

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

RA. No. 41 of 1992
in
O.A.NO. 17/1992
T.A.NO.

DATE OF DECISION 12.11.98

S.N. Thakor

Petitioner

P.K. Handa

Advocate for the Petitioner [s]

Versus

Union of India & Others

Respondent

Advocate for the Respondent [s]

CORAM

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

The Hon'ble Mr.

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lerdships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

S.N.Thakor,
22-C, Gulabchand Park,
Behind Arykanya Vidhyalaya,
Karolibaug,
Baroda

.. Applicant

Advocate Mr. P.K.Handa
VERSUS

1. Union of India,
Notice to be served through
The Secretary,
Ministry of Defence
NEW DELHI
2. The Chief Engineer,
Jaipur zone,
Power House Road,
Rani Park,
Jaipur.
3. Chief Engineer,
Ahmedabad zone,
Camp at Hanuman,
Ahmedabad.
4. The Chief Engineer,
Southern Command,
Pune.
5. The Commandant Work Engineer,
Makarpura Road,
Baroda Respondents.

ORAL ORDER

RA 41/1998 in OA No. 17/92

Dt. 12.11.98

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

The Review applicant has sought review of the orders passed by me and Hon'ble Mr. Laxman Jha in OA 17/1992 on 22-6-98.

2 In the main OA the applicant had prayed for a direction to the Respondents that he should be appointed as B/S Gr. II with effect from the date some of his juniors were appointed. The applicant was represented by MR. R.K.Mishra. While disposing of this OA the Tribunal observed in para 2 as follows:-

"We find that the applicant was functioning as a Lower Division Clerk and in April, 1983, there was a recruitment of Supervisor B/S Gr.II in the then pre-revised pay scale of Rs. 330-550/-. For these posts, applications were invited from outsiders and the Departmental candidates were allowed to forward their names through proper channel if they were otherwise qualified and eligible. A reference is made in this connection to the letter dated 15-4-83 as at Annexure A-1. It is also stated that the applicant was interviewed on 30-5-83 and by a letter dated 4-7-83 as at Annexure A-3 he was told that he was selected to the post of Supervisor B/S Gr.II. The grievance of the applicant is that despite receiving such a communication, he has not been given such appointment."

3 It was enquired of the Counsel as to how a selection held in 1983 could be challenged by filing an OA in 1992. Besides, the selection conveyed through letter dt. 4-7-83 has been cancelled by order dt. 31/7/85 (A-9), which has not been challenged. It was held by the order dated ~~that~~ 22-6-92 ~~there was gross delay in approaching the Tribunal in respect of a selection stated to have been held in 1983, which was cancelled on 31-7-85, and the applicant was guilty of delay and laches~~ ^{and} the OA was dismissed on this ground.

4 In the RA it has been submitted that Mr. Handa had later on filed a Vakalatnama for the applicant to appear alongwith Mr. R.K.Mishra, but registry failed to show the name of P.K.Handa. An MA for delay condonation was filed on 15-6-98, but the Registry has not placed the same before the Court. It is stated that the MA should have been taken into account before passing the orders.

before the Ahmedabad Bench of the Tribunal and was finally decided on 16-8-88. It is further stated that he engaged in some correspondence with the department for his appointment and ultimately they failed to appoint him. In this connection he has also relied on the judgment of the Hon'ble Supreme Court in the case of K.C.Sharma v/s. Govt. of India 1998 SCC (L&S) 226ⁱⁿ particu~~lar~~ Head Notes, which reads as under:-

"A. Administrative Tribunals Act, 1985 s 21 (3) - Limitation Condonation of delay - When question of taking benefit of latest judgment arises - Appellant railway employees retiring between 1980 ~~to~~ 1988 - They were aggrieved by notification dt. 5-12-88, which adversely affected their pension retrospectively. The notification not challenged within limitation period⁸⁹ - However, when the Central Administrative Tribunal (Full Bench), in another case declared the notification invalid, by its judgment dated 16-12-93, the appellants claimed from the Railways, the benefit of the judgment and when the benefit was not extended to them, they filed application in the Tribunal in April 1994 - Held, the delay in filing the application should have been condoned by the Tribunal and the appellants given relief on the same terms as was granted by the Full Bench - Allowances- Running allowance - Indian Rly. Establishment Code, Rr.2544 (Para 6)

B. Judgments - Judgment in rem - Benefit of a judgment to others similarly situated - Delay/laches consideration of Expiry of limitation period- Condonation of "

9 The present applicant approached the Tribunal through OA 17 in 1992 for a selection held in 1993. The reason given that the applicant was waiting for Court decision in a similar case, which was decided on 16-8-88 and then entered into correspondence with the department till 1992 is not a good ground to condone the delay. In this connection I may refer to the decision of the Hon'ble Supreme Court in State of Karnataka and others v/s S.M. Kotrayya and others (1966) 6 Supreme Court cases 267. The Head Note reads as follows:-

" Service law - Administrative Tribunal Act 1985 - S-21 Condonation of delay Grounds for - The mere fact that the applicants filed the belated Application immediately after coming to know that in similar ~~xx~~ claims relief had been granted by the Tribunal, held not a proper explanation to justify condonation of delay - The explanation must relate to failure to avail the remedy within the limitation period - Limitation."

10 The reliance on Supreme Court's decision in K.C. Sharma's case is also misconceived. In that case the Full Bench of the Tribunal had struck down an amended rule what was less favourable to the employee in so far as it sought to give retrospective operation. The judgment in that case was a judgment in rem. This is not obviously the position in respect of the decision of this Tribunal in TA 542/86.

11 For the reasons stated above ~~as~~ I hold that the RA is without merit and deserves to be dismissed.

12 As the matter was decided by me alongwith Hon'ble Mr. Laxman Jha, my views may be forwarded to Mr. Jha alongwith the relevant files for recording his views.

DR
17/11/77

(V. RAMAKRISHNAN)
VICE CHAIRMAN.

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

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orders passed by me and Hon'ble Mr. Laxman Jha in OA
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direction to the Respondents that he should be appointed
as B/S Gr. II with effect from the date some of his juniors
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MR. R.K.Mishra. While disposing of this OA the Tribunal
observed in para 2 as follows:-

"We find that the applicant was functioning as a Lower Division Clerk and in April, 1983, there was a recruitment of Supervisor B/S Gr.II in the then pre-revised pay scale of Rs. 330-550/-.. For these posts, applications were invited from outsiders and the Departmental candidates were allowed to forward their names through proper channel if they were otherwise qualified and eligible. A reference is made in this connection to the letter dated 15-4-83 as at Annexure A-1. It is also stated that the applicant was interviewed on 30-5-83 and by a letter dated 4-7-83 as at Annexure A-3 he was told that he was selected to the post of Supervisor B/S Gr.II. The grievance of the applicant is that despite receiving such a communication, he has not been given such appointment."

3 It was enquired of the Counsel as to how a selection held in 1983 could be challenged by filing an OA in 1992. Besides, the selection conveyed through letter dt. 4-7-83 has been cancelled by order dt. 31/7/85 (A-9), which has not been challenged. It was held by the order dated 22-6-92/that there was gross delay in approaching the Tribunal in respect of a selection stated to have been held in 1983, which was cancelled on 31-7-85, and the applicant was guilty of delay and laches/and the OA was dismissed on this ground.

4 In the RA it has been submitted that Mr. Handa had later on filed a Vakalatnama for the applicant to appear alongwith Mr. R.K.Mishra, but registry failed to show the name of P.K.Handa. An MA for delay condonation was filed on 15-6-98, but the Registry has not placed the same before the Court. It is stated that the MA should have been taken into account before passing the orders.

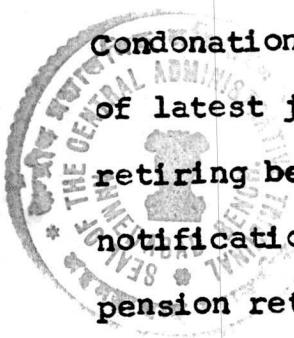
5 I have gone through the relevant file and find that Mr. Handa has in fact filed a Vakalatnama prior to the date of disposal of the QA. However, Mr. R.K.Mishra had not retired from the case. In RA it is stated that Mr. Handa has been engaged in addition to Mr. Mishra. The case was adjourned on few occasions. On 27-4-98 it was adjourned to 17-6-98 and on 17-6-98 in the absence of Mr. R.K.Mishra it was adjourned to 22-6-98. It was duly listed in the cause list on those dates. When the final orders came to be passed on 22-6-98, neither Mr. R.K.Mishra nor Mr. Handa had been present in the Court.

6 As regards the MA for condonation of delay, this was filed by Mr. Handa on 15-6-98, but there were some office objections on 22-6-98 on which date the QA itself came to be disposed of. In view of the above, the Registry did not put up the MA (which was bearing only stamp No.) before the Court on 22-6-98. The MA was numbered as MA/349/98 and placed before the Court on 19-8-98. As the main QA was dismissed on 22-6-98, this MA was disposed of as infructuous.

7 In the light of this / the reasons given / position for seeking Review are not tenable, especially as Mr. Mishra who ~~remained~~ continued to be the Advocate of the Applicant was heard on a few occasions.

8 Despite disposal of MA 349/98 / ^{on 19-8-98 as} / ^{now} infructuous I have gone through this MA. The reasons given for condonation of delay / ^{were} that the applicant was waiting for the result of the TA 542/86 which was pending

before the Ahmedabad Bench of the Tribunal and was finally decided on 16-8-88. It is further stated that he engaged in some correspondence with the department for his appointment and ultimately they failed to appoint him. In this connection he has also relied on the judgment of the Hon'ble Supreme Court in the case of K.C.Sharma v/s. Govt. of India 1998 SCC (L&S) 226/particular Head Notes, which reads as under:-

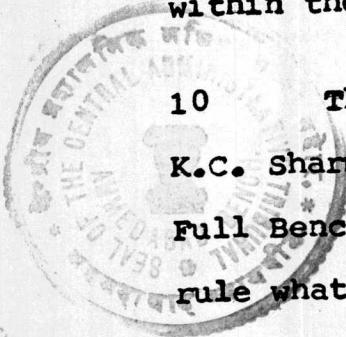

"A. Administrative Tribunals Act, 1985 s 21 (3) - Limitation
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within limitation period - However, when the Central
Administrative Tribunal (Full Bench), in another case
declared the notification invalid, by its judgment
dated 16-12-93, the appellants claimed from the Railways,
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extended to them, they filed application in the
Tribunal in April 1994 - Held, the delay in filing
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Tribunal and the appellants given relief on the
same terms as was granted by the Full Bench - Allowances-
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B. Judgments - Judgment in rem - Benefit of a
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consideration of Expiry of limitation period-Condona-

9 The present applicant approached the Tribunal through OA 17 in 1992 for a selection held in 1993. The reason given that the applicant was waiting for Court decision in a similar case, which was decided on 16-8-88 and then entered into correspondence with the department till 1992 is not a good ground to condone the delay. In this connection I may refer to the decision of the Hon'ble Supreme Court in State of Karnataka and others v/s S.M. Kotrayya and others (1966) 6 Supreme Court cases 267. The Head Note reads as follows:-

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10 The reliance on Supreme Court's decision in K.C. Sharma's case is also misconceived. In that case the Full Bench of the Tribunal had struck down an amended rule what was less favourable to the employee in so far as it sought to give retrospective operation. The judgment in that case was a judgment in rem. This is not obviously the position in respect of the decision of this Tribunal in TA 542/86.



11 For the reasons stated above ~~me~~ I hold that the RA is without merit and deserves to be dismissed.

12 As the matter was decided by me alongwith Hon'ble Mr. Laxman Jha, my views may be forwarded to Mr. Jha alongwith the relevant files for recording his views.

sd/

(V. RAMAKRISHNAN)
VICE CHAIRMAN.

करनवाल
Prepared by: Pbk/le
संसदीय विभाग
Composed by: Pbk/le
संसदीय विभाग
R/11/98
R/11/98
Section Officer (J.)
Central Administrative Tribunal
असामिया न्यायालय
Ahmedabad Bench

5,
Ahmedabad Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHEMDABAD BENCH

REVIEW ~~Case~~ Application No. 41/1997
IN
Original Application No. 17/1992

Between

Shri S. N. Thourar _____ Applicant

v/s

Union of India & Others _____ Respondent

INDEX

Sr. No.	Details of documents relied upon	Page No.
1.	Application	1 to 6
A.	COPY OF Judgement dt. 22.6.98.	5 to 6

Place: Baroda
Date : 23.9.98

Signature of Applicant's
Advocate.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

REVIEW APPLICATION NO. 41 OF 1998

IN ORIGINAL APPLICATION NO. 17/92

BETWEEN :

S.N. THAKOR, APPLICANT
22-C, Gulabchand Park,
Behind Aryakanaya Vidhyalaya,
Karelibaug,
Baroda.

V/S.

1. Union of India,
Notice to be served through
The Secretary,
Ministry of Defence,
New Delhi.
2. The Chief Engineer,
Jaipur Zone,
Power House Road,
Rani Park,
Jaipur.
3. Chief Engineer,
Ahmedabad Zone,
Camp at Hanuman,
Ahmedabad.
4. The Chief Engineer,
Southern Command,
Pune.
5. The Commandant Work Engineer,
Makarpura Road,
Baroda..... Respondents

1. The applicant has filed the Original Application No. 17/92 seeking the relief "Your Lordships may be pleased to hold and declare that the petitioner is entitled to be appointed as Supervisor B/S Grade II and he is entitled to be placed in the time scale grade of Rs. 330-560 and to all such other benefits

attached to the post, such as seniority, placement in the time scale grade and the arrears in difference right from the date junior counter parts came to be appointed as B/S Grade II and placed in the time scale Grade of Rs. 330-560, and accordingly Your Lordships may be pleased to direct the respondent authorities to accord all the benefits such as arrears of salary in the time scale grade by placing the petitioner in the time scale grade of Rs. 330-560, seniority and all such other benefits which have been accorded and are being enjoyed by the junior counter parts to be accorded to the petitioner." the application came for final hearing in which the applicant has also joined Mr. P.K. Handa Advocate along with R.K. Mishra the necessary Vakalatnama was filed but registry failed to show the name of P.K. Handa on the board of Hon'ble Bench has asked to file the Delay Condonation which was filed on 15.6.98 whereas the date of hearing of the application has not come on board on 17.6.98 and ultimately it is adjourned to 22.6.98 the Hon'ble Bench has finalised the application in the absence of the Applicant's Advocate on the plea that despite of giving the opportunities to the applicant to make submission or to file the M.A. for condonation of delay no such M.A. has been filed therefore there is gross delay in approaching the Tribunal inspite of the selection a stay have been made in 1983, as Per Anne. A.

2. The applicant submits that infact the M.A. for delay condonation as per the directions of the Court has been filed on 15.6.98 but the registry has failed to place it on the record before the application is decided the grounds taken for delay

condonation is given in the M.A. filed for delay condonation therefore no justice has been given to the applicant on the negligency of registry.

3. The applicant submits that the Hon'ble Bench has passed the Order to give the copy of the Judgment to Mr. Handa so that the appropriate action can be taken the copy of the Judgment is received by Mr.P.K. Handa on 16.9.98 and the Review Application is filed accordingly which is within the period of one month from the receipt of the copy of the Judgment.

4. Relief Sought :

In view of the above the applicant has not given the opportunity to argue the case the Hon'ble Bench is requested to modify the Judgment and call for the O.A. for rehearing so that the applicant can get justice.

(5)

AFFIDAVIT

I, S. N. Thakor aged adult resident of Baroda do hereby verify solemnly affirm and state on oath that the contents of para 1 to 4 are true to my personal knowledge and the contents of para 1 to 4 are believed to be true on legal advise and I have not suppressed any material fact.

DATE : SIGNATURE OF APPLICANT

PLACE : APPLICANT'S ADVOCATE

X 

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. 17/92
T.A.NO.

DATE OF DECISION 22.06.1998

Mr. D.N. Thakore

Petitioner

Mr. P.K. Mishra

Advocate for the Petitioner [s]

Versus

Union of India and Others

Respondent

Mrs. P. Safaya

Advocate for the Respondent [s]

RAM

Hon'ble Mr. V. Ramakrishnan, Vice Chairman

Hon'ble Mr. Neerjan Singh, Member (J)

Shailendra Nathalal Thakore,
Residing at: 22-C, Gulabchand Park,
behind Aryakanya, Karelibaug,
Baroda.

... applicant

(Advocate: Mr. R.K. Mishra)

VERSUS

1. The Union of India,
To be served through the Secretary,
Ministry of Defence, New Delhi.
2. The Chief Engineer,
Jaipur Zone R.E.S.,
Power House Road,
Renipark, Jaipur.
3. Chief Engineer, R.E.S.
Ahmedabad zone
Camp at: Laxman
Ahmedabad.
4. The Chief Engineer R.E.S
Southern Command
(In the Maharashtra State)
5. The Commandant Works Engineers
Nakarpura Road, Baroda: 390 009.

... Respondents

Advocate: Mrs. E. Sefaya)

ORAL U. S.

2022/17/23

Dated: 22.06.1998

Per: Hon'ble Mr. V. Ramakrishnan, Vice Chairman

5. The applicant has prayed for a direction from this
tribunal to the respondent that he should be appointed as
Grade II with effect from the date some of his juniors
were appointed and to be given all consequential benefits.

2. We find that the applicant was functioning as a Lower Division Clerk and in April, 1983 there was a recruitment of supervisor B/S Grade II in the then pre-revised pay scale of

Contd... 3/-

Rs.330-550/- For these posts, applications were invited from outsiders and the Departmental candidates were allowed to forward their names through proper channel if they were otherwise qualified and eligible. A reference is made in this connection to the letter dated 15.4.83 as at Annexure A-1. It is also stated that the applicant was interviewed on 30.5.83 and by a letter dated 4.7.83 as at Annexure A-3 he was told that he was selected to the post of supervisor B/3 Grade II. The grievance of the applicant is that despite receiving such a communication, he has not been given such appointment.

3. The counsel for both sides had argued for quite some time earlier. We enquired ^{from} the applicant's counsel as to how the applicant can challenge a selection held in 1983 by filing an OA in 1982. It was also brought out that the letter dated 4.7.83 has been cancelled by an order dt. 31.7.85 as at Annexure A-5. This subsequent letter has not been challenged in the present case. Despite giving opportunities to the applicant to make submissions or to file an OA for condonation of delay giving reasons for such a delay, no such steps have been taken. There is gross delay in approaching the Tribunal in respect of a selection stated to have been made in 1983 which came to be cancelled by the order dt.

31.7.85 as at Annexure A-5 and this cancellation order has remained unchallenged. We hold that the applicant is guilty of delay and excess. On this ground, we dismiss the OA with ¹⁴⁵⁷⁵ ²⁸² no order as to costs.

No Copy

8/15/84

Sd/-

(Laxman Chh)
Laxman Chh
Member (C)

8/15/84

hki

8/15/84

Sd/-

(W. Venkateswaran)
W. Venkateswaran
Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
IN THE HIGH COURT OF GUJARAT, AHMEDABAD.

VAKALATNAMA

Accepted

In the matter of

PETITIONER / PLAINTIFF / APPLICANT / APPELLANT / COMPLAINANT / FIRST PARTY

Sheri S. N. THAKOR

V/S

RESPONDENT / DEFENDANT / OPPONENT / ACCUSED / SECOND PARTY

Ministry of Defense
Notice to be served through
Directorate of Defense
New Delhi

In the matter of _____

I / We S. N. Thakor, above named
do hereby authorise **Shri PAVANKUMAR S. HANNA, Advocate &**
Shri _____ Advocate to act,
appear & plead for me / us in the above matter.

The advocate(s) is also authorised, by way of compromise in or out
of the court, settle the matter, & also to do carry out and execute all
that is usually being done as practice of things in the like matters.

Advocate(s) is not under obligation to convey the information
regarding adjournments to the undersigned. Advocate(s) is also at liberty
to retire, without any notice whatsoever, if I / We fail to appear when
called upon and/or for want of instruction(s)

In witness whereof I / we set and subscribe my / our hands on this
22nd day of Sept 1998

ACCEPTED

E. Hanra

PAVANKUMAR HANNA, Advocate

Above Pratapnagar P. O.,
VADODARA-390 004.
PHONE : (R) 649891, (O) 466031
High Court Code No. 1026
Advocate Welfare Fund
Membership No. VDR / BRC / 786



