

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 596/96.

Date of Decision: MARCH 10th, 1998.

Surendra Kumar Tigunayat, Applicant.

Shri Suresh Kumar, Advocate for Applicant.

Versus

Union Of India & 5 Others,

Respondent(s)

Shri ~~N. K. Srinivasan~~ ^{V. S. MASURKAR} Advocate for Respondent No. 1 & 2.

Shri P. G. Zare, Advocate for Respondent(s) Nos. 3, 4 & 6.

CORAM:

Hon'ble Shri. Justice R. G. Vaidyanatha, Vice-Chairman.

Hon'ble Shri. P. P. Srivastava, Member (A).

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

R. G. Vaidyanatha
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 596/96

Dated this ^{pronounced} ~~10th~~ the 10th day of MARCH, 1998.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,
VICE-CHAIRMAN.

HON'BLE SHRI P. P. SRIVASTAVA, MEMBER (A).

Surendra Kumar Tigunayat,
Law Assistant (Adhoc),
O/o. Deputy Chief Personnel
Officer (H.Q),
Western Railway,
Churchgate,
Mumbai - 400 020.

(By Advocate Shri Suresh Kumar)

... Applicant

VERSUS

1. Union Of India
through the Chairman,
Railway Board,
Rail Bhavan,
New Delhi.
2. The General Manager,
Western Railway,
Churchgate,
Mumbai - 400 020.
3. Shri P. G. Joshi,
Law Assistant,
M.T.P.-CCG, Western Rly.,
Churchgate, Bombay-400 020.
4. Smt. A.F. Thomas,
Law Assistant,
CCO-CCG, Western Railway,
Churchgate, Bombay-400 020.
5. Shri K.K. Dubey,
Law Assistant,
PRO-CCG, Western Railway,
Churchgate, Bombay-400 020,
6. Shri N. Vasant Kumar,
Law Assistant,
CCO-CCG, Western Railway,
Churchgate, Bombay-400 020.

... Respondents.

(By Advocate Shri ~~N. K. Srinivasan~~ ^{V.S. MASURKAR}
for Respondent Nos. 1 & 2.

By Advocate Shri P.G. Zare for
Respondent Nos. 3, 4 and 6).

: ORDER :

¶ PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN ¶

This is an application filed under Section 19 of the Administrative Tribunals Act, 1985. The respondents have filed reply. We have heard the Learned Counsels appearing on both sides.

2. The applicant's case is that, he is working on adhoc basis as Law Assistant in the Western Railway since 1993. Then, for the purpose of regular appointment, applications were called for in 1994. The applicant responded to the said offer and applied for the post. A written test and viva-voce was held for selection of Law Assistants. During the selection process, the respondents have awarded 15 marks for seniority, though the candidates were from different units. It is alleged that in view of the law declared by the Supreme Court, awarding of seniority marks for the purpose of selection of Law Assistant is illegal. Therefore, the panel prepared on the basis of total marks including the marks of seniority, is not sustainable in law. In view of this new panel of six persons published by the Selection Committee for appointment of Law Assistant dated 12.06.1996, the applicant is liable to be reverted from his adhoc post as Law-Assistant. Hence, this application is filed praying for quashing of the Selection Panel dated 12.06.1996 and for a direction to the respondents to declare the panel without taking into consideration the seniority marks and for other consequential reliefs.

3. The official respondent nos. 1 and 2 have filed a reply stating that the seniority marks are given to the candidates as per rules. That there is no illegality in the selection panel prepared for the post of Law Assistant. That the applicant is not entitled to any other reliefs prayed for. The other allegations in the reply are not relevant for the present purpose.

4. Four of the candidates appearing in the impugned selection panel are made as Respondent nos. 3 to 6. Only Respondent Nos. 3, 4 and 6 have entered appearance through their advocate and they have opposed the O.A. Respondent No. 5, Shri K. K. Dubey, has remained unrepresented.

5. At the time of hearing, the Learned Counsel for the applicant contended that the preparation of the selection panel by awarding marks for seniority is illegal and the select panel should be prepared excluding the seniority marks. According to him, the Select Panel should be prepared purely on the basis of merit, namely the marks obtained in the written test and viva-voce. On the other hand, the Learned Counsels appearing for the official respondents and private respondents contended that awarding of seniority marks is perfectly justified under the rules. Further, they also submitted that the select panel should be arranged not on the basis of total marks but on the basis of seniority.

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6. As far as the main question is concerned, ~~marks for~~ namely - whether awarding of seniority is justified or not, the question is no longer res-integra but it is covered by a direct authority of the Supreme Court which is reported in 1996(1) SC SLJ 536 ¶ M. Ramjayaram V/s. General Manager, South Central Railway & Others ¶. In that case, in an identical case of appointment to the post of Law Assistant, the Apex Court has observed that giving seniority marks is illegal. Today, ~~we have held~~ in an identical case in O.A. No. 503/92 challenging the appointment to the post of Law Assistant by awarding of seniority marks was held illegal in the light of the observations of the Supreme Court. Infact, we heard common arguments of advocates on both sides, both for the present O.A. and O.A. No. 503/97. In the order passed by us today in O.A. No. 503/97, we have given detailed reasons after referring to the decision of the Supreme Court and the relevant provisions of the Indian Railway Establishment Manual and for the same reasons which we adopt here, we hold that giving of seniority marks is illegal.

7. ~~In view of the above~~ ~~we have taken the view~~ that seniority marks are to be excluded from consideration while preparing the select panel and we hold that the Selection Committee should revise the select panel. We find that the Selection Committee has given various marks for seniority upto marks of 15 to different candidates. One of the candidate has been given 15 marks. The lowest seniority

marks given is 5. Even the present applicant has been given 8 marks for seniority. Therefore, all these seniority marks given to all the seventeen candidates who appeared in the viva-voce will have to be excluded from consideration. The maximum marks kept for seniority was 15 out of the total marks of 100. If this 15 marks is excluded, then the total marks will be 85 marks. Then as per rules candidate must get 60% of the marks and above for being kept on the select panel. We have today observed in our considered order in O.A. No. 503/97 that a list of all the candidates who have obtained 60% and above out of 85 marks, in other words, the candidates obtaining 51 marks and above out of 85, should be prepared. Then, we have observed in that order that the final select panel should be arranged in the order of seniority. On the basis of that final select panel prepared on the basis of seniority, appointment orders will have to be issued depending upon the number of vacancies.

In this case, there are six candidates in the impugned select panel which is at page 18 of the paper book. Among the candidates in this panel, Sl. No. 5 & 6 belong to S/T and S/C category. They are not made parties to the present O.A. We may also notice that this panel dated 12.06.1996 has already been implemented and appointment orders have been issued to all of them. They have joined the post in 1996 and we are told that one of them is even promoted to the next post as Chief Law Assistant. We are also

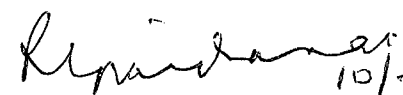


informed at the time of argument by the Learned Counsel for the applicant that Respondent No. 5, Shri K. K. Dubey, has not accepted the post as Law Assistant and he is no longer working as a Law Assistant.

8. As already stated, since the candidates at Sl. No. 5 and 6 belong to S/C and S/T category and they are not made parties to the O.A. and their appointment is not challenged, their appointments cannot be disturbed by the respondents while doing the exercise of preparing a fresh panel. The department must now prepare a fresh panel only for the ~~four~~ posts of General candidates on the basis of getting 60% of the marks out of 85 and then arranging the names of the selected candidates in the order of seniority as observed above. If, as a result of the preparation of revised panel as indicated above, the name of any candidate who has been already selected and appointed as Law Assistant does not find place in the revised panel, then in the normal course, he will have to be reverted, but we find that these selected and appointed candidates have already joined the post and are working there for more than 2½ to 3 years. We, therefore, feel that they should not be made to be reverted but they can be continued as Law Assistants on adhoc basis by giving one more opportunity to them to appear in the next selection by appearing in the written test and viva-voce, etc.

9. In the result, the O.A. is allowed partly. We direct that the select panel dated 12.06.1996 (exhibit A-1 to the O.A.) should be revised and a fresh panel should be prepared by excluding the marks given for seniority and then^a list of candidates who secured 60% of marks and more in the aggregate should be prepared and the names should be arranged on the basis of seniority as per the guidelines given in this order and also in the detailed reasons given in the order passed today in O.A. No. 503/97. If on the basis of revised list, the applicant is empanelled, then he is entitled to be appointed as Law Assistant. We direct the Selection Committee to go through this exercise and prepare a fresh panel of names for the post of Law Assistants within a period of two months from the date of receipt of this order. In the circumstances of the case, there will be no order as to costs.


(P.P. SRIVASTAVA)
MEMBER (A).


(R. G. VAIDYANATHA) 10/3/98
VICE-CHAIRMAN.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

REVIEW PETITION NO. 38 & 39 / 98,
AND
MISCELLANEOUS PETITION NO.334 of 98
AND 335/98.
IN
ORIGINAL APPLICATION NO. 596 / 96.

Friday, this the 10th day of July, 1998.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri D.S.Baweja, Member(A).

S.K.Tigunayat. ... Applicant.

(By Advocate Shri Suresh Kumar)

V/s.

Union of India & Anr. ... Respondents.

(By Advocate Shri V.S.Masurkar)

O R D E R

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

The Review Petition No.38/98 is filed by the applicant and Review Petition No.39/98 is filed by the Respondents. The respondents have filed M.P.334/98 for condonation of delay in filing the Review Petition No.39/98. M.P. 335/98 is a petition filed by the applicant for some directions. We have heard the learned counsel appearing for both sides.

2. In both the Review Petitions filed by the applicant and respondents, they are requesting the Court to review the Judgment passed by this Tribunal dt.10.3.98. After going through the averments in the two review petitions and after hearing the learned counsel in support of their ^{side} say, We find that the grounds urged are more in the nature of an appeal against the Judgment dt. 10.3.1998. The scope of review under

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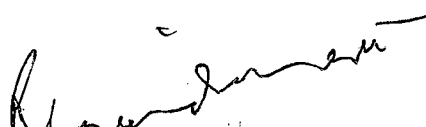
Order 47 Rule 1 of C.P.C. is very very limited. The review is permissible if there is any apparent error on record or if there is any discovery of new facts.

~~discovery~~ In the present case there is no allegation of discovery of new facts or material. But in the Review Petitions some grounds are given to show that the findings giving in the Judgment dt. 10.3.1998 are not correct and are required to be corrected. In our view, these review petitions are not strictly in terms of Order 47 Rule 1 of CPC and they are more in the nature of an appeal. If the respective parties are aggrieved by the Judgment of this Tribunal, their remedy is elsewhere and certainly not by way of a Review Petition, with this ^{observation} the Review Petition is rejected. M.P. No.334/98 filed by the Respondents for condonation of delay in filing is also liable to be rejected.

3. It is submitted at the bar that the respondents have moved the Railway Board for instructions and the matter will require some time for implementing the directions given in the order dt. 10.3.1998. After hearing both sides we feel that the period of three months from to day would be just and reasonable.

4. In the result, Review Petitions No.38 & 39/98 and M.P.334/98 are rejected. However, M.P. 335/98 is hereby allowed by granting three months time to the respondents to comply with the directions of the order of the Tribunal dt. 10.3.1998. No costs.


(D.S. BAWEJA)
MEMBER (A)


(R.G. VAIDYANATHA)
VICE-CHAIRMAN.