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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 267 OF 2000

Cuttack, this the 20th day of August, 2001

K.Ravichandran

Applicant

Vrs.

Union of India and others ...

Respondents



FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Yes.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No.

G. NARASIMHAM
(G. NARASIMHAM)

MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
20.8.2001
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 267 OF 2000
Cuttack, this the 20th day of August, 2001

COURT:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

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K.Ravichandran, aged about 33 years, son of R.Krishnamurty Rao, presently working as Junior Engineer -I(v), Office of the Dy.Chief Engineer (C)/Plg./BBS, South Eastern Railway, Bhubaneswar

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Applicant

Advocates for applicant - M/s A.Kanungo
S.R.Misra
B.Ray
M.K.Biswal

Vrs.

1. Union of India, represented through General Manager, S.E.Railway, Garden Reach, Calcutta.
2. Chief Personnel Officer, S.E.Railway, Garden Reach, Calcutta.
3. Chief Administrative Officer, S.E.Railway, Chandrasekharpur, Bhubaneswar.
4. Chief Engineer, S.E.Railway, Garden Reasch, Calcutta...

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Respondents

Advocates for respondents - M/s B.Pal
R.C.Rath

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this O.A. the petitioner has prayed for a direction to the respondents to include him in the panel of AEN Group-B and to promote him with all consequential benefits.

2. The case of the applicant is that he was initially appointed in the Railways as Temporary Works Mistry on 9.12.1988 and was regularly posted against the post of Work Mistry in the scale of Rs.1400-2300/- with effect from 10.6.1989 on successful completion of his

probation. He was provided lien against the post of I.O.W.Grade-III in Open Line with effect from 18.12.1992. In letter dated 28.2.1995 (Annexure-2) applications were invited for filling up 30% vacancies in the post of Assistant Engineer, Group-B, from all staff of Civil Engineering Department who have completed five years of regular service (non-fortuitous) as on 1.11.1994. The petitioner applied for the post, appeared at the written test and qualified for viva voce. He also took the viva voce on 8.3.1996. The result of the applicant was not published along with some others. 12 such persons whose results were not published and who were not allowed to appear at the viva voce test approached the Tribunal in OA No.128 of 1996 (B.Chandra Sekhar and others v.Union of India and others), decided on 4.8.1998. In that case the Railways took the stand that the applicants therein were not eligible to appear at the Limited Departmental Competitive Examination (LDCE) because they had not completed five years of non-fortuitous service. The Tribunal in their decision dated 4.8.1998 held that service rendered by the petitioners therein as Temporary Works Mistry on regular basis till 17.12.1992 was non-fortuitous service and therefore by 1.11.1994 they must be taken to have put in five years of non-fortuitous service. Against the above decision the Railways filed OJC No.14206/98 and the Hon'ble High Court in their judgment dated 4.5.1999 (Annexure-4) upheld the order of the Tribunal dismissing the OJC. In OA No.128 of 1996 the applicants therein had appeared at the viva voce test by virtue of the interim order of the Tribunal. After the decision of the Hon'ble High Court, the Railways issued order dated 5.5.2000 at Annexure-7

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including 9 out of 12 applicants in OA No.128/96 in the panel of AEN. The applicant's case is that he is similarly situated as the applicants in OA No.128 of 1996 and in the context of the above, he has come up in this petition with the prayer referred to earlier.

3. Respondents have filed counter opposing the prayer of the applicant. It is not necessary to refer to all the averments made by the respondents in their counter. Respondents have admitted that the applicant was called to written test and viva voce. But at the time of publishing the provisional panel of AEN, it was detected that the applicant was so called erroneously, having put in less than five years of non-continuous service in the grade of Rs.1400-2300/- as on 1.11.1994. The respondents have also referred to the decision of the Tribunal in OA No.128 of 1996 and the judgment dated 4.5.1999 of the Hon'ble High Court in the OJC. It is further stated that as the General Manager was not empowered to enlarge the panel, a proposal was sent to the Railway Board who in their letter dated 31.12.1999 directed holding of a supplementary viva voce test for those candidates who are now eligible to appear at the LDCE for AEN. Supplementary viva voce test was held on 15.3.2000 and the panel was enlarged keeping the lowest marks of the last person in the panel originally published on 12.8.1996. The Railway Board approved enlargement of the panel for inclusion of 10 candidates who secured more marks than the last candidate in the earlier published panel. Out of these ten candidates, one candidate Shri V.Sridhar has in the meantime been directly recruited by Union Public Service Commission in IRSE and accordingly, nine candidates were included in the panel in order dated 5.5.2000 at

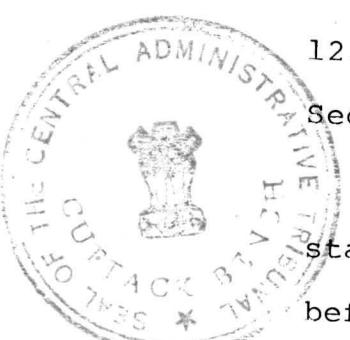
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Annexure-7 of the O.A. Respondents have stated that prayer of the applicant for the relief is based on the ground that he is similarly situated as the applicants in the earlier OA. But for enforcing this legal right he has to come up within the period of limitation. In this case, cause of action arose, as noted by the applicant himself, when the respondents issued letter calling for applications to appear at LDCE against 30% vacancies in the post of AEN. The applicant did not approach the Tribunal immediately after publication of the original panel and he should not be allowed to raise this grievance after passage of about four years after the first final panel was published on 12.8.1996. They have stated that such a claim is barred by Section 21 of the Administrative Tribunals Act, 1985.

4. The applicant in his rejoinder has stated that the petitioners in OA No.128 of 1996 came before the Tribunal because they were not allowed to appear at the viva voce test whereas the applicant was called to the viva voce test. In view of this, it cannot be said that he has approached the Tribunal late. It is stated that in the OJC before the Hon'ble High Court, the respondents in their counter filed letter dated 6.3.1997 (Annexure-5) indicating the reason as to why the applicant was held ineligible. He has also stated that according to Rule 308.3 of the Indian Railway Establishment Manual, representation against selection should be dealt with on merits without restriction of any time limit for their submission. Therefore, he has urged that his claim is within time. He has also made averments regarding the marks obtained by him and the marks obtained by the last candidate in the panel.

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5. We have heard Shri A.Kanungo, the learned counsel for the petitioner and Shri B.Pal, the learned Senior Panel Counsel and Shri R.Ch.Rath, the learned counsel for the respondents. The learned counsel for both sides have filed written notes of submissions which have been perused. The learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in the case of K.C.Sharma and others v. Union of India and others, 1998(1) AISLJ 54.

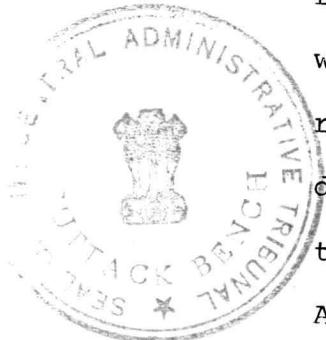
6. From the above pleadings of the parties it is clear that the main ground on which the prayer of the applicant has been opposed by the respondents is the point of limitation. The respondents have not denied that the applicant joined as Temporary Works Mistry and was regularised in the scale of Rs.1400-2300/- with effect from 10.6.1989. It is also the admitted position that for the applicants in OA No.128 of 1996 their service as Works Mistry from the date of their regularisation in the scale of Rs.1400-2300/- has been held non- fortuitous. The point herein is that the panel was published on 12.8.1996 and the applicant's grievance for his non-inclusion in the panel must be taken to have arisen on that date. The applicant has approached the Tribunal in May 2000, i.e., after a gap of almost four years. The applicant has stated that he was not aware of the ground on which he was left out of the panel. We are not inclined to accept this proposition because in their order dated 4.8.1998 the Tribunal have noted the case of the applicants in paragraph 4 of the order where the case of the present applicant K.Ravichandran was mentioned by the

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applicants therein in their rejoinder. The applicant has enclosed a copy of the order dated 4.8.1998 of the Tribunal in OA No.128 of 1996 and therefore, he cannot take the pleas that he was not aware of the fact that his candidature has been rejected on the ground of his having fortuitous service prior to 18.12.1992.

7. The second aspect of the matter is that Rule 208.3 of the Indian Railways Establishment Manual does provide that representation against selection should be dealt with on merits without restriction of any time limit for its submission. This has also been admitted by the respondents in their written note of submission. But here we are not concerned with the consideration of representation by the Railway authorities. The point for determination is whether the present application is within the period of limitation. Under Section 21 of the Administrative Tribunals Act, 1985, the period of limitation is one year from the date when cause of action has arisen. In this case, the cause of action has arisen when the applicant, after being called to the viva voce test, was not included in the final panel published on 12.8.1996 and therefore, this application must be held to be beyond the period of limitation. Paragraph 208.3 of the Indian Railway Establishment Manual no doubt provides that representations against selection should be decided on merits without restriction of any time limit for their submission. But that does not mean that by operation of this provision in the Indian Railway Establishment Manual, the statutory provisions in the Administrative Tribunals Act, 1985, will be rendered nugatory. If a Railway servant files a representation five years after the cause of action has

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arisen and the representation is rejected within six months thereafter, it cannot be argued that he would be free to approach the Tribunal within one year from the date of rejection of the representation. If such a view is taken, then the provision of limitation provided in the Administrative Tribunals Act, 1985, will become open-ended in cases where Paragraph 208.3 of the Indian Railway Establishment Manual comes into play. This obviously cannot be the intention. In view of this, the application must be held to be beyond the period of limitation.

8. The learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in the Hon'ble Apex Court noted K.C. Sharma's case (supra). In that case, Office Memorandum dated 5.12.1988 through which Rule 2544 of Indian Railways Establishment Code was amended for the purpose of calculation of average emoluments and the same was given effect to from 1.1.1973 and 1.4.1979. ~~was xx under xx harkenxx~~. The Full Bench of the Tribunal held that the notification dated 5.12.1988 in so far as it gave retrospective effect to the amendment was invalid. The decision of the Tribunal was upheld by the Supreme Court. Certain other employees came up before the Tribunal for getting the benefit of the decision of the Tribunal, and the Tribunal rejected their cases on the ground of delay. On appeal, the Hon'ble Supreme Court held that having regard to the facts and circumstances of the case, this was a fit case where the delay should have been condoned and the appellants should have been given relief as has been given to the applicants who were before Tribunal in the Full Bench decision. From the above recital of facts of that case, it appears that there retrospective operation of an amendment was struck

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down and this was a decision in rem and therefore the Hon'ble Supreme Court held that benefit of this decision should be given to other persons who have approached the Tribunal belatedly. The facts of the present case are, however, quite different. In their order dated 4.8.1998 the Tribunal dealt with the case of twelve petitioners therein and their period of service, which was held to be fortuitous by the Railway authorities, was held to be non-fortuitous by the Tribunal. That order was not an order in rem of which the advantage could be taken by the applicant. In view of this, we hold that the law as laid down by the Hon'ble Supreme Court in K.C.Sharma's case (supra) is not applicable to the case of the applicant. The Hon'ble Supreme Court in the above decision have specifically noted that their order has been passed taking into account the facts and circumstances of that case. In view of this, K.C.Sharma's case(supra) does not provide any support to the case of the applicant.

9. In the result, therefore, we hold that the applicant is not entitled to the relief claimed by him in this O.A. which is accordingly rejected. No costs.


(G. NARASIMHAM)

MEMBER (JUDICIAL)


(SOMNATH SOM)
20.8.2001
VICE-CHAIRMAN

CAT/Cutt.Bench/ 20th August, 2001/AN/PS