

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
Txxx

314/91

199

DATE OF DECISION 16.10.1991

Mr. M.K. Anwar Babu _____ Applicant (s)

Mr. M.R. Rajendran Nair _____ Advocate for the Applicant (s)

Versus

Union of India (Secretary, Min. of Telecommunications) _____ Respondent (s)
and 2 others.

Mr. N.N. Sugunapalan _____ Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N.V. Krishnan, Administrative Member

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?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

N.V. Krishnan, Administrative Member

The applicant is aggrieved by the non-consideration of this claim for selection as Technician for the year 1989 by the General Manager, Telecommunications, Kannur, the 3rd respondent. He has therefore sought the following reliefs:

"(i) To direct the 3rd respondent to consider the application submitted by the applicant for selection as technician for the year 1989 in accordance with law, include him in the select list of candidates, depute him for training and to appoint him in his turn.

(ii) Grant such other reliefs as may be prayed for and the Tribunal may deem fit to grant."

6

2. The facts of the case leading to the application can be briefly stated.

2.1 The applicant submitted to the 3rd respondent the Annexure-I application for recruitment as Technician for the year 1989 in response to a notice issued in this behalf on 24.7.89 in the Indian Express. A copy of the notice has not been produced. It is alleged that the notice stipulated, among other things, "that the applicants must have registered in an Employment Exchange within the recruitment units for which they applied and that their registration must be current." The applicant contends that this stipulation is unconstitutional. Therefore he submitted the Annexure-I application to the 3rd respondent though he had a registration only with the Employment Exchange in Ernakulam.

2.2 Annexure-II is the result of the selection to the post of Technicians for 1989 made by the Selection Committee on 28.12.90. The aggregate percentage of marks secured by him is claimed to be 74.6%. He points out that this is higher than the aggregate marks secured by the candidates selected, except those at S.No. 1 to 8 of the list published as Annexure-II. It is seen from the extracts of aggregate marks given in Ann.II that candidates at S.No. 12 and below have secured less marks than the applicant. Therefore, the applicant alleges that his application was not considered at all on the ground that he had no registration with the Employment Exchange within the recruiting unit, viz. Kannur.

2.3 It is stated that the applicant challenged the restriction regarding registration in the employment exchange in the recruitment unit in OA 670/89 which was disposed of by judgement dated 27.9.90, holding that this stipulation is unconstitutional. That judgement was however recalled, and after hearing 3 review applications and later, the OA itself was closed on 18.10.90 as it was not pressed by the applicant.

2.4 Further to this decision, Government have issued the Annexure-III instruction dated 2.1.91 clarifying that registration with any of the Employment Exchanges in the territorial jurisdiction of the whole State is a sufficient pre-condition for determining eligibility for recruitment.

2.5 The applicant has also another grievance relating to the manner in which the candidate is chosen by selection which is referred to in ground 8 in support of the application. He contends that the selection should be based only on the marks given in the final year of the Diploma course as was done in Thiruvalla and Calicut Divisions in respect of this examination and not on the basis of the aggregate marks in the three years of the Diploma course.

3. The respondents have filed a detailed reply. They claim that the applicant cannot agitate the matter regarding the constitutionality of the mandatory requirement relating to registration in the Employment Exchange in the recruitment unit. They contend that after OA 670/89 was closed as not pressed by the applicant, he cannot raise this issue now. On merits, it is submitted that in response to the original notice dated 24.7.89 the applicant had sent his application for selection to

Triandrum, Kottayam & Cannanore SSAs, besides Ernakulam where he had his employment registration in the Employment Exchange. He was, therefore, considered for selection in Ernakulam Division but was not selected. After the OA 670/89 was finally disposed of, the results of the selection in Kannur Division were finalised on 28th December 1990 vide Annexure-II. Other than the applicant, there were 91 other persons who also did not have employment exchange registration in Kannur and their applications were also not considered on the basis of instructions which have not been set aside for any reason. It is submitted that the Annexure-III instructions are applicable prospectively.

4. We have carefully gone through the record and heard the counsel on both sides. We notice that OA 670/89 is being relied by both sides for their respective contentions. None has however filed copies of the judgements in that case. Hence we have referred to the case record of OA 670/89.

5. We notice that in OA 670/89 the impugned notice issued by the Kannur Telecommunication Office on 24.7.89 (Annexure-I) was impugned and the following three important reliefs were sought:

" (i) To declare that the condition that the applicants should have current registration with the employment exchange in the unit of recruitment for selection to the post of technicians is ultra vires the rules and unconstitutional as violative of Articles 14 and 16 of the Constitution of India.

(ii) To declare that the method of selection adopted by the 3rd respondent to select the candidates on the basis of total marks in the 1st, 2nd and 3rd year of the course of study is ultra vires the rules and to direct the respondents to select the candidates on the basis of the marks in the final examination, i.e. the marks reckoned for the award of diploma for appointment as technicians.

(iii) Declare that the selection and appointment of technicians on the basis of different recruitment units in a circle is ultra vires the rules and unconstitutional as violative of Articles 14 and 16 and to direct the respondents to make selection to the post of technicians on the basis of circlearwise merits."

The following order was passed on 27.7.90:

" In the result, while upholding the validity of the method of selection adopted by the third respondent to select the candidates on the basis of total marks in the first, second and third year of the course of study, we declare that the condition in Annexure-I notification, that the applicants should have current registration with the Employment Exchange in the unit of recruitment for selection to the post of Technicians is ultra vires of the Recruitment Rules at Annexure-II and unconstitutional and violative of Articles 14 and 16 of the Constitution of India. We further declare that the selection and appointment of Technicians on the basis of different recruitment units in the circle are also ultra vires the Recruitment Rules and are unconstitutional."

(L)

The entire selection process initiated in pursuance of the impugned notification Annexure-I was also struck down and the respondents were directed to recommence the selection process afresh by issuing a proper notification.

6. However, three review applications were filed (RA 95, 96 and 97/90) to review the aforesaid judgement. It is not necessary to go into the grounds adduced for review. Sufficient to say that on 18.10.90 the review petitions were allowed and the earlier order was recalled. The Bench directed that OA 670/89 be heard afresh after impleading the review applicants in RA 95/90 as additional respondents.

7. On the same day OA 670/89 was heard afresh after bringing some additional respondents on the party array. It was then that the original applicants submitted that they did not wish to press the OA any more. Thereupon the Tribunal passed an order in the following terms:

"The learned counsel for the original applicants in OA 670/89 Shri MR Rajendran Nair stated that since the applicants have already got their grievances in OA 670/89 substantially redressed by the method adopted by the respondents in Thiruvalla and Calicut Divisions in which the additional respondents who have been impleaded now have been selected, he does not wish to press the OA any more. We have heard the learned counsel for the original respondents as well as additional respondents. They have no objection to closing this case. In the circumstances we close this application as not pressed."

8. We pause here for a moment to consider the implication of these orders in OA 670/89. In so far as legislation is concerned, if an Act of Parliament is first repealed by another Act of Parliament and later, that repealing Act itself is repealed by a third Act of Parliament, such repeal does not automatically revive the original Act of Parliament, unless the third Act contains specific provisions therefor, or such revival has necessarily to be presumed. That analogy will not apply to a recall of an original judgement on the basis of a review application, with the intention of hearing the case afresh. That is the situation in OA 670/89. The direction after review was to rehear the case afresh after recalling the original judgement. Therefore, the impugned notification has of necessity to be treated as having been left intact without any change pending the ^{after review.} ~~earlier~~ fresh hearing. The recall of the ~~judgement~~ restored the case to the position in which it stood before that order was passed.

9. That being the case, if the applicant ^{now} wants the reliefs he has prayed for, he should have produced the notification dated 24.7.89 and impugned the provisions therein relating to registration in the employment exchanges in the recruitment units and those relating to separate selection for each recruitment unit. He should also have assailed the provision relating to the method of selection i.e. whether aggregate marks or only marks in the final ^{only} year will count. The applicant has ^{sought} some directions but he has not impugned any notification/rule or instruction. Therefore, no relief can be granted to him in respect of the directions prayed for by him. In the circumstances, we do not find it necessary to consider

16

any other issue on merit, including whether, even otherwise, the application would stand barred on the principle of resjudicata.

10. In the circumstances, the application is dismissed.

N.Dharmadhan
(N.Dharmadhan)
Member (Judicial)

N.V.Krishnan
(N.V.Krishnan)
Member (Administrative)