in T.A.No.05/89 had already filed Writ Petition before the High Court which was registered ^{in the year} ~~as~~ /83. It remained pending in the High Court for about 6 years, then it was transferred to the Tribunal for decision. The Judgment was given on 28.09.90. During all these years the applicant did not take ^{any} steps. If he was vigilant of his rights and injustice caused to him, he ought to have agitated the matter by approaching the departmental authorities or by filing a writ petition but he did take any steps. The Judgment was delivered in 1990 after more than 3 years he filed his first representation on 14.12.1993, and then he filed this O.A. on 28.01.1994. The only explanation is that when he noticed that Abid Ali on 03.02.93 has been appointed, then he approached the departmental authorities.

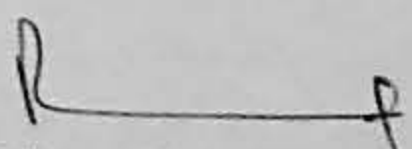
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5. The Hon'ble Supreme Court in the case of State of Karnataka and Others Vs. S.M. Kotrayya (supra) has held that the mere fact that the applicants filed the belated application immediately after coming to know that in similar claims relief had been granted by the Tribunal, held, not a proper explanation to justify condonation of delay. The Judgment of Hon'ble Supreme Court, thus, is squarely applicable in the facts of the present case. In fact the applicant approached this Tribunal after 13 years of holding of the examination and 4 years after the Judgment was given by this Tribunal. By now, more than 20 years have passed. It is difficult to grant relief to the applicant after such a long delay. The application is liable to be rejected as time barred.

6. Learned counsel for the applicant has further submitted that the Judgment in Abid Ali was a judgment in rem. ----- It was a writ petition filed by two petitioner claiming relief on the facts of their claim. The Court granted relief to one and another ^{petitioners} was refused ^{the} relief. Such Judgment cannot be treated ^{judgment in a} as rem. ----- The Judgment cited by learned counsel for the applicant is not applicable in the present matter.

7. In view of the facts and circumstances discussed above, the O.A. lacks merit and is accordingly dismissed. No order as to costs.


Member (A)
/M.M./


Vice Chairman