

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. 479/93
T.A.NO.

DATE OF DECISION 30.8.2000

Shri P.S.Thakur

Petitioner

Mr.M.S.Trivedi

Advocate for the Petitioner [s]

Versus

Union of India & Ors.

Respondent

Mr.N.S.Shevde

Advocate for the Respondent [s]

CORAM

The Hon'ble Mr. V.Ramakrishnan

: Vice Chairman

The Hon'ble Mr. P.C.Kannan

: Member (J)

JUDGMENT

- 1, Whether Reporters of Local papers may be allowed to see the Judgment ? *ne*
- 2, To be referred to the Reporter or not ? *yes*
- 3, Whether their Lordships wish to see the fair copy of the Judgment ? *m*
- 4, Whether it needs to be circulated to other Benches of the Tribunal ? *no*

: 2 :

Shri P.S.Thakur
Working as Jr.Clerk,
Western Railway,
Ajmer.

: Applicants

Advocate: Mr.M.S.Trivedi

Versus

1. Union of India, through:
The General Manager,
Western Railway,
Churchgate, Bombay.
2. The Divisional Railway manager,
Office of D.R.M.
Ajmer.
3. The Loco Forman,
Office of Loco Foreman,(DL)
Western Railway,
Gandhidham.

: Respondents

Advocate: Mr.N.S.Shevde

ORAL ORDER

OA/479/93

Date: 30.8.2000

Per: Hon'ble Mr.V.Ramakrishnan

: Vice Chairman

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We have heard Mr.M.S. Trivedi for the applicant and
Mr.N.S.Shevde for the respondents.

2. The applicant entered Railway service at Group 'D' level. In 1979 he was given a Group 'C' post in the scale of Rs.225-308 at the level of Junior Clerk. There is a provision for promotion for Group 'D' staff to this level of Clerk consisting of written test and viva voce test. The applicant appeared in the selection and was called for written test as it is seen from the letter dated 19.6.1980 (Annexure A-1). However, he did not appear in the viva voce test. The applicant's contention is that he was never informed about the need to appear in the viva voce test and he was not spared for the purpose. He has therefore, filed the present OA seeking the following reliefs:-

"(A) that the Hon'ble Tribunal be pleased to admit this application.

(B) that the Hon'ble Tribunal be pleased to quash and set aside the action on part of the respondents not informing the applicant for viva-voce test and further be pleased to declare that the applicant is entitled/eligible for regularisation as Jr.Clerk and further promotions at par with his juniors.

(C) that the Hon'ble Tribunal further be pleased to direct the respondents/its subordinates to regularise the applicant as Jr.Clerk as they are working since last more than 10 years.

(D) Any other and further reliefs that the Hon'ble Tribunal may deem fit may be given to the applicants."

: 4 :

On 3.9.1993, the Tribunal by way of an interim measure restrained the respondents from reverting the applicant from the post of Group 'D' level.

3. Mr.Trivedi states that the applicant had admittedly cleared the written test as is seen from the letter dated 19.6.1980.(Annexure A-1) This letter also stipulates in the last para that the staff who had ^{been} called for viva voce test should be spared well in time so that they may be able to present themselves on the required dates and if any body is not willing his unconditional refusal should be obtained and forwarded to the office. The applicant was not informed about his having qualified in the written test and there is no question of his giving any refusal as he was keen to continue in the Group 'C' level. The applicant also submitted a representation dated 26.1.1981 as at Annexure A-2 where he had brought out that he was not informed by his immediate superior whose name he ~~was~~ given in his representation. However, the panel for the group 'C' category was finalised by the Railways vide their order dated 5.9.1980 as at Annexure R-II.

4. Mr.Trivedi further refers to the preliminary reply of the respondents dated 22.11.1993 wherein para-5 there is a clear averment that the applicant was informed by his superior about the viva-voce test but at his own he did not ^{appear} ~~do so~~. The Tribunal on 10.1.1994 had directed the respondents to bring the relevant file showing whether or not the applicant was spared to appear at the

test on 2.7.80 for perusal of the Court to substantiate their stand. The direction of the Tribunal was to be complied with by 31.1.94 . The respondents prayed for time to file such an affidavit and time was given up to 16.9.94 . However, no such reply was filed till 11.11.98 where the Railway Administration has taken the stand that there is no formal file with notings and proceedings was maintained and also the concerned official has retired from Railway service and it was not possible to file a proper affidavit and in the absence of relevant file a formal affidavit could not be filed. However, their stand is that the applicant was informed by the supervisor to attend the viva-voce test which according to Mr.Trivedi has not been substantiated.

5. Mr.Trivedi submits that the applicant should not be made to suffer on account of the lapse on the part of his superior in not relieving him for attending the viva-voce test. He says that as he was continuously working so long, he should be declared as regularised in Group 'C' level and he should be given consequential benefits.

6. Mr.Shevde for the respondents takes a preliminary objection that the OA is barred by limitation. He states that the applicant had submitted a representation in January 1981 and after that he has not taken any steps in this regard. He has challenged the panel of September, 1980 as at Annexure R-11. Mr.Shevde also states that this Tribunal has no jurisdiction to entertain the present OA and cannot even condone the delay when the cause of action arose prior to November, 1982.

7. Even on merits, Mr. Shevde submits that the respondents do not admit that the applicant was not spared well in time by his immediate superior. As it is an old case, records are not available and subsequently there was an examination in 1989 where also the applicant had not qualified. He reiterates the contentions that the application is barred by delay and laches and on this ground itself, the OA should be dismissed.

8. We have carefully considered the submissions of both sides. In the context of the preliminary objection of Mr. Shevde, we have to go into the question pertaining to limitation. The applicant's contention is that he was not intimidated or in any case he was not spared to appear in the viva-voce test which was scheduled in the middle of 1980. He has submitted the representation in 1981. The panel for Group 'C' level was also published in September, 1980. The cause of action has admittedly arisen when he was not spared to appear in the viva-voce test and in any case not later than the date when the panel was declared. In any case, the applicant was aware of this development as it is clear from his representation dated 26th January, 1981 (copy as at Annexure A-2) where he had levelled some allegations against his superior officers. After submitting such representation, he has slept over his grievance for about 7 years. Mr. Trivedi says that the applicant had approached the APO in 1986 and according to him the APO has given some assurance that the inquiry was conducted by the Welfare Inspector. He therefore, submits that the applicant is not guilty of delay in approaching this Tribunal. He also refers to the further representation, etc. We find that Mr. Trivedi's contention in this

regard is without any merit. The applicant was aware that he was not either informed or he was not spared to appear in the viva-voce test even though his name figured in the list of successful candidates who have passed in the written test^{dt 19.6.1980}. He has submitted the representation in January, 1981. Having done so, his further contention that he had made subsequent representation would not save limitation and he should have approached the appropriate forum in time. We also note that he has challenged the panel of September, 1980 which was finalised ^{after the test - dt} in 19.6.1980 as at Annexure-A. Therefore, the cause of action has clearly arisen from 1980. In any case when he made representation in 1981 which had not met with any positive outcome, he should have waited for six months and approached the appropriate forum soon thereafter. He had not taken any steps but only made some submissions about being in touch with APO, etc.

9. Apart from this, there is a more fundamental objection in the present case, as the cause of action has clearly arisen well before 1.11.1982 which is three years prior to the constitution of this Tribunal. In the case of V.K.Mehra vs. Secretary, Ministry of Information and Broadcasting AIR (1986) (CAT) 203, the Tribunal held that any proceeding or order issued before 1.11.82 cannot be entertained or examined by this Tribunal. The Administrative Tribunals Act does not vest any power or authority to take cognizance of a grievance arising on account of an order issued prior to 1.11.1982. The petitioner in that case had prayed that the delay in filing the application may be condoned but the Tribunal held that it is not at all a question of condoning the delay in filing the application but it is a question of the Tribunal not having

jurisdiction to examine a grievance which arose prior to 1.11.1982.

This principle was followed in the case of Sangeetha Rao vs. Union of India (1989) 11 ATC 516.

In the light of this clear position, it is not necessary to go into the merits of the case as to whether or not the applicant was informed or spared to attend viva-voce test scheduled in 1980. Mr.Trivedi says that there is inconsistency in the statement of the Railways and the final reply in pursuant to the order dated 10.1.94 which was given much after the stipulated time. This is not material when it is held that this Tribunal has no jurisdiction to entertain the OA itself.

10. In the light of the above position, we cannot grant any relief sought for by the present applicant. Mr.Trivedi says that even though the relief sought pertains to not relieving the applicant for viva-voce test cannot be entertained by this Tribunal, however, it is open to this Tribunal to consider the other part of the relief namely; that the applicant should be regularised as Junior Clerk having put in a number of years service. He says that in a similar case OA No.275/90, regularisation was ordered by this Tribunal in respect of a person who had appeared in the written test but failed in the viva-voce test. We are not aware of the details of that case. *Be that as it*
Whatever may be when the applicant has not cleared the selection

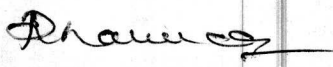
process not only in 1980 but even subsequently in 1989 when he had appeared but not succeeded in the selection he cannot be ordered to be regularised . We do not see any merit in his contention.


11. However, we note the stand of Mr.Trivedi that the applicant for whatever reason has been functioning in Group 'C' level right from 1979 and it will ~~be~~ result~~ed~~ in hardship to him, ¹¹³ if he is suddenly reverted to the Group 'D' post. after so many years of service. There is some force in the contention of Mr.Trivedi . Even though ~~as~~ the applicant has no legal right to continue as such in Group 'C' level when he was not successfully negotiated ¹¹² in the selection process, the fact remains that he has been holding Group 'C' post for number of years, ¹¹² if the applicant wants to make a representation to the authorities within one month from the date of receipt of a copy of this order bringing out the fact that he had officiated on adhoc basis for long time at Group 'C' level and seeking a further opportunity to qualify himself at that level without being reverted meanwhile , the respondents shall dispose of the same objectively keeping in view all the relevant circumstances including the fact that he had held for long time ¹¹² in Group 'C' post.

¹¹² In the context of the interim direction of this Tribunal, the respondents shall not revert the applicant till the disposal of the representation if the representation is received within one month from the date of receipt of a copy of this order.

: 10 :

12. Subject to the above observations, the OA is dismissed. No costs.


(P.C. Kannan)
Member (J)


(V. Ramakrishnan)
Vice Chairman

ab

(See Rule 114)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, AHMEDABAD BENCH

CA/TA/RA/CP/ 679/92 of 200Mr P.S. Thakur

APPLICANT (s)

VERSUS

Chaitanya

RESPONDENT (s)

I N D E X - S H E E T

SR.NO.	DESCRIPTION OF DOCUMENTS	PAGE
01.	<u>CA</u>	<u>1 to 32</u>
02.	<u>Reply</u>	<u>33 to 35</u>
03.	<u>Rejoinder</u>	<u>36 to 40</u>
04.	<u>MA/940/92</u>	<u>41 to 45</u>
05.	<u>MA/321/98</u>	<u>46 to 49</u>
06.	<u>Reply to order dt 10-1-94</u>	<u>50 to 64</u>
07.	<u>Affidavit in Support of Reply</u>	<u>65 to 68</u>
08.	<u>MA/936/95</u>	<u>69 to 74</u>
09.	<u>Order Org. D.O. dt 30/8/2000</u>	

Certified that the file is complete in all respects.

PC 24-9-2000

Signature of S.O. (J)

Am 29/9

Signature of Dealing Hand.