

(P)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 655/87.

~~XXXXXXXXXXXXXX~~

DATE OF DECISION 11.2.1993

Shri Vinod Y. Aghamkar.

Petitioner

Shri G.S. Walia

Advocate for the Petitioners

Versus

Respondent

Union of India

Shri V.G. Rege.

Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri S.K.Dhaon, Vice-Chairman,

The Hon'ble ~~Shri~~ Ms. Usha Savara, Member(A).

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. Whether it needs to be circulated to other Benches of the Tribunal ?

} NO

S.K.DHAON
(S.K.DHAON)
VICE-CHAIRMAN.

NS/

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, BOMBAY BENCH,
B O M B A Y.

Original Application No.655/87.

Shri Vinod Y.Aghamkar.

... Applicant.

V/s.

Union of India.

... Respondent.

Coram: Hon'ble Vice-Chairman, Shri S.K.Dhaon,
Hon'ble Member(A), Ms. Usha Savara.

Appearances:-

Applicant by Shri G.S.Walia.
Respondent by Shri V.G.Rege.

Oral Judgment:-

[Per Shri S.K.Dhaon, Vice-Chairman] Dated: 11.2.1993.

The refusal of the respondent to permit the applicant to change over from the trade of Armature Winder to that of Instrument Mechanic has given rise to this application. A reply has been filed on behalf of the respondents. No rejoinder has been filed. Parties have been heard.

2. The admitted facts are these. The trade tests for recruitment of Armature Winders and Instrument Mechanics took place. The applicant was selected as an Instrument Mechanic. He made an application for being ~~permitted~~ permitted to change over to Armature Winder which was accepted. Thereafter, he made an application for reverting to the trade of Instrument Mechanic.

3. It appears that on 4th August, 1983 a notification was issued stating therein that "one time options" has been given to change over from one trade to another trade. The intending applicants were required to submit their applications within a specified time. The applicant submitted his application after the time specified, yet, the application was accepted, he was put to a trade test

and thereafter he was transferred as Armature Winder. The submission is that the action of the respondents in acting upon an application which was barred by time was ab initio void and therefore, it should be presumed that the applicant continued to be in the original trade viz. that of Instrument Mechanic. We are not impressed with this submission. The applicant submitted ~~xx~~ a belated application which was accepted, that act was to his advantage, he cannot be heard now to say that he feels aggrieved because ~~xx~~ his belated application was acted upon. Moreover, it is a settled law that any action taken on a time barred matter is not void, and it is merely illegal, such an illegality can be ~~xx~~ agitated by a person aggrieved | Ittyavira Mahai V/s. Varkey and Varkey and Another. (AIR 1964 S.C. 907) |

4. The second submission made by Shri Walia is that the decision to permit the applicant to change over to the trade of A.W. was, in fact, not acted upon and the applicant continues to be in the trade of Instrument Mechanic. There are ~~three~~ ^{two} documents on record filed by the applicant himself which negative ~~xx~~ this contention. The first is the application dt. 11.11.1986 submitted by the applicant to the Deputy Chief Electrical Engineer in which it is stated that, despite the fact, that the applicant is in the trade of Instrument Mechanic the work of Armature Winding is being taken from him, this action is not only causing financial loss to the applicant, but also physical strain. The prayer in the application is that the applicant may be sent to the proper trade viz. the trade of Instrument Mechanic. The second is the letter dt. 5.6.1986 addressed by the applicant to the Chief Electrical Engineer, Central Railway, Bombay. In

paragraph 7 it is mentioned that on 16.4.1975 the applicant was surprised when the Works Manager passed oral order asking the applicant to go to the Armature Winding Section. This also goes to show that, in fact, the applicant was working as Armature Winder.

5. The respondent's case is that even now it is open to the applicant to leave the trade of Armature Winder and go to the trade of Instrument Mechanic provided he is willing to give up his seniority in the service and accept the position of the juniormost in the trade of Instrument Mechanic.

6. The counsel for the applicant insists that despite the order dt. 27.10.1988 passed by this Tribunal directing the respondents to produce the documents mentioned hereafter, the same has not been produced. The documents are: Muster Roll of the applicant upto April, 1986, Job Card and Daily Register, Working Register, Purchased Card of Booth No.6 and seniority list of 1984 etc.

7. It is apparent that the applicant desired this Tribunal to examine the afore mentioned documents only for the purpose of ascertaining whether the option given by the applicant for switching over to the trade of armature winding had been accepted by the respondents and acted upon. Assuming (although we have recorded a finding that the request of the applicant to switch over was acted upon) the applicant continued to work in the trade of instrument mechanic, inspite of the acceptance of his application to switch over, nothing will turn on the mere fact that for some reason or the other he continued working in the ✓ trade of the instrument mechanic. A notification referred to above clearly indicated that only one chance had been

given for change of work and the applicant availed of the chance.

8. We find no force in this application. It is accordingly dismissed, but with no order as to costs.

U. Savara
11.2.93

(USHA SAVARA)
MEMBER (A)

S.K.D.
(S.K.DHAON)
VICE-CHAIRMAN.

B.