

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038

Dated : 5 APR 1989

REVIEW APPLICATION NO (s) 49 /88
in Application Nos. 243/86(T) & 862/87(F)
W.P. NO (s) /

Applicant (s)

Shri Mahaboob Ali Khan
To

v/s

Respondent (s)

The Commandant, 515 Army Base Workshop,
Bangalore & 3 Ors

1. Shri Mahaboob Ali Khan No. 1907, Master Craftsman Methods Engineering Department 515 Army Base Workshop Ulsoor Bangalore - 560 008	5. Shri Mohammed Fazluddin Foreman Methods Engineering Department 515 Army Base Workshop Ulsoor Bangalore - 560 008
2. Shri K.J. Shetty Advocate 115, Sampige Road Mallewaram Bangalore - 560 003	6. The Secretary Ministry of Defence South Block New Delhi - 110 011
3. The Commandant Electrical & Mechanical Engineering 515 Army Base Workshop Ulsoor Bangalore - 560 008	7. Shri M.S. Padmarajaiah Central Govt. Stng Counsel High Court Building Bangalore - 560 001
4. The Presiding Officer Board of Officers for Selection of Technical Supervisors C/o The Commandant Electrical & Mechanical Engineering 515 Army Base Workshop Ulsoor Bangalore - 560 008	

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith a copy of ORDER/~~STRA~~/~~RECORDED~~
passed by this Tribunal in the above said Review application (s) on 31-3-89.

Yessica
16.4.89
S.M.C
of P. Venkatesh
DEPUTY REGISTRAR
(JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH :BANGALORE

DATED THIS THE 31ST DAY OF MARCH, 1989

Present:

Hon'ble Shri Justice K.S.Puttaswamy .. Vice Chairman
Hon'ble Shri P. Srinivasan .. Member (A)

REVIEW APPLICATION NO. 49/1988

Mahaboop Ali Khan,
No.1907, Master Craftsman,
Methods Engineering Dept.
515, Army Base Workshop
Ulsoor, BANGALORE-8

.. Applicant

(Shri K.J.Shetty, Advocate)

vs

1. The Commandant,
Electrical Mechanical Engg.,
515, Army Base Workshop,
Ulsoor, Bangalore-8.
2. The Board of Officers for
Selection of Technical Supervisors,
(Ref : Do.1, No:15/Est.
Dt : 4.1.1979)
By its Presiding Officer
C/O The Commandant,
Electrical Mechanical Engg.,
515, Army Base Workshop,
Ulsoor, Bangalore-8.
3. Mohamed Fazluddin,
Foreman, Methods Engineering
Department, 515, Army Bass
Workshop, Ulsoor,
Bangalore-8.
4. The Union of India by its
Secretary, Ministry of Defence,
NEW DELHI. .. Respondents

(Shri M.S.Padmaraajaiah, Advocate)

This application having come up for hearing
today, Shri P. Srinivasan, Hon'ble Member (A) made the
following:

ORDER

The subject matter of this review application
is coming up before us for the fourth time after a brief
passage through the Supreme Court. What the applicant



wants is that we should review our orders dated 5-9-1986 and 2-11-1987 disposing of application No. 243/86 (originally filed as writ petition No. 2705 of 1980 before the High Court of Karnataka) and application No. 862/87 filed by the applicant before this Tribunal. In writ petition No. 2705 of 1980 filed before the High Court of Karnataka, the applicant, who was working at the time as a Toolmaker in the Methods Engineering Department 515 Army Base Workshop, Bangalore, complained that in a selection, the result of which was announced sometime in 1979, his name had been shown against the post of Senior Chargeman Part I Cadre (SC I) while it should, on the basis of his performance in the test held for the purpose, have been shown against the post of Foreman Part II Cadre (FM II) which carried a higher scale of pay. He averred in that writ petition that he had, in response to a notification dated 8-8-1978, issued by the Commandant, 515 Army Base Workshop, applied for both the posts of SC I and FM II, that in the common test which was held for both the posts, he had obtained the highest marks and that therefore, he should have been selected for the higher post of FM II. More specifically, he wanted a writ of mandamus directing the second respondent namely the Commandant, 515 Army Base Workshop, to fill up the post of FM II "in accordance with the proceedings of the Board of Officers held on 1-3-1979 for considering the case of the petitioner for appointment to the said post." When the matter was still pending in the High Court, counsel for the respondents Shri Nandeshwar submitted to the court that "the petitioner has not been selected to the higher post by the Selection Committee and he has been selected only to the lower post which has been offered to him now." (Vide order dated 30-9-1980 recorded on the order sheet by

the learned Judge at the time). The learned Judge further recorded on the same date that "Mr. Jois, learned counsel for the petitioner contends to the contrary and he submits that if the petitioner has not been selected to the higher post, he would withdraw the petition. To verify these controversial facts, Mr. Nandeeshwar is requested to produce the records." Thus, the controversy was narrowed down to ascertaining whether the Selection Committee had actually selected the applicant for the post of FM II. Thereafter the writ petition came to be transferred to this Tribunal and registered as application No. 243/86(f) and came to be heard by us on 5-9-1986. Since the controversy had by then been narrowed down to ascertaining the actual decision of the Selection Committee, we looked into the records maintained by the respondents and found as a matter of fact that the Selection Committee had placed the applicant in the list of persons selected for the post of SC I and not for the post of FM II. In view of this, and consistent with the statement made by the counsel for the applicant in the High Court, we dismissed the application by our order dated 5-9-1986.

2. Thereafter, the applicant filed a review application R.A.No. 15/86 on 15-3-1987. He wanted us to review our order dated 5-9-1986 referred to above. The review application was also heard by us. Disposing of the same by our order dated 25-3-1987, we wrote as follows:-

"Shri M.S.Jois, learned counsel for the applicant, pleads that we should once again verify whether the applicant had been placed on top of the combined list of selectees for both the posts or had only figured in the list of persons selected for the post of Senior Chargeman (Part I Cadre).

We have considered Shri Jois' contention carefully, and we find no merit in this. As we have already explained, we looked into the original records ourselves to ascertain whether the applicant had been placed in the list of selectees



P. S. - 82

for the post of Foreman (Part II Cadre) and we found that his name did not figure there. In the statement of objections filed in the original application, respondents had categorically denied that the applicant had been put on top of the list of candidates selected for appointment as Foreman (Part II Cadre) and that he had only been put on top of the list of persons selected for the post of Senior Chargeman (Part I Cadre). We found this statement was correct with reference to the records scrutinised by us. None of the factors mentioned in Order 47 Rule of the Civil Procedure Code for undertaking a review are present in this case. We see no justification for accepting this review application."

3. Undaunted still, the applicant filed another application (No.862/87) before this Tribunal on the same subject. That application also came to be heard by us. In that application, a new case was sought to be set up as to why the applicant should have been selected for the post of FM II and not to the post of SC I. Shri Mohamed Fazluddin, who had been selected for the post of FM II in the same selection was impleaded as respondent-3 in this application. While in the earlier application (No.243/86(T)) the applicant had contended - as it ultimately turned out - that the order offering him the post of SC I was not in accordance with the decision of the Selection Committee, in the new application No.862/87(F) he sought to challenge the decision of the Selection Committee itself. It was submitted that the Selection List prepared by the Selection Committee was not based on the actual performance-cum-preference of the candidate in the field in the test held for the purpose. The applicant had obtained the highest marks of all the candidates who appeared for selection, and he should, therefore, have been selected for the higher post of FM II and not Mohamed Fazluddin whose rank in the order of marks was fifth. Moreover Fazluddin had applied for the post of SC I only while the applicant had applied for both posts (FM II and SC I). In our order disposing of this application, we held that it was barred by res judicata. Both the earlier application namely

application No. 243/86(T) and the fresh application namely application No.862/87(F) had raised the same issue namely the validity of the action of the respondents in selecting the applicant for the post of SC I and not to the post of FM II. The only difference was that in the new application, a different argument was sought to be urged from the one that was urged in the first application. We, therefore, held that under section 11 of the Civil Procedure Code, the second application was barred by res judicata. We wrote in our order that the principle of res judicata which is applicable to all judicial proceedings including those before this Tribunal was intended to avoid repetitive litigation on the same subject between the same parties. We quoted in this connection the provisions of section 11 of the Civil Procedure Code which says that "no court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties". The direct and substantial matter in both the earlier and later applications was that the applicant had not been offered appointment as FM II.

4. Thereafter the applicant filed Special Leave Petitions Nos. 922-23 of 1988 before the Supreme Court. He produced a copy of a tabular statement showing the marks obtained by various candidates who appeared in the selection test, submitted to the Selection Committee. This statement appeared at pages 53 and 54 of the common Special Leave Petitions filed by the applicant before the Court. The Supreme Court by its order dated 21-3-1988, dismissed the Special Leave Petitions (where were two petitions - one directed against our order dated 25-3-1987, rejecting review application No.RA/86 and the other against our order dated 2-11-1987, disposing of application No.862/87).



But in doing so, the Hon'ble Judges also made the following observations:-

"Learned counsel for the petitioner says relying upon the two sheets which are produced at pages 53-54 of the record, that the petitioner had been selected for the post of Foreman Grade II and that he came across this document after the Tribunal disposed of his case. It is open to the petitioner to bring this fact before the Tribunal by way of a fresh review petition."

It is as a sequel to this that the present review application has been made.

5. We have heard Shri K.J.Shetty, learned counsel for the applicant, and Shri M.S.Padmarajaiah, learned counsel for respondent 1 and 2 at great length.

Respondent 3 has remained absent. We have perused all the records covering the impugned selection.

6. We may immediately point out that in application No.862/87 also the applicant contended that he had secured the highest marks among all candidates who were subjected to a common test in 1978. In support of this claim, he had enclosed with the application an extract of the mark list of candidates who appeared in the test at page 32 of the application. The extract shows the marks obtained by the applicant i.e. 190 and by respondent No.3 Mohamed Fazluddin (150). The two sheets filed in the Supreme Court on pages 53 and 54 of the Special Leave Petition contains the full mark list of all candidates who appeared in the test, while the enclosure to application No.862/87 to which we have made reference is an extract from this very list giving the marks obtained by the applicant and respondent 3 only and blanking out the rest. Since the dispute of the applicant is only regarding the selection of R-3 as FM II in preference to him, the sheets produced before the Supreme Court were in substance the same as those produced before us in application No.862/87 which we dismissed on the ground of res judicata. That being so, it is not as if the applicant

P.S. - The

has now produced documents in this review application which were not before us when we heard and disposed of application No.862/87. This fact does not appear to have been brought to the attention of the Supreme Court. On this ground itself, the review application deserves to be dismissed.

7. As we have indicated earlier in this application, the applicant wants us to review not only our order dated 2-11-1987 made in application No.862/87 but also our order dated 25-3-1987 passed in review application No.15/86. It is doubtful whether a review application can be entertained in respect of an order disposing of an earlier review application. But we leave the matter at that.

8. Since the matter has already gone up to the Supreme Court once, we also thought it fit to re-examine the question of the applicant's selection vis-a-vis respondent-3, namely Mohamed Fazluddin. It was explained to us on behalf of the respondents that in the impugned selection made in 1979, two posts of FM II were to be filled up, one by a Scheduled Caste candidate and the other by a candidate belonging to a general community. The post reserved for a Scheduled Caste candidate pertained to the Turner's trade while the other vacancy related to the Machinist's trade. Two posts of SC I were also to be filled up one by a Scheduled Caste candidate and the other by a general candidate both belonging to the Toolmaker's trade. The unreserved post of FM II had thus to be filled up by a candidate who belonged to the Machinist's trade. The applicant who was working as a Toolmaker could be considered only for a post in the trade of Toolmaker. Respondent-3 was a machinist and could be considered for the post of FM II belonging to that trade while the applicant could not be



considered for that post as he was a Toolmaker. That was how the applicant was selected as SC I and R-3 as FM II. At this point, Shri Shetty submitted that the applicant was also a machinist as he had worked as a miller from 3-2-1968 to 2-5-1971 when he was promoted as Toolmaker. The fact, however, remains that when the selection was made, the applicant was a Toolmaker, while R-3 was a Machinist. We cannot go into the further question whether the applicant was also competent to do the work of a Machinist and as such should have been considered for the post of FM II, particularly because the post of SC I offered to him was specifically earmarked for a Toolmaker. Thus on merits also, the selection of R-3 as FM II in preference to the applicant cannot be challenged.

9. What the applicant is really challenging through this review Application is an appointment made in 1979. By the time we came to deal with this challenge in application No.243/86, it was already 7 years old and both the applicant and R-3 had made further progress in their career. It would have been pointless at that stage to set the clock back and upset the settled arrangements. Even so, after a fresh examination of the whole matter, we are unable to uphold the applicant's claim. Though in a review application, it was not expected of us to re-examine the whole matter afresh, we have done so in deference to the orders of the Supreme Court.

10. This review application was heard on 28-3-1989 and was reserved for order to be pronounced today. Accordingly the order was dictated and typed up to the end of the previous paragraph. However, Shri Shetty appeared before us in the court today and submitted that the applicant had filed a rejoinder in the Registry yesterday and that the said rejoinder may be taken into account while

pronouncing judgement. Out of deference to Shri Shetty, we have gone through the rejoinder. The point made by the applicant in the rejoinder is that though he was a Toolmaker, he had sufficient experience and necessary qualifications as a machinist to be considered for the post of FM II in the machinist trade. He has drawn attention to his educational qualifications and his experience as a machinist and has also submitted that a turner(lathe), a grinder(grinding) as well as a machinist could become Toolmaker. The applicant's experience as miller between 3-2-1968 to 3-5-1971 qualified him as a machinist. We are not qualified to examine these submissions and to substitute our view for the view of the Selection Committee which consisted of technical persons who know one trade from another. The fact remains that when the impugned selection was made, the applicant was a Toolmaker. It is also clear that the posts advertised were earmarked for each trade, Toolmaker and Machinist being stated as separate trades in this connection. The post of FM II which was advertised was specifically described as a post in the machinist trade as opposed to one post of SC I which was stated to be in the machinist trade. Thus, when the toolmaker's trade and the machinist trade are separately stated and the applicant who was a Toolmaker at the time of selection, was selected to the post of SC I in the Toolmaker's trade and R-3 who was admittedly a Machinist was selected to the post of FM II earmarked for the machinist trade, we do not feel that we should question the decision of the Selection Committee, particularly while dealing with a review application.

11. In view of the above, the review application is dismissed leaving the parties to bear their own costs.

By Order of the
DEPUTY REGISTRAR (JDLT)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

Sd/-
X
VICE-CHAIRMAN
21-3-1989

Sd/-
MEMBER(A) 31/3/89