

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. M.A. 179 of 2012
O.A. 1242 of 1996

Date of order: 5.6.2012

Present : Hon'ble Mr. Mukesh Kumar Gupta, Judicial Member
Hon'ble Mr. Shankar Prasad, Administrative Member

DEBABRATA ROY

VS.

UNION OF INDIA & ORS. (Doordarshan)

For the Applicant : None

For the Respondents : None

ORDER (Oral)

Per Mr. Shankar Prasad, AM:

This Tribunal is a creature of AT Act. The preamble to the said Act shows that it provides for expeditious adjudication of disputes and complaints with respect to recruitment and conditions of service. The Central Government has framed the CAT (Procedure) Rules, 1987 in exercise of powers conferred under the Act. Rule 14(2) provides that every application shall be heard and decided as far as possible within 6 months of its registration. Sub-rule (3) provides that Tribunal shall have the power to decline an adjournment and also to limit the time for oral argument. Rule 15 provides that in case applicant does not appear the Tribunal in its discretion may either dismiss the application for default or hear and decide it on merit. When the case is disposed of on merits the decision cannot be reopened except by way of review. Rule 16 provides for exparte

hearing when the applicant appears but the respondent does not appear. In case of such exparte hearing the respondents may apply for setting aside of the order on showing of sufficient cause. Rule 15 & 16 thus operate in two separate fields. There is no specific provision when both the parties are absent. We believe that these principles will apply.

2. The Constitution Bench of the Apex Court in Mahabir Jute Mills Vs. Shiban Lal, AIR 1975 SC 2057, was considering the matter relating to reinstatement of 800 Workmen, who had been dismissed in 1955. The Apex Court observed that labour matters should have been given top urgency as inordinate delay results in a situation causing embarrassment both to the Court and parties. It also observed that such matters be decided within one year of presentation.

3. Recently a 3 Judge Bench of the Apex Court in Salem Advocate Bar Association Vs. UOI, (2005) 6 SCC 344, has held that grant of adjournments cannot be routine and has to be on a party showing special and extraordinary circumstances. The legislative intent has to be kept in mind.

4. This Bench has decided to attend to OA's instituted upto 2009 on a priority basis. We proceeded to hear the matter.

5. The O.A. was earlier disposed of vide order dated 12.9.2001 with a direction to respondent No. 2, Director General, New Delhi to consider the case for regular absorption as Carpenter or in any other equivalent post within 3 months from the date of communication of the said order. Being aggrieved the A.

respondents preferred WPCT No. 384 of 2004 against the decision of the Tribunal.

6. M.A. No. 179 of 2012 had been moved by the respondents to bring on record copy of the judgment in WPCT No. 384 of 2004 with CAN No. 6544 of 2009. The Hon'ble High Court had disposed of the matter with direction to the Tribunal to pass fresh orders within 2 months of the receipt of the orders keeping in mind subsequent developments including orders in WPCT 13/05. ^{Vide further} orders dated 17.2.12 two months time was given. Notice was accordingly ordered to be issued on 30.4.2012. The applicant appeared in person on 7.5.2012 and was granted time to engage a fresh Counsel. The respondents were also permitted to file supplementary affidavit to which the applicant could file rejoinder. The matter was adjourned to 18.5.2012 with the observation that no further adjournment will be granted in the matter. The matter is listed to today.

7. In compliance of the aforesaid order the respondents have filed a further supplementary affidavit dated 7.6.2012. They have enclosed the copy of common judgment of the Hon'ble High Court in WPCT No. 13 of 2005 and WPCT No. 282 of 2005. The Hon'ble High Court was of the view that after taking the rate of minimum wage prevailing at that time Susanta Kumar Das (WPCT No. 13 of 2005) had not completed the required number of days in the year 1989 and, therefore, the Tribunal had come to correct finding regarding the days worked. The said applicant had not been able to produce the notification regarding prevailing minimum wages for Gr. 'C' staff. Rather the respondents have produced the same. They were of the view that they were not sure as to whether the aforesaid

staff was categorized as Gr. 'C' or Gr. 'D'. If requirement was for Gr. 'D' category having regard to the nature of work performed by the applicant and after the respondents have categorized the Carpenter work as Gr. 'D' category then Susanta must be regularly absorbed.

8. It is submitted in the supplementary affidavit that the initial calculation on the basis of which proposal was sent was incorrect as the post of Carpenter is a Gr. 'C' post as per the Recruitment rule and the prevailing minimum wage was Rs. 40.60/- On this basis the applicant has worked for 93 days only in 1991 and could not have been regularized. Neither any rejoinder has been filed nor any documents brought on record to rebut this averment.

9. The case of applicant was that he has worked as a Casual Artist (Carpenter) and has further claimed that in terms of the Scheme dated 17.3.1994 the number of days for which the applicant worked was to have been worked as actual wage prevalent divided by minimum wage prevalent at the relevant time. Reliance has been placed on the inter-departmental communication recommending his regularization [Annexure A-7 colly. Page 41].

10. A Three Judge Bench of the Apex Court in the matter of R.M. Yellati Vs. Asst. Executive Engineer, 2006 SCC (L&S) 1 has, on general principles and after referring to earlier decision, held that this Court has repeatedly taken the view that burden of proof is on the applicant to show that he has worked for 240 days in a year. The burden is discharged by producing cogent evidence.

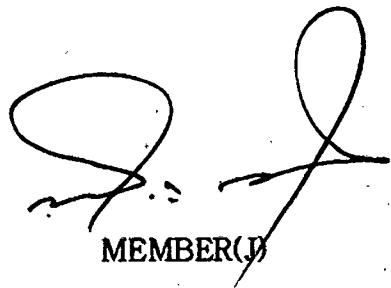
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11. The recruitment rules show that post of Carpenter is a Group 'C' post. The applicant has not discharged his burden. The O.A. is fit to be dismissed and is dismissed with no order as to costs.

12. M.A. also stands ~~dismissed disposed off~~

Shankaradas
MEMBER (A)

SP



MEMBER (D)