

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No.
XXXXXX

266/ 1989

DATE OF DECISION 29.6.1990

K. Subrahmanian and another Applicant (s)

M/s. M. Ramachandran & Advocate for the Applicant (s)

P. Ramakrishnan Versus

Union of India represented by Respondent (s)
General Manager, Southern Railway, Madras.

Smt. Sumathi Dandapani Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P MUKERJI, VICE CHAIRMAN

&

The Hon'ble Mr. N.DHARMADAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not? *NO*
3. Whether their Lordships wish to see the fair copy of the Judgement? *NO*
4. To be circulated to all Benches of the Tribunal? *NO*

Yes

JUDGEMENT

HON'BLE SHRI N.DHARMADAN, JUDICIAL MEMBER

In this application dated 1st May, 1989 the applicants pray for a declaration that the selection to Group B post of Assistant Personnel Officer should be conducted in accordance with the Railway Board's letter Annexure-IV dated 15.3.1989 giving them also opportunity to participate in it. They also pray that the second respondent may be restrained from proceeding with the present selection to the aforesaid posts and consequent appointment from Annexure-V list dated 18.4.89.

2. The relevant facts for deciding the issue in this case are as follows. The applicants are presently working as Welfare Inspector and Chief Clerk respectively in the Divisional Office of the Southern Railway. They claim that

they are fully eligible for promotion to Group B post of Assistant Personnel Officer.

3. The second respondent made a proposal to make a selection for twenty two posts of Assistant Personnel Officer by issuing notification dated 11.8.88 inviting consent from volunteers in terms of the criteria fixed in the Headquarters Office proceedings Annexure-I dated 11.8.88. The condition for eligibility reads as follows:-

"All staff in the revised scale of pay of Rs.1400-2300 and above, provided they have rendered three years non fortuitous service in this grade or higher grades as on 1.9.1988 and have reached the stage of Rs.2050/- in scale of Rs.1400-2300 or above."

4. Though the applicants rendered service in the above grade for three years, they were drawing a pay of Rs.1800/- and Rs.1850/- respectively at that time. Hence they could not apply for the selection. Pursuant to the above notification a written examination was held on 28.1.1989. Since several of the candidates could not participate in that examination, the second respondent arranged a supplementary examination to be held on 18.3.1989 by his order dated 27.2.1989 at Annexure-III. Before the examination the applicants could find that persons who were drawing lesser salary than that of the amount of Rs.2050/-, which was fixed in the notification as the minimum criterion for applying for selection, were included in the list of

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candidates to be allowed to participate in the examination. This was on the basis of a relaxation order at Annexure-IV dated 15.3.1989. The relevant portion of this order is extracted below:-

" i) The extant eligibility condition of minimum pay of Rs.2050/- for selection of employees against 75% vacancies for promotion to Group 'B' posts as contained in para 1(a) of Board's letter No.E(GP) 86/2/97 dated 14.4.1987 should be dispensed with.

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These instructions will apply to the selections initiated after the issue of this letter and the selections already in hand may be finalised according to the instructions presently in vogue except that where the written test has not been held or the answer sheets have not been evaluated or the result of written test not declared, this may be done according to the instructions contained herein."

5. Immediately the applicant approached the Senior Divisional Personnel Officer and requested him to allow the applicants also for writing the examination. The applicants were not allowed. In the meantime selection proceedings were continued and Annexure-V list of candidates was prepared fixing viva test on 9th and 10th of May 1989 presumably giving due weight to Annexure VI which contains, according to the applicants, an unauthorised insertion to the following effect:-

" Eligibility of minimum pay of Rs.2050/- for appearing at selections is removed. This will apply to all selections to be initiated after 15.3.1989."

6. According to the applicants the above addition in Annexure VI is unwarranted and it deprives the applicants' chance of promotion to the post of Assistant Personnel Officer, since persons who were drawing below Rs.2050/- were permitted to appear for the

test as pointed out by them. The specific case of A.N.Sasidharan is one such cases. The whole selection is illegal because the applicants were illegally prevented and they were deprived of their chance to sit for the examination.

7. In the counter affidavit the respondents stated that the selection proceedings were initiated as per Annexure A1 calling volunteers from among the staff who fulfilled the conditions, but the applicants have not fulfilled those conditions. Hence they were not eligible to compete in the selection. But they have admitted that the Railway Board considering the question of relaxation of the conditions for holding the selection of LDCEs as per circular dated 15.3.89 notified that in respect of selections the minimum pay limit of Rs.2050/- should be dispensed with "where the written test has not been held or the answer sheets have not been evaluated or the result of written test not declared". With reference to the addition of the objectionable insertion of the sentence in Annexure-VI, the answer in the counter affidavit is that the second respondent has merely indicated the gist of the Railway Board's order duly quoting it."At the most it can be termed only as an internal clarification. Having realised that the circular dated 15.3.89(Annexure A IV) could possibly be misunderstood, the Board suo moto issued a clarification on 15.5.89 setting the conclusion at rest and the copy of that Board's letter is herewith marked

as Annexure R-2". Regarding the contention of the applicants that persons who were drawing less than Rs.2050/- were also permitted to appear for the written test, the respondents submitted in the counter affidavit that five persons were allowed on special consideration as per instruction 6(i) which reads as follows:-

"In case a junior employee is considered for selection by virtue of his satisfying the relevant minimum service conditions all persons senior to him shall be held to be eligible notwithstanding the position that they do not fulfill the requisite minimum service conditions."

8. The main contention ^{urged before us} by the applicants is that they are only qualified to sit for the supplementary written test proposed to be held on 18.3.89 in the light of the relaxation letter of the Railway Board dated 15.3.89 at Annexure IV. Accordingly they have approached the Senior Divisional Personnel Officer for permitting them to sit for the examination. But they were not allowed. At the same time others who were drawing less than Rs.2050/- were, admittedly as stated in the counter affidavit, permitted for taking their chance in the written examination and getting promotion to the promotional post of Assistant Personnel Officer. This is arbitrary and discriminatory and violative of the provisions of Article 14 and 16 of the Constitution of India.

9. Even though the respondents have given some justification for allowing persons who were drawing less than the minimum salary of Rs.2050/- fixed for the

volunteers to participate in the examination, there is no legal justification for denying the same benefits to the applicants especially after the issue of Annexure-IV relaxation letter by the Railway Board. The letter at Annexure-VI dated 19.4.89, with the alleged unauthorised additional wording pertaining the rights of eligibility based on the minimum pay of Rs.2050/- for appearing at the selection, only apply to selections to be initiated after 15.3.89. This would not apply in the case of the applicants because it was issued subsequent to the date fixed for the supplementary test namely 18.3.89. So the condition in Annexure-VI, even if treated as valid addition as contended by the respondents in the counter affidavit, cannot stand in the way of the applicants' request for allowing them to take their chance for promotion by sitting in the examination which was held on 18.3.89 after the issue of Annexure IV.

10. At the time of the argument, the learned counsel for the respondents brought to our notice two judgments of the Madras Bench of the Central Administrative Tribunal, in (1) O.A No.507 of 1989 and connected cases and (2) O.A 405 of 1989. We have perused the judgment in O.A 507 and connected cases. The applicants in that case have challenged the letter issued by the Chief Personnel Officer of the Headquarters Personnel Branch, Southern Railway, and the questions raised by the

applicant in this case have not been dealt with in the judgment. Hence it is not applicable. In the other case (OA/405/89) the applicants' grievance was that the list prepared on the basis of the written examinations held on 28.1.1989 and 18.3.1989 are illegal. According to them, the written tests held to the post was in violation of the rules. They contended that the eligibility criteria of the minimum pay of Rs.2050/- should not have been insisted upon and they should also have been permitted to sit in the supplementary examination. But the Tribunal rejected that argument on the basis of the submission of the learned senior counsel appearing on behalf of the Railways, that the Railway Board's letter dated 15.3.89 should be read with a clarification issued on 15/16.5.1989 and in reading so, the applicants contention cannot be accepted.

11. We are not inclined to follow this reasoning, firstly because the facts in the case on hand are different; the applicants have not raised any contention to be answered with ^{reference to} the aforesaid two letters of the Railway Board. Secondly, we cannot understand the relevancy of the clarification letter issued on 15/16.5.89 in the case of an examination to be held on 18.3.89 much before the clarification. In the instant case the applicants' contention is that before the supplementary examination, Annexure IV

letter of the Railway Board was issued relaxing the minimum pay of Rs.2050/- fixed as a criterion for allowing entry to the examination and that this criterion cannot be modified or changed by means of issuing a notification subsequent to the examination.

So ^{second} ~~the~~ case also would not apply to the facts of the instant case before us. The applicants in the instant case when got the information of the relaxation, approached the Senior Divisional Personnel Officer for making them eligible for the examination ^{them} or allowing to sit for the same. But this was not granted. The reason for the rejection of the request is stated to be the subsequent letter of the second respondent at Annexure-VI and the statements contained therein. This cannot be a good ground for rejecting a legal right especially when it was an instruction issued subsequent to the date of examination.

12. Really the question to be considered is whether on the date of examination the candidates are eligible for the test and if they are eligible, can they be prevented from sitting for the examination without giving justifiable reasons? The applicants were admittedly on the date of supplementary examination fully qualified for the examination in the light of Annexure-IV relaxation letter. They made request to the Senior Divisional Personnel Officer to permit

them for undergoing the test. This was not granted. There is no legal justification to reject this request especially when the respondents allowed similarly situated persons to sit for the examination. Having regard to the facts and circumstances of the case, we are satisfied that the applicants are illegally prevented from writing the examination for getting their promotion as Assistant Personnel Officer. In the result this application is to be allowed.

13. On the basis of the interim order passed on 15.5.89 on M.P 284/89, we have directed that two out of the twenty six vacancies should be kept unfilled until further orders.

14. We direct that the applicants may be considered for filling up these two posts after conducting the necessary examination, if so advised, in accordance with law.

15. Accordingly, we allow the application and declare that the two posts of Assistant Personnel Officer which were kept vacant pursuant to our direction are to be filled up only after making selection of the applicants in accordance with Annexure-I read with Annexure-IV relaxation, as claimed by the applicants. There will be no order as to costs.

N.Dharmadan
(N.DHARMADAN)
JUDICIAL MEMBER

29.6.90
29.6.90

S.P. Mukerji
(S.P. MUKERJI)
VICE CHAIRMAN

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R.A. No. 88/90.....

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Placed below is a Review Petition filed by UOI rep
Day G. M., S. R. Jay, Madras & another (Applicant)
Respondent in OA/TA No. 266/89 seeking a review of
the order dated 29-6-90 passed by this Tribunal in the
above noted case.

As per Rule 17(ii) and (iii), a review petition shall
ordinarily be heard by the same Bench which passed the order,
and unless ordered otherwise by the Bench concerned, a review
petition shall be disposed of by circulation where the Bench
may either dismiss the petition or direct notice to be issued to
the opposite party.

The Review petition is therefore, submitted for orders
of the Bench consisting of Hon. Shri S.P. Mukerji, V.C.
and Hon. Shri N. Dharmadas, Member (T-1)
which pronounced the order sought to be reviewed.

10.8.90

PS to Hon. Shri N. Dharmadas,
Member (T-1)
There is an application for giving 10 days
under the order of the Hon. V.C. agreed before
posting the case to the Bench for hearing
11/8

I agree. Registry to fix a date after giving
notice to both the parties.

Hon'ble JM(I)
DR(J) agreed 11/8

11/8 90

3-1
May be on 31.8.90
Recorded 14/8/90
T/F
Recd. 14/8/90
Notice issued on 20.8.90
S. 2000

31.8.90

SPM & ND

Mrs.Sumati Dandapani
Mr.P.Ramakrishnan

(Order pronounced by Hon'ble Member)

M.P.No.620/90: This is an application filed for condonation of delay of 8 days in filing the Review Application. We have heard the matter and having considered ^{the matter is} we find actually there is no delay and the application is allowed.

R.A. No. 88/90: The respondents have filed this application for review of our judgment rendered in O.A. 266/89 on 29.6.90.

The three main grounds urged by the applicants in this R.A. are (i) the matter is already covered by the decision in O.A.507/89 and O.A.405/89 and this application should have been dismissed following the judgment in those cases (ii) while passing final orders in this case, this Tribunal failed to advert~~and~~ consider Annexure.R.2 and (iii) number of other similarly placed persons will also be affected by the judgment.

We have specifically dealt with ~~and the main~~ the ~~main~~ ⁴² issues now raised before us in the judgment. The Judgment of the Central Administrative Tribunal in O.A.507/89 and O.A.405/89 have been considered by us in Paragraph 10 of the Judgment and ^{we were unable to} ~~find ourselves~~ to follow the same for the reasons mentioned in the judgment. No fresh ground is brought to our notice for accepting the same.

The further contention of the applicants that Annexure R.2 has not been considered is also against the statement in paragraph 11 of the Judgment. Even though we have not specifically mentioned Annexure R.2, we have considered the document and found that it is not relevant. ^{disposal of the case by} for the ~~examination~~ because in the instant case, the applicants' contention is that before the supplementary examination Annexure R.14 letter of the Railway Board was issued, relaxing the minimum pay of Rs. 2050/- as criterion for allowing the entry to the examination.

The further contention that a number of similarly situated persons will be affected by the Judgment is not a ground for review in the same. If the applicants in this R.A. ~~are~~ ^{are} aggrieved by the ~~matter of the~~ ^{case} decision rendered by us, it is for them to approach the appropriate forum for getting the matter rectified or corrected in accordance with law, ^{if} ~~in~~ there is any error in the Judgment, and it affects others similarly situated.

cont'd...

No satisfactory ground has been made out for interfering in this matter by exercising the power of review vested with us. In the facts and circumstances mentioned above, the application is dismissed.

Order send for
despatch on
14.4.90.

FILE CLOSED


(N.Dharmadan)
Judicial Member

31.8.90.


S.P.M./31.8.90.
(S.P.Mukerji)
Vice Chairman

31-8-90

Ksn.