

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

REVIEW PETITION NO.77/2001
IN O.A. NO.488/1996

Dated : 21. /8/2002

CORAM:HON'BLE SHRI S.L.JAIN, MEMBER(J)
HON'BLE SMT.SHANTA SHAstry, MEMBER(A)

S.Sadasivan and 2 Ors. ... Applicant

V/s.

Union of India & Another ... Respondents
(Review Petitioners)
By Advocate Shri V.S.Masurkar

(Order)

Per Smt.Shanta Shastry, Member(A)

The present Review Petition is filed by the respondents in OA No.488/96. The OA was disposed of on 22/10/2001. According to the review petitioners, there is patent error of law on the face of the record. According to the review petitioners, the Circle gradation list prepared in 1995 was based on the existing departmental rules and strictly in accordance with Rule 32-E of the P&T Vol. No.IV. Therefore, the general policy of the Government of India on the matter of seniority as contained in OM dated 3/7/1986 of the DOP&T will have no application in the instant case. The review petitioners are relying on the judgement of the Supreme Court in the case of Mangal Das K Desai V/s. Shashikant R Desaid and Others reported in (2000) 9 SCC 28. It is further submitted that the three applicants in the original application were direct recruits and they had not undergone any examination for their recruitment and the examination at the end at the training centre is the deciding factor for fixing seniority as per the order of recruitment. Therefore, the

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grievance of the applicant is totally outside the purview of the statutory rules governing the seniority including the interse seniority. The action of Maharashtra Circle and all other circles is identical and nobody raised grievance in any of the other circles and hence implementing the order of the Tribunal will result in very big exercise to prepare a seniority list of the cadre on the basis of date of appointment in the cadre. It will not only have effect on the circle gradation list but also have effect on all other circles and the All India seniority list will have to be revised.

2. Further, in the case of the SC/ST candidates against unfilled reserved vacancies of Departmental Competitive Examination. The applicants are totally differently situated in the recruitment process and cannot compare themselves with SC/ST candidates.

3. The learned counsel for the respondents i.e., the review petitioners took the objection, that the OA suffers from non-impleadment of affected parties. Atleast some affected parties ought to have been impleaded in the interest of justice and fair play. This is a serious error apparent on the face of the judgement.

4. The learned counsel for the review petitioners again argued that the Tribunal cannot brush of or reject the review petition on the ground that "even if the Tribunal has committed a mistake, it cannot be corrected in a review. It is for the Supreme Court to correct the same. Such a view of the Tribunal is not conducive to the proper functioning of the judicial service when a patent error is brought to the notice of the Tribunal, the Tribunal is duty bound to correct with grace its

mistake of law by way of review of its orders/directions" as has been held in the judgement of the Supreme Court in the case of Surjit Singh V/s. Union of India, AIR 1997 SC 2693. According to the review petitioners, therefore this is a fit case for review and the Tribunal may review the same accordingly.

5. The applicant appearing in person also filed a reply to the review petition refuting the grounds taken by the review petitioners. He referred to the judgement of the Supreme Court dated 26/4/2000 in the case of SC/ST Social Welfare Association in Civil Appeal No. 4339/95 reported in (2000)9 SCC 71 which has been considered in the judgement wherein it was held that para-206 of P&T VolIV (Est) had lost its efficacy and relevancy from 28/6/1966 after the Telegraph Engineering Service (Gr.B) Recruitment Rules 1966 notified on 15/6/1966 under Article 309 of constitution of India. The Supreme Court upheld on 13/2/1997 in 1997 SCC 226, the statutory instructions issued under the para-5 of Appendix-I of the Telegraph Engineer Service Recruitment Rules 1966. These Recruitment Rules of 1966 were further superseded on 7/5/1981. These rules also were superseded on 23/7/1996 which are the rules applicable for promotion of the applicants from the post of JTO to Sub Divisional Engineer(SDE). This has been decided by the Supreme Court on 25/10/1996 in the case of Shobana V/s. Union of India and Ors. According to the applicants merely because others had not raised any grievance in respect of seniority list has no meaning. The applicants were recruited on the basis of merit on academic qualification and successful completion of training. Therefore it is not proper to compare the marks obtained by candidates in one course with marks in

other courses or examination. The applicants have cited the same judgements which had been cited by them during the course of hearing of the OA and which have been referred to in the judgement of the Tribunal.

6. We have heard the applicant in OA on review represented through Shri S.Sadashivan and the learned counsel for Respondents, Shri V.S.Masurkar.

7. We find that the learned counsel for the review petitioners have tried to put forth the same arguments which were put across during the course of the hearing of the OA. All that the Tribunal has held is that the seniority should be decided on the basis of the year of recruitment and the date of appointment after the marks obtained at the end of the training course. However, the persons undergoing training in different batches and appearing in different examination at the end of the training cannot be compared. Comparison can be only between equals i.e. those who belong to the recruitment of 1989 and among all appearing in the same examination at the end of the same training course.

8..... As regards SC/ST, this Tribunal has refrained from giving any finding as the SC/ST candidates were not made a party to the OA. Similarly, though the point regarding non joinder of the parties was made out by the respondents in the OA, this Tribunal held the view that it was not necessary to join the persons who were placed above the applicants wrongly in the seniority list. The relief is claimed against the Union Government and not against any particular individual. The contention is regarding

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the criteria adopted by the Union Government in drawing up the impugned seniority list. The Tribunal thus had taken note of the objections raised by the respondents.

9. In our considered view, no new points have been raised by the review petitioners which would call for a review of the judgement and order dated 22/10/2001. Accordingly, the review petition is dismissed.

Shanta

(SMT. SHANTA SHAstry)
MEMBER(A)

SLJ

(S.L.JAIN)
MEMBER(J)

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