

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 365/1993

Date of Decision: 7-2-97

I.T. Soneria,

Petitioner/s

Shri G. S. Walia,

Advocate for the
Petitioner/s

v/s.

Union Of India & Another.

Respondent/s

Shri S.S. Karkera for

Advocate for the
Respondent/s

CORAM:

Hon'ble Shri M.R. Kolhatkar, Member (A).

Hon'ble Shri D.C. Verma, Member (J).

- (1) To be referred to the Reporter or not ? ✓
- (2) Whether it needs to be circulated to other Benches of the Tribunal ?

M.R. Kolhatkar
(M.R. KOLHATKAR)
MEMBER (A).

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 365/93.

Presented, this 7th day of FEBRUARY, 1997.

CORAM : HON'BLE SHRI M.R. KOLHATKAR, MEMBER (A).

HON'BLE SHRI D. C. VERMA, MEMBER (J).

I.T. Soneria,
~~Asstt. Director (L-I)~~
Office of the General Manager,
Telecommunication Maharashtra
Circle, G.P.O. Building,
2nd floor, Bombay - 400 001.

C/o. Shri G.S. Walia,
Advocate High Court,
16, Maharashtra Bhavan,
Bora Masjid Street,
Behind Handloom House,
Fort,
Bombay - 400 001.
(By Advocate Shri G.S. Walia)

... Applicant

VERSUS

1. Union Of India through
Director General,
Dept. of Telecommunication,
Government of India,
New Delhi - 110 001.

2. The Chief General Manager,
Telecommunication,
Maharashtra Circle,
G.P.O. Building,
Bombay - 400 001.

... Respondents.

(By Advocate Shri S.S. Karkera for
Shri P.M. Pradhan).

: ORDER :

PER.: SHRI M.R. KOLHATKAR, MEMBER (A)

1. In this O.A., the applicant has not challenged any particular order, ~~but~~ the applicant is aggrieved by the non-selection of the Applicant for Telecom Engineering Service Group 'B' post though he claims, ~~he had~~ passed the required qualifying examination by obtaining the required number of marks. The applicant was appointed as a Technician in the

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year 1962 and was promoted to the higher post of Junior Engineer in the year 1973. The next promotion post available to the applicant is Group 'B' Post in the Telecom Engineering Service, to which selection is made on seniority-cum-fitness basis. The applicant states that in the month ^{of} December 1978, he appeared in the said qualifying examination with roll No. TDC/2/70 and the marks obtained by the applicant were - Paper I .. 33, Paper II .. 40 and Paper III .. 49. The overall percentage comes to more than 40. These were communicated to him by letter dated 05.06.1979 placed at exhibit 'B', page-16. The applicant was given to understand that he was declared as 'failed' and he made representation against this declaration seeking clarification vide his letter dated 07.06.1979 at exhibit 'C', page-17, in which he took the stand that he belonged to SC and that to his knowledge, getting 33% of marks in the subject is sufficient for qualifying in the said examination and therefore, he requested to declare him fit for Class-II promotion. The applicant relies on various circulars of the Department of Personnel, shown as exhibit 'A', collectively at page 13, 14 and 15. Circular dated 31.01.1978 states that any promotion made on the basis of seniority-cum-fitness in which there is reservation for SC's and ST's and where a qualifying examination is held to determine the fitness of candidate for such promotion suitable relaxation in the qualifying standard in such examinations should be made. Such relaxation should be made in terms of instructions



dated 17.07.1971. The circular dated 17.07.1971 states that the qualifying standard in aggregate marks for SC/ST community candidates would be 33% in each paper and the qualifying standard in aggregate marks for SC & ST candidates would be 38%. It is also clarified that the relaxation of standard should be the minimum limit upto which the competent authorities could go down in order to fill up the vacancies reserved for SC & ST in such qualifying examination. Another circular ~~dated~~ in regard to page 15 states that any promotion/confirmation made through Departmental Qualifying Examination, the SC/ST candidates who have not acquired the general qualifying standard in such examinations could also be considered for promotion/confirmation provided they are not found unfit for such promotions/confirmations.

2. The counsel for the applicant submitted that the applicant made the first representation in the year 1978, as mentioned above and since he did not receive any reply, he sent a representation to the departmental authorities vide dated 19.07.1988 at page 18, as well as to the Commissioner for SC/ST vide dated 27.08.1988 at page 20. He received an acknowledgement from the Commissioner for SC/ST placed at page 23. He also sent representation to the Cabinet Secretariate, Directorate of Public Grievances, at page 28 and he was informed that his representation has been ~~sent~~ to the department - pages 33 and 34. The applicant contends that the continued silence of the respondents is an indication of the malafides borne by the respondents against the applicant, who belongs to Schedule Caste. According to the applicant, in terms of the circular referred to by him,

relating to relaxation of standard in favour of SC/ST candidates he is entitled for a declaration that he has passed the test for deemed promotion to Group 'B' post with retrospective effect i.e. from 1978. The applicant has relied on M. Viswanathan V/s. Government of Tamil Nadu, which is quoted in Swamys News, March 1990, in which it is said that promotion or any eligible right to which an employee is entitled, ought to be given to him without asking and the fact that an employee had kept silent for nearly eleven years cannot be a ground to reject the justifiable request to promote to the post for which he had even qualified when it had fallen vacant. The applicant also relies on R.K. Sabharwal & Others V/s. State of Punjab and others [1995 SCC (L&S) 548]. That is a case relating to interpretation of orders on the point of reservation by promotion and operation of roster therefor. According to the counsel for the applicant, SC/ST assuming that a meritorious candidate ~~were~~ available with requirements they ~~were~~ counted the department fulfilling the minimum ~~have to be~~ towards open category and so far as filling the reserved posts for SC/ST are concerned, the respondents cannot take into account the SC/ST candidates who had obtained more marks if they were junior to the applicant because the selection is on the basis of seniority cum fitness and therefore, so long as the applicant qualifies ~~by~~ the relaxed standard, junior SC/ST candidate who might have got higher marks, who were not otherwise in the open category, could not have been preferred over the applicant. According to the counsel for the applicant, what is stated by the Supreme Court in relation to operation of roster point applies mutatis mutandis to the present case, in which the

issue involved is that of promotion of the applicant against the reserved quota by relaxed standard in relation to the Departmental Qualifying Examination.

3. The respondents have opposed the O.A. on the preliminary ground of limitation. According to the respondents, the cause of action arose when the applicant filed the representation dated 07.06.1979. At that time, the Central Administrative Tribunal was not in existence and therefore, the applicant ought to have approached the competent forum for redressal of grievance, which he did not do so and he waited for ten years. Apparently, the applicant waited because the respondents had already told him after his representation was received that since the number of candidates having required been achieved though belonging to SC/ST, the standard, the question of considering the candidates belonging to SC/ST after giving them relaxation in marks was not required and therefore his application was not considered, ^{required} (Vide para 12 of the Written Statement dated 18.1.1994). The applicant infact has qualified in the 1988 examination and it appears that it was only after the applicant was promoted on the basis of 1988 examination that he began to make representation for grant of retrospective promotion. In this connection, the respondents have contended that the action taken by the respondents to declare the applicant as failed is strictly in accordance with the rules. This is because in the orders relating to promotion of SC/ST candidates, it is specifically laid down vide order No. 62 that no special action for application of relaxed standard is required to be taken when sufficient number of candidates belonging to SC/ST are available, therefore, the

question of application of relaxed standard did not arise and the reliance placed by the applicant on this circular is entirely misplaced. The respondents also refer to the brochure on reservation of SC/ST, etc. and in particular instruction No. 6.8, which is reproduced below :-

"6.8 Relaxation of standards in departmental qualifying examinations for promotion to the higher grade on the basis of seniority subject to fitness.

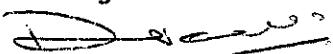
In promotions made on the basis of seniority subject to fitness in which there is reservation for Scheduled Castes and Scheduled Tribes vide para 2.(iii)(c) and where a qualifying examination is held to determine the fitness of candidates for such promotions suitable relaxation in the qualifying standard in such examination should be made in the case of Scheduled Caste/Scheduled Tribe candidates. The extent of relaxation should however, be decided on each occasion whenever such an examination is held taking into account all relevant factors including (i) the number of vacancies reserved, (ii) the performance of Scheduled Caste/Scheduled Tribe candidates as well as general candidates in that examination (iii) the minimum standard of fitness for appointment to the post and also (iv) the overall strength of the cadre and that of the Scheduled Castes and Scheduled Tribes in that cadre."

The counsel for the respondents relies on the Supreme Court judgement in Akhil Bharatiya Soshit Karamchari Sangh V/s. Union Of India & Others through its Secretary, Ministry of Railway & Others, in which R.K. Sabharwal's judgement has been further interpreted. According to the respondents, the action taken by the respondents is strictly in accordance with the Government orders on the point and the law laid down by the Supreme Court in the above judgement.

4. We, first of all consider the question of limitation. In the cases before Central Administrative Tribunal, the limitation starts from the date the appeal/

representation is disposed of or on expiry of six months from the filing of the appeal, etc. Vide S.S. Rathore V/s. State of Madhya Pradesh [1990(1) III SLJ 98]. The applicant's grievance is that, he ought to have been promoted on the basis of 1978 departmental examination. He had made representation on 07.06.1979 but he did not approach the competent forum for redressal of the grievance. From 1988 onwards, after having been promoted, he began to represent for retrospective promotion and even here, he went on making representation for about five years. The O.A. was filed on 15.03.1993. The action taken by the applicant of making repeated representations from 1988 onwards, i.e. after waiting for ten years, for which there is no explanation forthcoming, cannot extend the limitation in favour of the applicant. In our view, therefore, the O.A. deserves to be dismissed on the sole ground of limitation. All the same, even on merits, we consider that the applicant has no case. The respondents have contended that the candidates belonging to SC/ST were available who had obtained the minimum qualifying marks, as prescribed under the rules, therefore, the question of applying the relaxed standard did not arise. This is also as per rules, namely; Order No. 62, to which the respondents have made a reference. R.K. Sabharwal's case which relates in regard to reservation in promotion to roster points has no applicability to the facts of this case. The action taken by the respondents was strictly according to rules.

5. We are, therefore of the view that the O.A. has no merit and we dismiss the same both on grounds of limitation and on grounds of merit but with no order as to costs.


(D.C. VERMA)
MEMBER (J).


(M.R. KOLHATKAR)
MEMBER (A).