

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 428/94

29.2.2006
Date of Decision:

P.S. Aslekar & Anr.

Applicant.

Shri R. Ramamurthy

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri Suresh Kumar

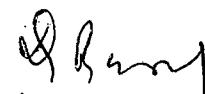
Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. D.S. Bawej, Member (A)

Hon'ble Shri. S.L. Jain, Member (J)

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


(D.S. BAWEJ)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO. 428/94

Dated this the 29th day of February 2000.

CORAM : Hon'ble Shri D.S.Bawaja, Member (A)

Hon'ble Shri S.L.Jain, Member (J)

1. P.S.Aslekar

2. J.P.Gautam

Head Travelling Ticket
Examiner on Western
Railway at Headquarters,
Churchgate, Bombay.

... Applicants

By Advocate Shri R.Ramamurthy

V/S.

1. Union of India
through the General Manager,
Western Railway,
Churchgate, Bombay.

2. The Senior Divisional Commercial
Manager, Western Railway,
Bombay Central, Bombay.

3. Divisional Railway Manager (E),
Western Railway, Bombay Central,
Bombay.

4. Divisional Chief Ticket
Inspector, Western Railway,
1st Floor, Grant Road
Railway Station, Bombay.

... Respondents

By Advocate Shri Suresh Kumar

ORDER

(Per: Shri D.S.Bawaja, Member (A))

This application is filed jointly by the
two applicants. The Applicant No. 1 joined on Western
Railway as Ticket Collector on 18.12.1962 and he was

promoted on adhoc basis as Head Travelling Ticket Examiner (Head TTE) from 1.1.1986. The Applicant No. 2 joined service on 18.12.1962 and was promoted on adhoc basis as Head TTE from 1.1.1986. A selection for post of Head TTE was notified in 1986 fixing the dates of the written examination. However, this selection was not progressed due to some seniority disputes pending in a Writ Petition. A fresh selection was notified on 23.8.1990 for the post of Head TTE and Head Ticket Collectors (Head TC) to form a panel for 290 vacancies. In this selection, as one time exception, conducting of written test was dispensed with and only viva voce was to be held to select the candidates for placement on the panel. A total of 540 employees were called for selection and the names of the applicants appeared at S.Nos.46 & 48 respectively. The viva voce test was conducted on 4 days, viz. 6.11.1990, 9.11.1990, 19.12.1990 and 14.1.1991. During the viva voce test, there was protest from the staff due to rude behaviour of the members of the selection committee and the viva voce test was disturbed for a period of 4 hours. The matter was settled at the intervention of the recognised Union. The panel was notified on 18.2.1991. But the names of the applicants did not appear in the same and about 250 juniors were included in the panel. The Applicant No. 1 made a representation on 22.3.1991 for non inclusion of his name in the panel followed by reminders on 3.4.1991 and 4.5.1993. Similarly, the Applicant No. 2 represented on 22.3.1991 and 4.5.1993.

One of the recognised Unions also took up the case of the applicants as per the letter dated 23.3.1991 and the administration replied to same as per letter dated 4.6.1991. The applicants were also replied with reference to representations dated 4.5.1993 stating that the earlier reply dated 14.6.1991 stands good. However, the applicants did not get the letter dated 14.6.1991. On not getting satisfactory reply, the applicants represented again on 11.10.1993. Since there was no response, the applicants have filed the present OA. on 11.3.1994.

2. The applicants have sought the following reliefs :-

- (a) To declare the non inclusion of the names of the applicants in the panel dated 18.3.1991 as arbitrary and direct respondents to declare the applicants as having qualified in the selection and placed on the panel dated 18.3.91 for promotion to the post of Head TTE/Head T.C. and promote the applicant accordingly from the date their immediate juniors have been promoted with all consequential benefits.
- (b) To direct respondents to grant further promotions as Travelling Ticket Inspector and Chief Ticket Inspector from the due dates when the immediate juniors have been promoted under cadre restructuring orders dated 27.1.1993 with consequential benefits.
- (c) Respondents be directed in any event promote the applicants on regular basis to the grade of Head TTE (Rs.1400-2300) from 1.3.1993 under cadre restructuring orders dated 27.1.1993 with all consequential benefits.

3. The applicant has raised several grounds in para 5 in support of the reliefs prayed for pointing out infirmities in the selection process which vitiate the selection. These will be deliberated later on in detail.

4. The respondents have contested the claim of the applicants in the written statement. The respondents submit that the promotion to the post of Head TC/Head TTE is by selection consisting of written test and viva voce. The selection process was started in 1986 for filling up the vacancies but the same could not be progressed on account of stay order in W.P.No.675/1986 by Bombay High Court. After vacation of stay order, fresh selection was notified on 23.8.1990. Since in the meantime a large number of vacancies had arisen, it was not considered possible to complete the selection process early and therefore as one time exception, the conducting of the written test was dispensed with by the competent authority and selection was confined to viva-voce only as per the extant rules covered under para 215 of IREM. Against 290 vacancies to be filled up, 540 candidates were called. The selection committee comprised of 3 officers as per rules and there was no irregularity in the same as the members belonged to the different Departments. Committee awarded marks in viva test for each candidate under different heads namely 50% marks for professional ability (interview) 20% marks for personality and leadership, 15% marks for seniority and 15% marks for record of service.

However, the applicants could not secure the minimum qualifying marks in the professional ability and therefore not placed on the panel. It is not that only the applicants have not been selected. There are number of seniors as well as juniors who did not find place on the panel since they did not get the required minimum marks in the professional ability. The applicants may be senior and working on adhoc basis but this does not entitle them to be selected without obtaining the required marks. The respondents with these details contend that the selection has been done as per rules and non selection of the applicants is not arbitrary as alleged. In their opinion, the OA. has no merit and deserves to be dismissed.

5. The applicants have filed rejoinder reply contesting the submission of the respondents and re-iterating the grounds taken in the OA. to support their prayer for the reliefs sought.

6. We have heard the arguments of Shri M.S. Ramamurthy and Shri R.Ramesh, learned counsel for the applicant and Shri Suresh Kumar, the learned counsel for the respondents.

7. The applicants have advanced several grounds bringing out infirmities in the selection process in para 5 of the OA. These are as under :-

- (a) Promotion to the post of Head TTE is on non selection basis and therefore the selection procedure through viva voce was illegal.
- (b) Allocation of 50 marks out of 100 marks for viva voce vitiates the procedure of selection according to the rulings of the Apex Court as such high marks provide scope of foul play and favouritism to a chosen few. As per provisions in IREM Vol.I, there could not be more than 15 marks to be allocated for professional ability.
- (c) Selection was done by bunching of the vacancies of several years in one lot, instead of considering the year wise vacancies for determining the zone of consideration and preparing the panel accordingly. Procedure followed was in violation of the para 215(2) of IREM Vol.I. The applicants have been over-looked due to faulty procedure adopted for the selection.
- (d) The composition of the Selection Committee was in violation of the provisions of para 218 of IREM on two counts (a) there were two Scheduled Caste members in the Committee. (b) Two members were lower in rank than the third member. As per rules, only the Personnel Officer could be of the lower rank. This composition reduced the effectiveness of the Selection Committee as the senior member was from the Department to which the selection belonged.
- (e) Holding of the viva-voce test was only a farce as 540 candidates were interviewed in 4 days only where also there was disturbance for a period of 4 hours giving hardly 3 to 4 minutes for each candidate.

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of this letter, but we are not convinced of this denial. If the applicants did not receive any reply, then it is not clear as to why the applicants kept quiet thereafter. Subsequent representations brought on record are of 1993, the first being dated 4.5.1993 at pages 79 & 84 by both the applicants, i.e. after more than 2 years. In fact, these representations do not refer to the panel dated 18.3.1991 but make a request for promotion against the subsequent vacancies. In para 4 of the representation dated 14.5.1997, it is stated "The purpose of this representation is not at all intended to question the panel that was formed." In view of this, we are unable to accept that the applicants were not aware of the rejection of their representation made in 1991 as representation dated 4.5.1993 clearly bring out that the applicants had reconciled to their non selection. The present OA. has been filed on 11.3.1994. It is not clear as to why applicants agitated the matter of panel dated 18.2.1991 again. The applicants have stated that the OA. is filed within the limitation period. The applicant's presumption perhaps is with reference to letter dated 6.9.1993 at Annexure 'A' which is in reply to their representations dated 4.5.1993. As stated earlier, representations dated 4.5.1993 were not in respect of the panel notified on 18.2.1991 but for delay in filling up the subsequent vacancies. Therefore, this letter cannot be reference point for challenge of the panel dated 18.2.1991. With the fact situation, the OA. has been filed beyond the period of limitation as laid down in Section 21 of the A.T. Act, 1985. The counsel for the respondents during

hearing strongly opposed the OA. on the ground of limitation. The counsel for the applicants however contested the same stating that the respondents did not take the plea of limitation in the written statement and cannot raise this objection at the time of final hearing. The counsel for respondents, however, reacted to this submission of the counsel for the applicants ^{and} contended that question of limitation is a legal issue and can be raised at any time. We have carefully considered the rival contentions and find merit in the submission of the respondents. The issue of limitation in case of service matters is of vital importance. Even if the plea of limitation is not taken by the respondents, the Tribunal while going into the merits of the reliefs prayed for cannot ignore the same. It is to be seen whether the granting of the relief prayed for will unsettle the settled position over a long period. It is also to be gone into whether the applicants have acted with diligence and promptitude and did not sleep over the matter and woke up at any time at ~~his~~ ^{their} own will to rack up the old matter after a long time. Here, we refer to the judgement in the case of Yashbir Singh & Ors. vs. Union of India, AIR 1988 SC 662 relied upon by the respondents. In para 10, their Lordships have observed as under :-

" It is well settled that anyone who may feel aggrieved with an administrative order or decision affecting his right should act with due diligence and promptitude and not sleep over the matter. Raking of old matters after a long time is likely to result in administrative complications and difficulties and it would create insecurity and instability in the service which would affect its efficiency."

In the case of Ratan Chandra vs. Union of India, JT 1993 (3) SC 418, the Apex Court has held that a person who sleeps over his grievances loses his right as well as remedy.

In para 7 of the judgement in the case of Union of India vs. Harnam Singh, 1993 SCC (L&S) 375, their Lordships of Hon'ble Supreme Court have held as under :-

"..... The law of limitation may operate harshly but it has to be applied with all its vigour and Court/Tribunals cannot come to the aid of those who sleep over the rights and allow the period of limitation to expire....."

In the present case, the applicants are challenging the panel notified on 18.2.1991 by filing OA. on 11.3.1994. All the persons placed on the panel had been already promoted. Even further promotions had also taken ^{place} as it transpires from the record. Not only this promotions to higher grades have also taken in between as the applicants have sought the relief of promotion as Travelling Ticket Inspector and Chief Ticket Inspector from the dates juniors have been promoted. The applicants through this OA. are seeking placement on the panel dated 18.2.1991 and consequential

benefits. This claim has a direct impact on the seniority and promotion of a large number of persons and will also affect the settled position of a large number of persons in a cadre. The present OA. filed on 11.3.1994 for the cause of action arising on 18.2.1991, is therefore certainly barred by limitation and deserves to be dismissed on this count alone. In this connection, we refer to the latest judgement of the Hon'ble Supreme Court and also cited by the respondents ⁱⁿ the case of Ramesh Chand Sharma vs. Udhamp Singh Kamal & Ors., 2000(1) SC SLJ 178. In this case, the representation filed against non promotion was rejected by order dated 2.7.1991. OA. challenging his non promotion was filed on 2.6.1994. The applicant stated in the OA. that it was filed within the period of limitation. The Tribunal allowed the relief prayed for. The Hon'ble Supreme Court in the SLP has set aside the order of the Tribunal holding that OA. before the Tribunal was time barred and there was no application for condonation of delay and Tribunal was not right in deciding the OA. on merits overlooking the statutory provisions contained in Section 21(1)(3). The present OA. on facts is squarely covered by what is held in this judgement.

12. Since we have held above that ^{the} OA. is barred by limitation, we decline to go into merits of the grounds taken in the OA. in support of reliefs prayed for.

13. The applicants have prayed for the relief of directing the respondents to promote the applicants on regular basis from 1.3.1993 under the cadre restructuring order dated 27.1.1993. This relief is independent of the main relief of placement of the names on the panel dated 19.2.1991. Therefore, multiple reliefs have been included in the same OA. and therefore this relief cannot be considered in the present OA. ^{as} this is not permissible as per the rules. In any way, during the hearing, it was given to understand that the applicants have been promoted as Head TTE from 1.3.1993.

14. In the result, the OA. deserves to be dismissed as being barred by limitation and is accordingly dismissed. No order as to costs.

S.L.JAIN
(S.L.JAIN)
MEMBER (J)

D.S.BAWEJA
(D.S.BAWEJA)
MEMBER (A)

mrj.