

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Order on RP & MPs

OPEN COURT / PRE DELIVERY/JUDGMENT IN OA 139 / 96

Hon'ble Vice Chairman / Member (J) / Member (A)

may kindly see the above Judgment for
approval / signature.

M. K. Kulkarni

V.C. / Member (J) / Member (A) (K/S)

27/6

Hon'ble Vice Chairman

Hon'ble Member (J)

Hon'ble Member (A) (K/S)

Agree
26/6

CENTRAL ADMINISTRATIVE TRIBUNAL
Review Petition No.74/96 in BOMBAY BENCH
Original Application No. 139/96

XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

along with M.P.No.422/96 dt.4.6.96
and M.P.No.nil Diary No.4146/96

filed on 18.6.96 in RP 74/96. Date of Decision 26.6.96

A.J.Gawade & 16 Ors.

Petitioner/s

Advocate for
the Petitioners

Versus

Union of India & 6 Ors.

Respondent/s

Advocate for
the Respondents

CORAM :

Hon'ble Shri. B.S.Hegde, Member(J),

Hon'ble Shri. M.R.Kolhatkar, Member(A).

- (1) To be referred to the Reporter or not ? x
- (2) Whether it needs to be circulated to x
other Benches of the Tribunal ?

M.R.Kolhatkar
(M.R.KOLHATKAR)
MEMBER(A)

B.S.Hegde
(B.S.HEGDE)
MEMBER(J).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, MUMBAI.

Review Petition No.74/96
in
Original Application No.139/96
along with
M.P. No.422/96 filed on 4.6.96
and
M.P. No. nil Diary No.4146/96
filed on 18.6.96 in R.F. 74/96.

A.J.Gawade & 16 Others.

... Applicants.

V/s.

Union of India & 6 Others.

... Respondents.

Coram: Hon'ble Shri B.S.Hegde, Member(J),
Hon'ble Shri M.R.Kolhatkar, Member(A).

ORDER ON REVIEW PETITION BY CIRCULATION

Dated: 26.6.1996.

In this Review Petition the Review Petitioners original applicants have sought review of our order dt. 26.4.1996 in O.A. No.139/96 on the ground that the order contains several mistakes and grave illegalities. It is contended firstly that the Tribunal did not pass any orders on the prayers at (c) and (d) of the O.A. These prayers were :

- "(c) To hold and declare that Respondents No.4 to 7 should be prosecuted under the prevention of corruption act and also proceeded departmentally under the Railway Servant's Discipline and Appeal Rules.
- (d) To hold and declare that the Respondents No.4 to 7 should be suspended, pending criminal prosecution and disciplinary action".

It is contended that the Tribunal is required to specifically consider all the prayers and its failure to do so is a patent mistake. Secondly, it is contended that the Tribunal did not consider the M.P.No.313/96 in the O.A. praying for summoning Respondents No.3 to 7 for cross-examination by the applicants. It is contended that the Tribunal was dutybound to decide this M.P. and the Tribunal has a duty to give a finding on the right of the applicants to cross-examine

Respondents No.3 to 7. Regarding illegalities in the order it is contended that the Tribunal had not accepted the contention of the Respondents that the viva voce test was incomplete because two candidates had remained absent. Therefore, it is contended that the Tribunal ought to have given a direction to the Respondents to declare the panel. It is next argued that the Tribunal had considered the Rules in the IREM to be merely guidelines not having statutory force. whereas, there are several authorities of the Supreme Court, High Court and Central Administrative Tribunal that IREM contains statutory rules and has therefore statutory force. Moreover, the Tribunal has upheld the competence of ^{the} /third respondent to make a re-valuation of the answer books, whereas, it is settled position that re-valuation can never be done and it is only the re-totalling which is permitted. Lastly, the Review Petitioners have contended that the reliance placed on Supreme Court Judgment in Union of India V/s. Anand Kumar Pandey is mis-placed because in the instant examination there was no proof of large scale copying and leakage of question papers.

2. We have considered the Review Petition. Our final order was passed after considering all material on record. When there is no specific order on any prayer, that prayer is taken to have been rejected. When there is no specific decision on an M.P., that M.P. is taken to have been rejected. ^{There are thus no patent mistakes.} / So far as grave illegalities said to have been committed by the Tribunal are concerned, our order is self-contained and reasons for our order are contained in the same. The various grounds for review re-agitate the same

grounds which were considered by us earlier and it is not necessary to detail our reasons for rejecting the same. In particular, we wish to observe that neither Rule 215(c) nor Rule 219(k) was applicable and we had made reference to Rule 219(1) only in the context of the power of the competent authority to cancel the panel if there are procedural irregularities or other defects. The reliance on the Supreme Court Judgment was in the context of the supreme importance of sanctity of the process of selection. It is well settled that IREC has statutory force and IREM does not have such statutory force. The authorities to the contrary referred to in para 3 of R.P. are not at all cited. We again invite attention to what has been stated in para 8 viz. "... but a right has been claimed by applicants of announcement of the panel on the basis that written test and the viva-voce test had already been held and to promotion on the basis of the panel so declared and the competence of the respondents to hold a fresh test has been challenged. According to us the right of the applicants to be considered for promotion which is all they can claim is not at all affected because it is open to them to appear for the fresh written test to be held by the respondents. According to us any inconvenience to which the applicants would be subjected as a result of being required to appear at the fresh written test has to yield to the general responsibility of the railway administration (respondents) to ensure that the procedural irregularities and other defects do not vitiate the sanctity of the process of selection."

3. We, therefore, consider that there is no merit in terms of Rules under Order 47 of CPC in the Review Petition which is liable to be rejected. We reject the same by circulation as provided by rules.

...4.

4. M.P. No.422/96 is a prayer for interim relief viz. ⁽¹⁾to restrain the respondents from conducting any fresh written test for selection to the post of Chief Clerk⁽²⁾. The second M.P. ~~which~~ is not numbered, of which Diary Number is 4146. In this M.P. it is prayed that the respondents may be restrained from giving effect to the letter dt. 14.6.1996 Annexure 'A' to the application. This letter is regarding the written examination. In other words, the general relief claimed in the first M.P. is made specific in the second M.P. with reference to the Circular since issued. Since R.P. does not survive, the M.Ps. are liable to be rejected and are accordingly rejected. Incidentally, we are constrained to observe that the copy of the Judgment enclosed with the R.P. is incomplete because only 8 pages are enclosed, whereas, the original order contains 9 pages. We strongly deprecate such carelessness on the part of the petitioners.

M.R. Kolhatkar

(M.R. KOLHATKAR)
MEMBER(A)

B.S. Hegde

(B.S. HEGDE)
MEMBER(J).

B.

del 26/1/96
Order/Judgement despatched
to Applicant/Respondent(s)
on 9/7/96

9/7/96