

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 329 of 1999.

Dated this Monday, the 25th day of October, 1999.

B. Ramasubbaiah, _____ Applicant.

Shri Shri V. G. Rege, _____ Advocate for the
applicant.

VERSUS

Union of India & Others, _____ Respondents.

Shri V. S. Masurkar, _____ Advocate for
Respondents.

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

Hon'ble Shri D. S. Baweja, Member (A).

- (i) To be referred to the Reporter or not ?
(ii) Whether it needs to be circulated to other Benches
of the Tribunal ?
(iii) Library. - yes

} NO


(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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

Hon'ble Shri D. S. Baweja, Member (A).

B. Ramasubbaiah,
Section Engineer (Works),
under the Dy. Chief Engineer (C),
D.R.M. Office Complex,
Central Railway,
Solapur.

... Applicant.

(By Advocate Shri V. G. Rege)

VERSUS

1. Union of India through
The General Manager,
South Eastern Railway,
Garden Reach,
Calcutta.
2. Chief Personnel Officer,
South Eastern Railway,
Garden Reach,
Calcutta.
3. Deputy Chief Personnel
Officer (Gaz.) through
second respondents
abovenamed.

... Respondents.

(By Advocate Shri V.S. Masurkar)

O R D E R (ORAL)

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. Since the point involved is a short point and is covered



by an earlier decision of the Bench of this Tribunal at Cuttack, we are disposing of this application at the admission stage.

2. The short point of dispute between the parties is, whether the applicant is entitled to be called for selection for promotion to the post of Assistant Engineer Group 'B' against 30% Limited Departmental Competitive Examination.

It is a common ground that applicant had been called for the written examination and applicant actually participated in the written examination. He was also successful in the written examination. According to the applicant, after passing the medical test, he was called for viva-voce and he attended viva-voce test held on 25.08.1998 but his result of viva voce examination has not been declared.

The stand of the respondents is, that by mistake or erroneously the applicant was called for the Limited Departmental Competitive Examination but infact, he was not entitled for appearing in the examination since he did not have the minimum qualifying regular service. It is also stated that applicant was not examined in the viva-voce examination since he was not qualified and eligible for being considered for promotion to the post in question.

3. As could be seen from the pleadings and admitted documents, the applicant was appointed as Temporary Works Mistry in the Construction organisation on 25.11.1988 and he was regularised on 24.05.1988 (vide exhibit 'F' at page 30 of the Paper Book). Subsequently, the applicant came to be absorbed in the Open Line against 75% of direct recruitment quota in IOW Grade-III as per the letter dated 16/18.12.1992. The letter is exhibit 'G' at page 31 of the Paper Book. The applicant's name finds place at sl. no. 28.

According to the applicant, he must be deemed to be in regular service right from earlier regularisation, namely - 24.05.1988, but the stand of the respondents is, that applicant will be in regular service only from December, 1992 and not earlier.

We need not consider the question on first principles, since identical matter has been considered by the Cuttack Bench of this Tribunal, where an employee whose name finds a place in panel at page 31 of the Paper Book, namely - K. Suryanarayana, filed an O.A. No. 128/96 in the Cuttack Bench of this Tribunal. The same dispute was raised in this case by the Railway Administration, namely - that these employees cannot be said to be in regular service till 1992. The Tribunal went into the question in detail and at page 24 of the judgement it is mentioned that the services of the applicant till 17.12.1992 was non-fortuitous service and, therefore, they must be held to be

in regular service and had non-fortuitous service of more than five years as on 01.11.1994 and hence eligible to appear in the written test of Limited Departmental Competitive Examination for the purpose of next promotion to the post of Assistant Engineer. Then the respondents filed a Writ Petition in the High Court of Orissa, Cuttack, against the said judgement in O.J.C. 14206 of 1998. The High Court of Orissa by a considered speaking order dismissed the Writ Petition by order dated 04.05.1999 and thereby confirmed the view of the Tribunal of Cuttack Bench. The judgement has now become final. Therefore, in view of the law laid down by the Cuttack Bench and confirmed by the Orissa High Court, the service prior to 1992 should be treated as non-fortuitous service for the purpose of eligibility for the Limited Departmental Competitive Examination.

4. In the present case, the cut off date is 01.01.1997 and one must have five years of regular service as on that date. The cut off date in the present case is 01.01.1997, on which date the employees who have completed five years of regular services (non-fortuitous) are eligible to appear for the examination in question. In view of the Cuttack Bench of this Tribunal, even the services prior to 18.12.1992 should be held as non-fortuitous service. Therefore, the applicant is entitled to apply for the Limited Departmental Competitive Examination in pursuance of the notification dated 03.11.1997. It is not disputed that applicant did appear in the written examination and he ^{has} ~~was~~ passed.



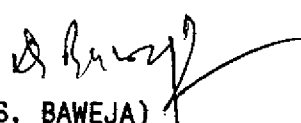
Therefore, the respondents' stand that applicant was not eligible for appearing in the examination and he was erroneously called for examination cannot be accepted in view of the above decisions.

5. There is some dispute between the parties about applicant's actually appearing in the viva-voce test. According to the applicant, he did undergo the medical examination and appeared in the viva-voce on 25.08.1998 but in the reply, the respondents are not admitting this fact. We do not have any record before us today. In the circumstances, we only observe that in case the applicant has appeared in the viva-voce test and marks have been assigned to him, then the results must be declared and if the applicant has 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 were given to him in the viva-voce test, then the department should subject the applicant to a fresh viva-voce test and on the basis of his performance in the viva-voce, his results must be declared and if he has passed, he should be empanelled subject to his merit position.

6. In the result, the application is allowed subject to directions given in para 5 above. In case the applicant gets



promotion as a result of the direction given by us, then he should be given notional promotion from the date of his junior's promotion and he shall be entitled to whatever consequential benefits permissible under the rules. In the circumstances, the respondents are directed to comply with this order within a period of three months from the date of receipt of a copy of this order. No order as to costs.


(D. S. BAWEJA)

MEMBER (A)


(R. G. VAIDYANATHA)

VICE-CHAIRMAN.

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

C.P. NO.: 61/2000 IN O.A. No. 329/99

Dated this Tuesday, the 21st day of August, 2001.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).
Hon'ble Shri S. L. Jain, Member (J).

B. Ramasubbiah,
Section Engineer (Works),
under the Dy. Chief Engineer
(Construction),
Divn1. Railway Manager's
office complex, Central Railway,
Solapur.

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Applicant

(By Advocate Shri V.G. Rege)

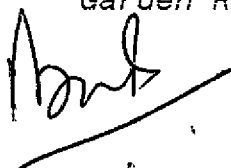
VERSUS

1. Union of India through
The General Manager,
South Eastern Railway,
Garden Reach, Calcutta.
2. Chief Personnel Officer,
South Eastern Railway,
Garden Reach, Calcutta.
3. Deputy Chief Personnel
Officer (through Second
Respondent above named).

... Respondents.

AND

1. Shri R. K. Thoopal,
General Manager,
South Eastern Railway,
Garden Reach Calcutta.
2. Shri R. R. Bhandari,
Chief Personnel Officer,
South Eastern Railway,
Garden Reach, Calcutta.
3. Shri A. K. Bramho,
Deputy Chief Personnel Officer,
South Eastern Railway,
Garden Reach, Calcutta.



4. Shri Ashok Kumar,
Chairman, Railway Board,
Ministry of Railways,
Rail Bhavan, New Delhi.

... Contemnors.

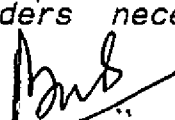
(By Advocate Shri V. S. Masurkar)

TRIBUNAL'S ORDER

We have before us the Contempt Petition No. 61/2000 arising out of the order made by this Tribunal in O.A. No. 329/99. We have been assisted by the Learned Counsel for Original Applicant, Shri V. G. Rege and have also heard Shri V.S. Masurkar, the Learned Counsel for Respondents and perused the papers in the case. Shri V.S. Masurkar drew our attention to the affidavit filed by the Original Respondent No. 2, Shri R. R. Bhandari, dated 20.03.2001 as also the affidavit by Shri M. C. Srivastava, General Manager, South Eastern Railway, Garden Reach, Calcutta (Original Respondent No. 1) dated 27.06.2001.

2. At the outset, we were informed by the Learned Counsel, Shri V.G. Rege, that the orders for promoting the Applicant have now been made on 25.06.2001. In fact, a copy of orders in this regard have been annexed with the M.P. No. 552/01 filed by the original respondent. Thus, it is clear that while the orders have been implemented, there has been considerable delay in its implementation.

3. We have carefully gone through the reasons pointed out for the delay in the internal page No. 3 of Shri R. R. Bhandari's affidavit. The point made is that some four orders were made in various O.As. filed before the Hyderabad Bench, copies of which are annexed to M.P. No. 552/01. It is submitted that these orders necessitated the holding of the process of selection





afresh and it needed permission from the Railway Board, etc. and since the Applicant's case was considered alongwith others, it entailed delay. Shri Rege did point out that this delay has caused loss in financial and other terms to the Applicant and that the Applicant's case should have been treated separately and also cited certain arguments.

4. We also note that in the affidavit filed by Shri M.C. Srivastava, General Manager, South Eastern Railway, an unconditional apology has been tendered and a request made that this may be accepted.

5. Considering all the facts, as discussed above, and the arguments made, it is clear that there has been delay in this case but considering all factors, we are not holding that the delay as intentional and also note the apology made. In view of this, we do not hold that a contempt has been committed. Notice on this Contempt Petition issued are therefore discharged and the C.P. is rejected. M.P. No. 552/01 also stands disposed of.

6. It is, however, clarified that should the Applicant have any grievance or any prejudice caused to him arising out of delay or otherwise, and if he is so advised, he is at liberty to come up to the Tribunal afresh as per law. No order as to costs.

(S.L. JAIN)
MEMBER (J).

OS*

dl 21/8/01
order/judgment despatched
to Applicant's dependent (s)
on 31/9/01

(B.N. BAHADUR)
MEMBER (A).