

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: MUMBAI

ORIGINAL APPLICATIONS NO. 192/96 & 193/96

THIS THE 14th DAY OF SEPTEMBER, 2001

CORAM: SHRI S.L. JAIN ... MEMBER (J)
SMT. SHANTA SHAstry. ... MEMBER (A)

Shri Bijivemula Ramasubbaiah,
Aged about 31 years,
R/o I.O.W. Gause Conversion,
S.E. Railway Wadsa,
Dist. Gadchiroli,
Pin: 441 207 (Maharashtra State) ... Applicant in OA.
192/96

Shri Kole Hari Kumar,
Aged about 29 years,,
R/o Hd. Estimator,
O/o Ch. Project Manager (GC),
South Eastern Railway,
Nagpur-440 001. ... Applicant in OA
193/96

By Advocate Shri S.K. Srivastava.

Versus

1. Union of India through
The General Manager,
South Eastern Railway,
Garden Reach,
Calcutta-43.
2. The Chief Personnel officer,
South Eastern Railway,
Garden REach,
Calcutta-43.
3. The Chief Project Manager,
(Gauge Conversion),
South Eastern Railway,
Nagpur-440 001. ... Respondents

By Advocate Shri P.S. Lambat.

O R D E R

Smt. Shanta Shastry, Member (A)

These two OAs involve common facts of law and issue, therefore, they have been heard together with the consent of the advocates and are being disposed of by a common order.

2. The brief facts in OA No.192/96 are given for facilitating the appreciation of the issue. The applicant was appointed as Works Mistry in the scale of Rs.1400-2300 on 25.11.88. After completion of the probation period, the applicant was regularised on 18.12.92. He was promoted as Inspector of Works Grade III in March, 93 and thereafter was promoted on adhoc basis as Inspector of Works Grade II in the scale of Rs. 1600-2660.

3. The respondents issued an advertisement on 28.2.95 for holding Limited Departmental Competitive Examination (LDCE for short) for Group "B" panel for Assistant Engineer against 30% vacancies of Civil Engineers. The applicant also applied for the same on 31.3.95. However, his name was not forwarded. He represented and thereafter, a list dated 3.4.95 including the applicant's name in the eligibility list was forwarded and published on 9.8.95. The applicant

appeared in the said examination. The respondents declared the result of the examination on 5.2.96. The applicant's name was not ~~having~~ included for vivavoce. All those, whose names were sent subsequently were not included in the list of successful candidates. According to the applicant, he was fully confident about being successful in the written examination.

4. The applicant has amended the OA due to subsequent developments. The reason given for not including the applicant's name for the viva voce was that the respondents found that the applicant had been erroneously allowed to appear in the written test, as he had not completed 5 years of regular service as on 1.4.97 and therefore, he could not be considered. Some other employees, who appeared in the written examination and qualified in the written test but had not been called for viva voce test, approached the Cuttack Bench of the Tribunal by filing OA No.126/96. This was finally disposed of by the Cuttack Bench by the judgment and order dated 4.9.98 allowing the OA and directing the publication of the final result of the selection as in between the period as per the interim order of the Tribunal, viva voce test of the applicants in OA 128/96 was held, but result had been withheld and also to take consequential action of issuance of promotional orders. The respondents, thereafter filed a Writ Petition in the High Court of Orissa at Cuttack against the said judgment. The High Court dismissed the writ petition by

a speaking order on 4.5.99 confirming the view taken by the Cuttack Bench of the Tribunal and the judgment has become final. The Tribunal held that the service prior to 1992 should be treated as non fortuitous service for the purpose of ^{eligibility for} Limited Departmental Competitive Examination.

5. According to the applicant, this ratio of the Cuttack Bench of the Tribunal squarely applies in the applicant's case also and therefore, the benefit of the judgment should be given to him. Further, a contempt petition was filed as the judgment of the Cuttack Bench of the Tribunal had not been implemented. Later on, promotional orders in respect of 9 applicants in OA 128/96 were issued on 5.5.2000. As a result of letter dated 28.1.2000 of the Railways, those employees including the applicants were called for viva voce test proposed to be held on 29.2.2000, which was finally held on 15.3.2000. The applicant appeared before the Committee. However, again the respondents failed to declare the result of the viva voce in respect of the applicants. While granting the benefit to others, who were parties in the OA No.128/96 in the Cuttack Bench of the Tribunal, the respondents have denied the same on the ground that the applicant was not a party to the OA 128/96 and hence, is not entitled for the benefit.

6. The only stand taken by the respondents is, that the applicant's case is distinguishable from that of the applicants in OA 128/96, as in that OA, the applicants had been allowed to appear in the viva voce and only the results had been withheld. In the applicant's case, he had not appeared in the viva voce test and therefore, there is no question of considering the applicant. The benefit can be given to only those who were parties in OA 198/96.

7. It is seen that the applicant had also filed OA 329/99. At the admission stage itself, that OA was disposed of observing, that in case the applicant had appeared in the viva voce test and marks had been assigned to him, then the result must be declared and if the applicant passed in the viva voce test, then he must be empanelled for the purpose of promotion to the post of Assistant engineer subject to his seniority and merit. However, if the applicant has not attended the viva voce test or no marks are given to him in the viva voce test, then the department should subject the applicant afresh for viva voce test and on the basis of the performance in the viva voce test, his result must be declared and he should be empanelled subject to his merit position. It was further directed that in case he gets promotion as a result of direction given by the Tribunal, then he should be given notional promotion from the date of his juniors given promotion and he shall be entitled to whatever consequential benefits.

permissible under the rules. The directions were very clear, the applicant appeared in the viva voce and therefore, the respondents should have declared the result.

8. The learned counsel for the applicant has contended that his case is identical to the case of applicants in OA No.128/96 and the benefit of that judgment, which has become final, should be extended to the applicant also.

9. The respondents have opposed the application on the ground that the applicant was not a party to the OA 128/96, secondly, the applicant had not appeared in the viva voce test at the time he filed the OA and thirdly, there is no scope for enlarging the panel for which special orders need to be issued by the competent authority. It is not possible to revise the procedure of formation of panel again and again at the behest of the employees like the applicant.

10. In our considered view, the only issue in this case is about whether the applicant possessed 5 years regular service on the cut off date. The applicant had completed 5 years service eligible for applying to the LDCE as on 1.1.97 in view of the ratio laid down by the Cuttack Bench that the service prior to 1992 is to be treated as non fortuitous service. The same ratio would apply in the case of the present applicant also.

11. We have heard the learned counsel for both sides and have given careful consideration to the pleadings. In our considered view, the applicant's case is on all fours with those in OA No.128/96. Since the issue of law has already been decided in that case, it needs to be applied in the case of the applicant also as the facts are similar in this case.

12. The learned counsel for the respondents tried to point out that since the applicant had not been regularised earlier and was regularised only in 1993, he is not eligible. The learned counsel relied on the judgment reported in 2000 (2) SCSLJ 235. In our considered view, as the Cuttack Bench of this Tribunal has clearly laid down the ratio, we cannot now discriminate between the applicants who are similarly placed and those in OA 128/96. We, therefore, hold that the applicant was eligible for appearing in the written examination held in 1995. Now that the *viva voce* has already been held in the case of the applicant, he is entitled to the declaration of the result. The respondents should comply with the orders already given by this Tribunal in OA No.329/99 dated 25th October, 1999 by declaring the result of the *viva voce* and considering the applicant for promotion on the basis of his merit with all consequential benefits if found fit. They are directed accordingly. This exercise should be

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completed within a period of 3 months from the date of receipt of copy of this order. The same holds good for the applicant in OA No.193/96.

13. In the result, both the OAs are allowed. No costs.

(SMT. SHANTA SHAstry)
MEMBER (A)

(S.L. JAIN)
MEMBER (J)

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(सन्. ए. शास्त्री)

उप निदेशक,

फेदिय प्रशासनिक अ निकरण,
मुम्बई व्यापारी, मुम्बई.

गुलस्तान विहार, निस्कॉट रोड,
फॉटो, मुम्बई-२८००१.

original file
in OA 192/96

192/96

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

R.P.No.5/2002 in OA.NO.192/96
and R.P.No.6/2002 in OA.NO.193/96

Dated this the 23rd day of October 2002.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Smt.Shanta Shastry, Member (A)

1. Bijivemula Ramasubbaiah,
R/o Assistant Engineer
Engineering Workshop,
SINI, Jharkhand State. (Applicant in OA.192/96)
2. Kole Hari Kumar,
R/o Chief Estimator,
O/o Dy Chief Engineer
(Construction),
South Eastern Railway,
Nagpur. (Applicant in OA.193/96)

By Advocate Shri V.G.Rege

vs.

1. Union of India
through The General Manager,
South Eastern Railway,
Garden Reach,
Kolkata.
2. The Chief Personnel Officer,
South Eastern Railway,
Garden Reach,
Kolkata.
3. The Chief Project Manager,
(Gauge Conversion),
South Eastern Railway,
Nagpur.

... Respondents

None for Respondents.

O R D E R

{Per : Shri S.L.Jain, Member (J)}

This Tribunal decided OA.No.192/96 and OA.No.193/96 by a common order dated 14.9.2001 allowing both the OAs.

2.. The Applicant in OA.NO.192/96, viz. Bijivemula Ramasubbaiah and Applicant in OA.No.193/96, viz. Kole Hari Kumar have filed separate Review Applications which are numbered as R.P.NO.5/2002 and 6/2002 respectively.

3. The grievance of the applicants in Review Applications is with respect to Para 12 of the order by which the respondents were not clearly directed what to do.

4. It is worth mentioning that Applicant in OA.NO.192/96 viz. Bijivemula Ramasubbaiah has filed OA.No.329/99 which was decided vide order dated 25.10.1999 with a direction to the respondents to declare the result of viva-voce and consider the applicant for promotion on the basis of merits with all consequential benefits if found fit. In Review Petition, it has been explained that OA.No.329/99 was in connection with the Limited Departmental Competitive Examination for formation of Group 'B' Panel for the post of Assistant Engineer against 30% vacancies of Civil Engineering Department initiated by issuance of Notification No.DCPO(G)/CON/SB/LDE/2/Pt.III, dated 3.11.1997 issued by 2nd Respondent at which the said Applicant B.Ramasubbaiah had only appeared.

5. OA.NOs.192/96 and 193/96 relate to Limited Departmental Competitive Examination for Group 'B' panel for Assistant Engineer against 30% vacancies of Civil Engineers in pursuance of an Advertisement issued by respondents on 28.2.1995. Thus, there were two Limited Departmental Examinations for formation of Group 'B' Panel for the post of Assistant Engineer.

6. It was held in our order dated 14.9.2001 as under :-

"In our considered view, as the Cuttack Bench of this Tribunal has clearly laid down the ratio, we cannot now discriminate between the applicants who are similarly placed and those in OA.128/96. We, therefore, hold that the applicant was eligible for appearing in the written examination held in 1995. Now that the viva voce has already been held in the case of the applicant, he is entitled to the declaration of the result."

In fact, there is no necessity to further direct the respondents to declare the result in respect of Limited Departmental Examination held in pursuance of issue of an Advertisement by Respondents dated 28.2.1995. It is clarified that the respondents to declare the result relating to the applicants in view of Departmental Examination held in pursuance of an Advertisement issued on 28.2.1995 by the respondents within one month from the date of receipt of copy of order. This order shall be treated as part of order dated 14.9.2001. Review Petitions are disposed of as such.