

CAT/J/13

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. RA No. 15 of 1999
T.A.NO. in OA No. 547 of ~~1988~~
1989

DATE OF DECISION 9.7.99

Union of India & others. Petitioner

Mr. N.S. Shevde

Advocate for the Petitioner [s]

Versus

Kum. Meena Bhogilal & others Respondent

Advocate for the Respondent [s]

CORAM

The Hon'ble Mr. V. Ramakrishnan, Vice Chairman

The Hon'ble Mr. P.C. Kannan, Member (J)

Union of India & others
(Advocate Mr. N.S. Shevde)

Applicants
(Original Respondents)

VERSUS

Kum. Meena Bhogilal Koya & others

Opponents
(Original Applicants)

ORDER
RA No. 15 of 1999
In OA No. 547 of 1989

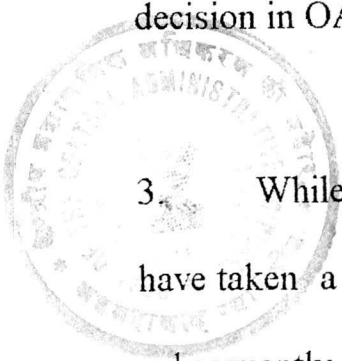
Dt. 9 / 7 / 99

Decision by circulation.

The Review Applicant is the original respondent in OA No. 547.1989 and seeks a review of our order dt. 3.3.98. MA for condonation of delay has also been filed, as the review application was initially filed in September, 1998 and was under objection which was removed only in May, 1999 and the RA was listed in June, 1999.

2. The original applicants in OA No. 547/89 were candidates ^{in response} to the employment notice of the RRB for the post of Clerks and appeared in the test held in 1981. They passed in the written test and were called for interview. They later on appeared in a test on 19.5.82, which was supposed to be the last test. However, their names did not figure in the list of candidates who were successful. They had approached the Court with a Civil Suit, which was transferred to the Tribunal. The respondents then took the line that as they were guilty of malpractice and mala fides their

results were not declared. The Tribunal held that the passing of test by itself can not create a right to the selection/appointment but directed the respondents to intimate the facts and circumstances of the mala fides in the case of the concerned applicants. In response to the same they were informed that they have secured 140, 141 and 144 marks out of 300, which was below the prescribed standard for passing for the general candidates and hence the applicants could not be appointed. They challenged this decision in OA No. 547/89.



3. While disposing of the OA the Tribunal noted that the respondents have taken a stand initially that the applicants were guilty of mala fides and subsequently stated that they have secured lower marks. In TA No.1305/86 the respondents have taken the stand that in respect of some applicants they have secured less than the prescribed marks but not in respect of the present applicants. The respondents can not normally be permitted to change their earlier stand but in order to ascertain whether the statement made earlier was on account of a bona fide error, they were directed to produce number of documents. The Tribunal directed the respondents to make available the answer sheets of the present applicants and some other documents. The respondents brought some papers but the Tribunal observed that it was not

possible to say whether they are the entire mark sheets and entire select list. The Tribunal repeated its direction to comply with the earlier orders. Despite grant of number of opportunities, RRB did not produce the relevant records and the Tribunal in para 18 observed that the RRB did not want to produce the relevant records and its conduct deserved to be deprecated. It also held that the RRB was not in a position to substantiate the contention in its letter dt. 24.1.89 where it has taken a stand different from what had been urged before the Tribunal in TA 1305 of 86 and that the shift in its stand is not on account of any bona fide error. It was also brought to the notice of the Tribunal that some other candidates who have secured lower marks than the applicants were given appointment. The Tribunal directed the original applicants should also be given notional appointment from the date on which such persons with lower marks were given appointment.

4. The Review application seeks review of the order giving a number of reasons saying that the preservation period of the records was over. It is also contended that cut off marks for the general candidates ¹⁵⁰ and the original applicants had secured less than the prescribed percentage. Some other contentions have also been raised.

5. We find that the grounds urged in the RA are without any substance. The Tribunal had directed production of the documents and

particularly Resp No.3 was aware that a court case is pending from 1981 onwards. In any case this stand that the records have been destroyed earlier, is not correct. At one time the representative of the department brought some papers but for reasons best known to the department omitted to bring the entire answer books and entire mark sheet. It is inconceivable that the relevant mark sheets also would have been destroyed when court cases were

pending. There is also a reference to CBI/vigilance case, which was

concluded in 1996 ~~concluded in 1996~~ and the documents were in their

custody. There is also a submission that the applicants were informed about

the mala fides. This contention is contrary to facts. When they were

directed to inform the applicants ^{about} ~~them~~ the circumstances of mala fides, the

respondents simply brought out that they have secured less than the

prescribed marks and obviously no mala fides were brought out.

6. Even at present no material whatsoever have been submitted. In the

circumstances we reiterate our stand that the failure to implement the

Tribunal's directions to produce the records would show clearly that the

respondents are not able to establish their stand. The Tribunal had given

ample opportunities to the respondents to substantiate their contentions and

- their deliberate failure to do so proceeded to draw adverse

inference. It was also made clear in the order that the shift in the stand of

the respondents referred to earlier was not on account of any bona fide error.

There is no error apparent on the face of record which would warrant review of the order.

6. The RA is devoid of merits and is dismissed.

(P.C. Kannan)
Member (J)

nsh

(V.Ramakrishnan)
Vice Chairman

Prepared by: 19-07-99
Checked by: Rista
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Amr 47
19.20
Central Administrative Tribunal
Ahmedabad Bench