

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 689/92.

Dated the 11th day of June, 1999.

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

HON'BLE SHRI D. S. BAWEJA, MEMBER (A).

M. G. Sonar,
Asstt. Commercial Inspector(Refund),
Chief Commercial Superintendent's
Office, Central Railway,
Bombay V.T.,
Bombay - 400 001.

... Applicant

(By Advocate Shri G. S. Walia)

VERSUS

1. Union Of India through
The General Manager,
Central Railway,
Bombay V.T.,
Bombay - 400 001.

2. Chief Commercial Superintendent,
Central Railway, Bombay V.T.,
Bombay - 400 001.

3. Divisional Railway Manager,
Central Railway,
Bhusaval.

... Respondents.

(By Advocate Shri R. R. Shetty).

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 the reply. We have heard the Learned Counsels appearing on both sides.

2. The applicant was working as an Assistant Commercial Inspector in the pay scale of Rs. 455-700. He is entitled to be promoted to the next higher grade in the pay scale of Rs. 550-750 and then Rs. 700-900 (all pre-revised scale). During 1984-86 the respondents

called for applications for selection for the higher post of Assistant Commercial Inspector in the higher pay scale. The applicant had also responded to the notification. He passed the written test and he was called for an interview but the final panel published did not include the name of the applicant. He presumes that his name is not included since there was some C.B.I. case against him. He made number of representations but with no result. Then in 1991 the department called for fresh applications for the same post. Then the applicant gave one more representation to say that he should have been included in the 1986 panel and promoted. Therefore, the applicant is challenging his non-selection in the panel of 1986. His case is that even if there are some C.B.I. cases, he could not have superseded unless there was a charge-sheet or criminal case pending against him on the date of selection. He, therefore, wants a direction to the respondents to promote him to the higher pay scale of Rs. 550-750 and then further promotion to the grade of Rs. 700-900 and consequential benefits.

3. The respondents in their reply have stated that the applicant passed in the written test but he failed in the viva-voce and, therefore, he could not be selected for promotion. It is also stated that the application is barred by limitation.

4. In view of the pleadings and the arguments addressed before us, the question for consideration is, whether the applicant's case of non-selection in 1986 has any merit or not ? Then we also have to consider the respondents' contention that the application is barred by delay, laches and limitation.

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5. The application is filed in 1992. The applicant is challenging his non-selection in the 1986 panel. On the face of it there is delay of five six years in the applicant challenging his non-selection. According to the Administrative Tribunals Act, the limitation is only for a period of one year from the date of cause of action. As soon as the panel of 1986 was published on 16.01.1986 and when applicant's name was not shown, the applicant got an immediate cause of action to challenge his non-selection. Mere sending representations or repeated representations will not save or arrest limitation. Irrespective of the question of limitation, the application is barred by the principles of delay and laches. A question like promotion or seniority cannot be hanging on for years together. Suppose, now we hold that applicant is entitled to promotion from 1986 and his name should be included in the 1986 panel, then it will upset the seniority of those persons who are below the applicant in 1986 panel and it will upset the seniority of selectees of 1991 selection.

Another thing to be noticed is that the applicant has filed this application just on the eve of his retirement. Though he was not selected in 1986, he has filed this application in this Tribunal on 09.07.1992 when his date of retirement is hardly one month away, namely - 31.08.1992. Therefore, even on the ground of principles of delay and laches, we cannot grant any relief to the applicant.

6. Now coming to the merits of the case, the applicant's presumption that he was superseded because of the C.B.I. case is not correct. We have perused the selection papers produced by the Learned Counsel for the respondents which clearly shows that the applicant had

application is being made non-selective in the 1982 budget. The application is being made non-selective in the 1982 budget. The application is being made non-selective in the 1982 budget. The application is being made non-selective in the 1982 budget. The application is being made non-selective in the 1982 budget.

The American Statistical Association is
very pleased to have from the referee the cause of
no benefit to be derived from the application
of the TBLP and the cause of the failure of
the TBLP to be applied in the first place.

Non-compliance of this requirement of the case, the
application, a representation which has superseded because
of the C.B.I. case is not correct. We have been
requested to believe that the relevant Government for the
representation which correctly states that the application has

passed in the written test but he has failed in the viva-voce. To this, the submission of the Learned Counsel for the applicant is, that when the applicant was already working in the same post on adhoc basis, he cannot be failed in the interview and strong reliance was placed on an unreported judgement of the Supreme Court in SLP (C) No. 9866 of 1993 in the case of R. C. Srivastava V/s. Union Of India & Others. In that case the Supreme Court has referred to a circular dated 19.03.1976 and has observed that if a person is on adhoc promotion and his service record is quite satisfactory, then he should not be failed in the interview and that too marginally. In that case, the Supreme Court noticed that the applicant had secured 29.15 marks but he should have got 30 marks for being selected. In other words, he was short of .85 marks. In the viva-voce he had been given 5 marks against 15 marks. The Supreme Court observed that when the service record shows that the applicant had good record of service and had obtained 11 marks as against 15 marks for record of service, it must be held to be satisfactory record of service and, therefore, he should not be failed by a marginal marks of .85. Therefore, we find that the Supreme Court took into consideration the fact that the applicant in that case had good or satisfactory record of service of having obtained 11 marks out of 15 marks for record of service and, therefore, he should not have been failed for less than one mark in the written cum viva-voce.

7. Even if we apply the above ruling of the Supreme Court, it will not help the case of the applicant in any way.



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~~selection process~~

8. In the present case, no doubt in the entire-~~case~~ the applicant got only 59 marks in total as against 60 marks for the purpose of selection. In the written ~~and~~ viva-voce he got 29 marks as against 30 marks expected. Therefore, if he had been given one mark more in the viva-voce, he could have been selected. It may be on the basis of the above Supreme Court decision we could have given a direction to the respondents to treat him as selected, since the applicant is short by only one mark. But in the facts and circumstances of the case, such a direction cannot be given since the applicant does not have satisfactory record of service. In the case before the Supreme Court the applicant had obtained 11 marks out of 15 marks for record of service.

In the present case, the present applicant has got only 5 marks out of 15 marks under the heading 'Record of Service'. When applicant has obtained mere 5 marks out of 15, how can we say that his record of service is satisfactory and that he should not have been failed in the viva-voce. The applicant has himself admitted in one of his representation (vide exhibit 'D' at page 27 of the paper book) about an adverse remark against him in the confidential report for 1980-81. Then it is further admitted that there was a C.B.I. case against the applicant. In view of the marks obtained by the applicant against record of service and other circumstances, it cannot be said that the applicant had a good record of service so as to invoke the ratio of the decision of the Supreme Court in the above unreported case.



As already stated, the applicant has now retired from service in 1992. We are now in 1999. He is challenging his non-selection after a period of six years. He does not have good record of service. Therefore, this is not a fit case for this Tribunal to interfere and grant any relief.

9. In the result, the application fails and it is dismissed. No order as to costs.

D. S. Baweja
(D. S. BAWEJA)

MEMBER (A).

R. G. Vaidyanatha
11.6.99
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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