CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. MA 279 of 2010
(OA 1335 of 1996)

Date of order : 25.8.2011

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

ABIR GHOSH & ORS.
PRANESH CH. ROY

VS

UNION OF INDIA & ORS.

For the applicants : Mr.S.Mukherjee, counsel
Mr.T.K.Ghosh, counsel

For the respondents : Mr.A.K.Ganguly, counsel

O R D E R

Mr.Shankar Prasad, A.M.

The official respondents had issued a notification dated 2.3.94 for holding a written test for formation of panel of AAO (Group 'B') in the grade of Rs.2375-3500/- against 70% quota. Vide letter dated 6.4.94 the controlling officers of the eligible candidates were informed that the written test will be held on 7.5.94 and that the panel will be of 33 UR, 4 SC and 3 ST candidates. Annexure A/4A is a notification for filing up 30% posts of the LDCE examination. Annexure A/6 is the result of the written test held for 70% examination. Annexure A/10 is a letter dated 29.10.96 for holding a viva voce test of the candidates would come out successful in the written test held on 11.1.95. This was pursuant to directions in OA 1112/96. These applicants had sought for relief of cancellation of the two selections and to hold both the selections simultaneously and strictly in accordance with the provisions contained in IREM and circulars of Railway Board. This OA was dismissed for default on 19.4.05. Pursuant to the orders of the Hon'ble High Court the OA was restored to file. The Tribunal recorded an order on 21.4.10 as under :

> "3. Counsel for the applicant seeks a short adjournment to consider impleading successful General Category candidates who have taken over charge as private respondents. He also requests that the respondents may be directed to

produce the result of this selection so that from the perusal of those records the Tribunal can satisfy itself if the test was conducted properly.

4. The ld. counsel for the respondents' states that all the pleadings are already on record and, therefore, it may not be appropriate to produce the records.

5. Be that as it may, we direct the respondents to produce the records for the perusal of the Tribunal in the first instance. The OA applicant should also bring on record the proof of service on the private respondents, if the same has already not been brought on record."

2(a) MA 279/10 has been moved for impleading 14 persons mentioned therein as respondents and for adding an additional paragraph to level allegations that the written and oral examinations were vitiated by serious malpractices namely leakage of question papers, etc. to favour undeserving Railway servants who illegally gratified the then FA&CAO and who was allowed to retire voluntarily and was thereafter censured by the Hon'ble President of India.

b) It is stated therein in the MA that Shri A.K.Neogi filed OA 688/05 challenging the non-declaration of results and he may be directed to join as a co-petitioner because the fact of the later case depends on the outcome of this application. These petitioners were unable to ascertain the names, designations and place of postings of Railway servants in general category who are illegally promoted and their details have been furnished. One of the persons has been described as retired Dy. Chief Accounts Officer. The relief sought for in the OA have been referred to above.

c) Rejoinder to the reply is filed. It is submitted that in OA 688/05 filed by Shri A.K.Neogi he had been given liberty to agitate this issue in OA 1335/96. It is submitted that he and said Shri Neogi were denied opportunity to exercise options for 30% LDCE, both of them were qualified but were not promoted on account of malpractices.

d) The respondents filed their reply. It is stated therein that the affidavit pursuant to the orders of the Tribunal had been filed. ~~On~~ On 28.6.10. The applicant of OA 688/05 has no nexus with the present application and need not be joined as a co-applicant. Submissions are made regarding 1993-95 selection – 30% LDCE. The then FA&CAO, Eastern Railway was part of Selection Committee in respect of only 70% part of 1993-95 selection. The Tribunal in OA 176/95 has held that the proper procedure was followed in this selection. The voluntary retirement of the then FA&CAO was accepted to enable him

to join as Member (Technical) in the Indian Railway Claims Tribunal. The said Shri Sanyal had not been censured but a displeasure was communicated. The same will be produced. It is not at all necessary to add the persons named in Schedule 'A' as party to the applicant. It was stated at the time of arguments that 4 of the newly added respondents have already superannuated and the rest have been further promoted.

3. We have heard the ld. counsel.

4. The short question for consideration is whether such an amendment should be allowed after a long lapse of time.

5. The majority decision in the decision of a Thee Judge Bench of the Apex Court in **L.D.Kabrawala –vs- N.C.Kabrawala [AIR 1964 SC 11]** is as under :

> "It is, no doubt, true that, save in exceptional cases, leave to amend under O. 6 R. 17 of the Code will ordinarily be refused when the effect of the amendment would be to take away from a party a legal right which had accrued to him by lapse of time. But this rule can apply only when either fresh allegations are added or fresh reliefs sought by way of amendment. Where for instance, an amendment is sought which merely clarifies an existing pleading and does not in substance add to or alter it, it has never been held that the question of a bar of limitation is one of the questions to be considered in allowing such clarification of a matter already contained in the original pleading."

6. Another Three Judge Bench in **Siddalingamma & Anr. –vs- Mamtha Shenoy [AIR 2001 SC 2896]** held as under:

> "On the doctrine of relation back, which generally governs amendment of pleadings unless for reasons the Court excludes the applicability of the doctrine in a given case the petition for eviction as amended would be deemed to have been filed originally as such and the evidence shall have to be appreciated in the light of the averments made in the amended petition."

7. Para 10 of the decision in **Sampath Kumar. –vs- Ayyakannu [AIR 2002 SC 3369]** is as under :

> "An amendment once incorporated relates back to the date of the suit. However, the doctrine of relation back in the context of amendment of pleadings is not one of the universal application and in appropriate cases the Court is competent while permitting an amendment to direct that the amendment permitted by it shall not relate back to the date of the suit and to the extent permitted by it shall be deemed to have been brought before the Court on the date on which the application seeking the amendment was filed. (See observations in Siddalingamma and another v. Mamtha Shenoy, (2001) 8 SCC 561)."

8. Para 10 of the decision in **Heeralal –vs- Kalyan Mal [AIR 1998 SC 618]** is as under :

"Consequently it must be held that when the amendment sought in the written statement was of such a nature as to displace the plaintiff's case it could not be allowed as rules by a three member Bench of this Court. This aspect was unfortunately not considered by latter Bench of two learned Judges and to the extent to which the later decision took a contrary view qua such admission in written statement, it must be held that it as per incuriam being rendered without being given an opportunity to consider the binding decsi9on of a three member Bench of this Court taking a diametrically opposite view."

9. Relevant part of para 5 of the decision in **Muni Lal –vs- the Oriental Fire & General Insurance Company Ltd. & Anr. [AIR 1996 SC 642]** is as under :

"Admittedly, by the date of the application for amendment filed, the relief stood barred by limitation. The question, therefore, is whether the Court would be justified in granting amendment of the pleadings in such manner so as to defeat valuable right of defence of bar of limitation given to the defendant. It is true that this Court in the case of Vineet Kumar v. Mangal Sain Wadhera reported in (1984) 3 SCC 352 at page 360 : (AIR 1985 SC 817 at p. 820), in paragraph 16) held that normally amendment is not allowed, if it changes the cause of action. But it is well recognized that where the amendment does not constitute the addition of a new cause of action, or raise a new case, but amounts to not more than adding to the facts already on record, the amendment would be allowed even after the statutory period of limitation. In that case, the question of limitation was not really in issue.

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In Pasupuleti Venkateswarlu v. The Motor & General Traders, (1975) 3 SCR 958 : (AIR 1975 SC 1409) this Court dealing with the basis of cause of action and character of the right has held that 'it is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceedings. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to Court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal (Emphasis supplied), it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision of fair play is not violated, with a view to promote substantial justice subject, of course, to the absence of other disentitling factors or just circumstances (Emphasis supplied). Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the Trial Court.' In other words, this Court laid emphasis that with a view to mould the relief a new fact can always be taken into account not merely by the trial court but even by the appellate court."

10. Para 14 & 15 of the decision in **Pankaja & Anr. –vs- Yellappa by L.R.s & Ors. [AIR 2004 SC 4102]** is as under :

"14. The law in this regard is also quite clear and consistent that there is no absolute rule that in every case where a relief is barred because of limitation an amendment should not be allowed. Discretion in such cases depends on the facts and circumstances of the case. The jurisdiction to allow or not allow an amendment being discretionary the same will have to be exercised in a judicious evaluation of the facts and circumstances in which the amendment is sought. If the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no straight

jacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case.

15. This Court in the case of L.J.Leach and Co. Ltd. and another v. Messrs, Jardine Skinner and Co., AIR 1957 SC 357, has held :-

'It is no doubt true that Courts would, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be bared by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the Court to order it if that is required in the interests of justice."

11. The proviso in Order VI Rule 17 after the substitution of CPC (Amendment) Act, 2002 reads as under :

"Provided that no application for amendment shall be allowed after the trial as commenced, unless the Court comes to the conclusion that inspite of the due diligence, the party could not have raised the matter before the commencement of trial."

12. Order I Rule 3(b) of Civil Procedure Code is as under :

All persons may be joined in one suit as defendants where –

(b) if separate suits were brought against such persons, any common question of law or fact would arise.

13. The Apex Court in **K.R.Mudgal & Ors. –vs- R.P.Singh & Ors. [1986 (4) SCC 531]** has held

".....A Govt. servant who is appointed to any post ordinarily should at least after a period of 3 to 4 years of his appointment be allowed to attend to the duties attached to his post peacefully and without any sense of insecurity. In the present case the appellants had been put to the necessity of defending their appointments as well as their seniority after nearly three decades. This kind of fruitless and harmful litigation should be discouraged. The High Court was wrong in rejecting the preliminary objection raised on behalf of the appellants (who were respondents in the writ petition before the High Court) on the ground of latches."

14. The Apex Court in **Dehri Rohtas Light Railway –vs- District Board, Shahabad & Ors. [AIR 1993 SC 802]** has held

> "The principle on which the relief to the party on the ground of laches or delay is denied is that the rights which have accrued to others by reason of the delay in filing the petition should not be allowed to be disturbed unless there is reasonable explanation for the delay. The real test to determine delay in such cases is that the petitioner should come to the writ Court before a parallel right is created and that the lapse of time is not attributable to any laches or negligence. The test is not to physical running of time. Where the circumstances justifying the conduct exists, the illegality which is manifest cannot be sustained on the sole ground of laches."

15. The Three Judge Bench of the Apex Court in **Prabodh Verma –vs- State of U.P. [AIR 1985 SC 167]** has held as under :

> "Where it is the petitioner's contention that an Act or Ordinance is unconstitutional or void the proper relief for the petitioner to ask is a declaration to that effect and if it is necessary, or thought necessary to ask for a consequential relief, to ask for a writ of mandamus or a writ in the nature of mandamus or a direction, order or injunction restraining the concerned State and its officers from enforcing or giving effect to the provisions of that Act or Ordinance. Hence, where a writ of certiorari was asked for while challenging the constitutional validity of an ordinance, it was held, that the High Court ought not to have proceeded to hear and dispose of the writ petition without insisting upon the petitioners amending the said writ petition and praying for proper reliefs."

16. Coming to the facts of this case we notice that these applicants had ~~to~~ approached this Tribunal against the result of the 70% LDCE against the vacancies of 1993-95. The selected persons were however, not impleaded. They are sought to be impleaded now. The official respondents have not said anything regarding the amendment of the OA to serve these persons apart from stating at the Bar that 4 of these 14 persons have superannuated and the remaining have been further promoted. Even though some of the SC candidates have been served they have not entered appearance. The decision in **Prabodh Verma** shows that even in such cases some persons must be joined in a representative capacity. The decision in **Dehri Rohtas Light Raiilway (supra)** shows that the ~~two decisions~~ time test of limitation is not the physical running out of time but crystallization of rights in favour of third party. The decision in **K.R.Mudgal (supra)** shows that persons must be left to enjoy their posts quietly after 3 to 4 years. These applicants were a necessary party As per the 2002 amendment of ~~CPC~~ CPC the MA applicants had to make out a case that they could not join the affected persons ~~for amending the OA~~

~~to challenge the selection~~ after due diligence. The MA is silent on this point. Besides this they have after a long lapse of 15 years chose to level allegations against the then FA&CAO without impleading him.

17. We are of the view that the interests of this third party person have to be safeguarded.

18. We are accordingly of the view that Private Respondents cannot be allowed to be impleaded after this lapse of time. We cannot also allow the allegations of malice to be raised after 15 long years. The request for permitting Mr. A.K.Neogi is a co-~~respondents~~ applicant is allowed in view of the facts stated.

19. MA is accordingly disposed of.

20. List the matter on 15.11.2011 for hearing of the OA. One of the questions that would also arise is as to whether the OA is bad for non-joinder of the successful candidates.

V.K. Agrawal.
MEMBER (J)

Shankar Prasad
MEMBER (A)

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