


CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

+ RD 81/95, MP 469/96 & RP 85/95
IL
OPEN COURT / PRE DELIVERY JUDGMENT IN/OA 1261/93

Hon'ble ~~Vice Chairman~~ / ~~Member (J)~~ / Member (A)

may kindly see the above Judgment for

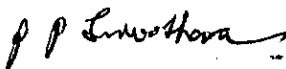
approval / signature.


~~V.C. / Member (J) / Member (A) (K/S)~~

Hon'ble Vice Chairman

Hon'ble Member (J)

Hon'ble Member (A) (K/S)



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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, 'GULESTAN BUILDING' NO.6
PRESCOT ROAD, FORT, MUMBAI-400001.

Dated this 26th day of July 1996.

R.P. 84/95, M.P. 469/96 and R.P. 85/95 in O.A. 1261/93.

CORAM : 1) Hon'ble Shri B.S. Hegde, Member (J)
2) Hon'ble Shri P.P. Srivastava, Member (A).

Shri P.N. Yeole

(By advocate Shri D.V.
Gangal)

... Applicant

v/s

Central Railway & Anr.

(By advocate Shri V.S.
Masurkar, Central Govt.
Standing Counsel).

... Respondents

O R D E R

The applicant has filed R.P. 84/95 and also the
M.P. 469/96 in R.P. 84/95 for production of documents.

2. The O.A. 1261/93 was disposed of by the Tribunal
on 28-2-1994 by passing the following order -

"The only order that we need make is that the
respondents should interpolate the name of the
applicant in the waiting list of Casual
Labourers in the Commercial Department in
Bhusaval Division depending on the number of
days he has worked in Commercial Department
and shall grant him appointment when his turn
comes. If any of the juniors to the applicant
have been regularised, this order will ~~not~~
have the effect of reverting them and the
applicant to take his turn on the basis of
his placement which we have indicated above.
With these directions the application is
disposed of."

From pre-page:

Against this order, the applicant has filed C.P. 46/95 in O.A. 1261/93 which was disposed of by the Tribunal on 5-6-1995. The Tribunal has observed that the applicant's contention is that four persons whose name has been given in para 3 of the application were junior to him and they were granted the benefits which were denied to the applicant. This contention has been controverted by the Respondents in para 4 of the written statement wherein it was pointed out that the four persons referred to by the applicant were working since 1986 whereas the applicant was joined on 28-1-1992 in Commercial Department. With regard to the interpolation of the applicant's name, the applicant was given his placement on the basis of having worked for 1258 days. Against this order, the Respondents have also filed R.P. 85/95 in O.A. 1261/93 contending that the applicant was engaged for 161 number of days, the casual labour at Sr.No. 39 was engaged for 193 days and casual labour at Sr.No. 41 was engaged for 109 days. The applicant was engaged for 161 days only and therefore the seniority assigned to the applicant was according to the said number of days, whereas in the order passed by the Tribunal it is stated that the applicant was given his placing on the basis of having worked for 1258 days which requires to be modified.

3. Based on the perusal of the pleadings of the Respondents, we find that the total number of days worked by the applicant is found to be 161 days; therefore, the R.P. filed by the Respondents is required to be allowed. Accordingly, the order in the C.P. stating that the applicant was given his placement on the basis of having worked for 1258 days is modified to that of 161 days and as per the directions of the

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Tribunal, the Respondents have given appropriate seniority in the waiting list. The same may be corrected and modified version of the order be given to the parties.

4. The main contention of the applicant in this R.P. is that the C.P. was heard ex-parte on 5-6-1995 as the applicant's counsel Shri Gangal was on his legs arguing before another Bench of this Tribunal. In this connection, the learned counsel for the applicant Shri Gangal draws our attention to the order passed by the Tribunal on 27-9-1991 in O.A. 99/1989 of the applicant. Considering the rival contentions of the parties, the Tribunal has observed that "from the photo-stat copy of the pay sheets it indicates that the name of the applicant is also there in the pay sheets of July and March. The applicant was also marked absent and present. As such, it cannot be said that the applicant has nothing to do with the Canteen; it may be that he had been working in the Canteen only for food but he was not getting any salary etc. with the hope of getting a regular employment. The denial by the Respondents and their action cannot be justified. Accordingly, the Tribunal directed that the Canteen has been employing many casual labourers and expect that without giving any cause of action to the applicant and without creating any other complication and controversy the Respondents will employ him as a casual labour expeditiously within a period of two months." Therefore, the learned counsel for the applicant contends that since the judicial pronouncement made by the Tribunal has to be given due respect stating that the applicant has been working earlier in the Canteen; however, the

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Tribunal did not give him back wages and directed the Respondents to take him on duty. Considering the factual averment that he has worked only for 161 days, the Tribunal while disposing of the C.P. directed the Respondents to interpolate the name of the applicant in the waiting list of casual labourers on the basis of the number of days he has worked. According to the applicant, the applicant has been working from 1978 to 1992 - 14 years and he could have been given seniority and he ought to have been regularised long on back/which the Respondents did not take any action. He is perforced to file the C.P. because the Respondents did not take him on duty even after the decision of the Tribunal. The contention of the applicant that he has been working since 1978 is not based on material documents. The said contention is rejected. However, he was seeking for regularisation. On receipt of the Tribunal's order dated 27-9-1991 he should have preferred a R.P. for modification of the order which he did not do so. The only prayer made in this R.P. is to review the order dated 5-6-1995 since he could not be heard when the C.P. was taken up. Accordingly, we have heard the applicant's counsel Shri Gangal as well as Shri V.S. Masurkar for the Respondents. The applicant also filed M.P. 469/96 for production of documents which were not available at the time of disposal of the O.A. and C.P., the reasons for not producing the said documents is not made out.

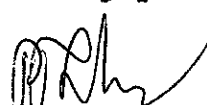
5. The R.P. cannot be utilised for re-arguing the case. The Supreme Court in Chandrakanta & Anr. v/s Sk. Habib AIR 1975 Vol. 62 SC 1500 - held that once an

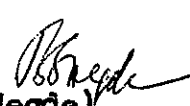
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order has been passed by the Court, a review thereof must be subject to the rules of the game and cannot be lightly entertained. A review of a judgement is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility.

6. The only ground urged by the applicant in this R.P. is that he has not been given opportunity at the time of disposal of the C.P. filed by him. Neither in the C.P. nor in the M.P. he has brought in a new ground. Since opportunity has not been given to him at the time of disposal of the C.P., we have heard the learned counsel for the applicant both in R.P. as well as the M.P. and we find, that neither any error apparent on the face of the record has been pointed out nor any new fact has been brought to our notice calling for a review of the original judgement or the C.P. as the case may be.

7. For the reasons given above, and in the facts and circumstances, we do not see any merit in the R.P. filed by the applicant. Accordingly, the R.P. 84/95 and also the M.P. 469/96, both are dismissed. In the R.P. 85/95 filed by the Respondents, they have prayed for the correction of the number of days worked as 161 instead of 1258 as referred to in the C.P. Accordingly, the C.P. order is modified to that extent stating 161 days instead of 1258 days and the R.P. 85/95 of the Respondents is accordingly allowed to that extent.


(P.P. Srivastava)
Member (A)


(B.S. Hegde)
Member (J)