

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 452/91
T.A. No.

198

DATE OF DECISION 14.7.1992

Anand T. Moon

Petitioner

H.B. Agaste

Advocate for the Petitioner (s)

Versus

The General Manager,
Ordnance Factory,
Ambazari, Nagpur & ora.
MR. RAMESH DARDA

Respondent

Advocate for the Respondent (s)


CORAM

The Hon'ble Mr. JUSTICE S.K. DHANON, Vice-Chairman

The Hon'ble ~~MR.~~ USHA SAVARA, MEMBER (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

ND


 (S.K. DHANON)
 V/c

srl

(6)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH
CAMP AT NAGPUR

....

ORIGINAL APPLICATION NO: 452/91

Anand Tukaramji Moon,
Working as Machinist
Skilled bearing ticket
No.CFTI/1068/3162, in the
establishment of the
Respondent No.1

.... Applicant

V/s

The General Manager,
Ordnance Factory,
Ambazari, Nagpur.
and others.

.... Respondents

CORAM : HON'BLE MR. JUSTICE S.K.DHAON, Vice-Chairman

HON'BLE USHA SAVARA, MEMBER (A)

Appearance :

MR.H.B.AGASTE and
Shri F.G.Isaac, Advs.
for the applicant

Mr.Ramesh Darda, Adv.
for the Respondents.

ORAL JUDGEMENT

14TH JULY 1992

(PER : JUSTICE S.K.DHAON, V/C)

The applicant was working as Machinist skilled in the Establishment of Ordnance Factory, Ambazari, Nagpur. The Trade Test was notified for the purpose of promotion to the Skilled Machinist Grade-II. The applicant appeared in that test, but he was not declared successful. He made a grievance of his failure at the test in an appeal, which is provided by statute. The appeal has been dismissed. Hence this application.

Singh

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2. In the memorandum of appeal before the Appellate Authority the thrust was that the Trade Tests Board was not properly constituted when it put the applicant to test. The Appellate authority had examined this question and had recorded its finding that the Board was properly constituted. Indeed, the legality of the constitution of the Board is not being assailed now by the learned counsel appearing for the applicant.

3. The only submission is that the applicant was subjected to a test on a machine, which was different to the one on which he had been working before. We may note that this plea has not been taken in the present application. Such a plea does not find place in the memorandum of the appeal either. It is also clear that such a plea was not raised before the Appellate Authority. Our attention is invited to the memorandum dated 2.5.1988 addressed by the applicant to the Chairman, Pre-Litigation Committee, Though such a plea was taken there but we have already pointed out, that this point was not presented before the Appellate Authority.

4. Having given a thoughtful consideration to the grievance of the applicant, we feel that a factual controversy should not be allowed to be raised now for the first time. That apart, the applicant had failed to raise this plea or objection at the time when test was being taken and he had taken his chance in the test. He is, therefore, estopped from taking such a plea.

5. The application is dismissed but with no order as to costs.

Usha Savara
(USHA SAVARA)
M/A
14.7.92

S.K. Dharon
(S.K. DHARON)
Vice-Chairman

(10)

Date: 12.9.94 R.P. NO: 50/94

The Bench for hearing the R.P. is re-constituted and the order passed on 24.3.94 is modified. The R.P. will be heard by a Bench comprising of Vice-chairman and Mr. R. Rangarajan. H(A).

(H.S. Deshpande)
V.C.

Date: 12.9.94 R.P. NO: 50/94

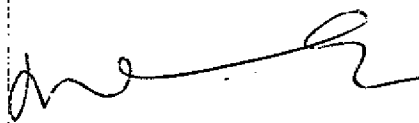
We have heard ~~the~~ Mr. M. B. Agasthi counsel for the Review Petitioner and Mr. R. P. Darda for the respondents.

The grievance is that he has raised the ground in para (P) of the original application regarding the change of Machine. But it was observed in para 3 of the judgment that this plea was not taken by the present applicant in the O.A. Such a plea did not find a place in the memorandum either. It is apparent that the ground could not be raised at the time of final hearing because of

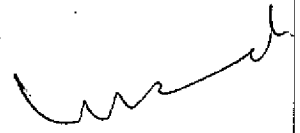
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inadvertance. It is therefore clear that the ground has not been raised before the Tribunal when the O.A. was heard.

If the ground is not raised it cannot be said an error apparent on the face of the record. We see no merit in this R.P. It is dismissed.



(R. Rangarajan)
H(A)



(M.S. Deshpande)
V.C.

Copy of order dt 12-9-94

issued to the parties on

16/9/94

21/9/94

Appeal against (A)

Jt dt. 14/7/92 &

order in R.P. no 50/94

dt 12/9/94, dismissed

on 11/12/95.

(Sh P nos. 27742-743/95)

8/02/96.