

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO. .: 1210 of 1995.

Dated this Wednesday,, the 26th day of July, 2000.

V. N. Mangalanandan & Another, Applicant.

Shri G. S. Walia, Advocate for the
applicant.

VERSUS

Union of India & Another, Respondents.

Shri A. L. Kasturey, Advocate for
the respondents.

CORAM : Hon'ble Shri B. S. Jai Parameshwar, Member (J).

Hon'ble Shri Govindan S. Tampi, Member (A).

- (i) To be referred to the Reporter or not ?
- (ii) Whether it needs to be circulated to other Benches
of the Tribunal ? / No
- (iii) Library.


(B.S. JAI PARAMESHWAR)
MEMBER (J).

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CORAM : Hon'ble Shri B.S. Jai Parameshwar, Member (J).
Hon'ble Shri Govindan S. Tampi, Member (A).

1. V. N. Mangalanandan.
2. Harikumar S.

Both the applicants are working as
Electrical Chargemen (Ad-hoc) in
the scale of Rs. 1400-2300 (RPS)
at BAMY, Bombay Division,
Western Railway.

... Applicant.

(By Advocate Shri G.S. Walia)

VERSUS

1. Union of India through
The General Manager,
Western Railway,
HQrs. Office,
Churchgate,
Bombay - 400 020.
2. Divisional Railway Manager,
Bombay Division,
Western Railway,
Bombay Central,
Bombay - 400 008.

... Respondents.

(By Advocate Shri A. L. Kasturey)

OPEN COURT ORDER

PER : Shri B.S. Jai Parameshwar, Member (J).

Heard Shri G.S. Walia, the Learned Counsel for the
applicant and Shri A. L. Kasturey, the Learned Counsel for the
respondents.



...2

2. There are two applicants in this O.A. They are presently working as Electrical Chargeman in the scale of pay of Rs. 1400-2300 on adhoc basis. They are holders of substantial post of Electrical Feeder Grade-I.

3. By letter dated 16.08.1994 the respondents proposed to conduct a selection for preparing a panel of 7 persons to the post of Electrical Chargeman working in the Electrical Loco Shed, Bulsar/BAMY. The said panel was to be prepared on the basis of written test and viva-voce test. The applicants appeared for the written test conducted on 04.12.1994. They submitted that they have fared well in the written test and were expecting to be called for the viva-voce test. They make grievance that subsequently on account of revaluation of some official's ^{consider} script, they were eliminated. On 21.03.1995 a list was prepared consisting of eligible candidates to appear for the viva-voce test. It is stated that subsequently the name of Applicant No. 1 was included in the said eligibility list. The applicant No. 1 attended the viva-voce test conducted on 27.07.1995 and 28.07.1995. Subsequently, a panel was issued on 28.08.1995. The Applicant No. 1 was not included in the said panel.

4. The applicants have filed this application challenging the panel dated 28.08.1995 as illegal, discriminatory and unwarranted and pray for setting aside the said panel and for a direction to the respondents to include the names of the applicants in the said panel after considering them according to

rules, with all consequential benefits like seniority, increments, arrears of pay, etc. and to consider and hold the written test according to the rules and promote the applicants accordingly with all consequential benefits of seniority, increments, backwages, arrears, etc.

5. The respondents have filed ^{the} written statement. In their written statement they specifically deny the process of revaluation. In fact, they submit that both the applicants had failed in the written statement but however, the first applicant was made eligible to be called for viva-voce in accordance with the Railway Board letter dated 05.12.1984 which indicated that seniority marks should be considered to make them eligible for appearing for the viva-voce test. Accordingly, 15 marks was awarded to Applicant No. 1 and thus, he was made to appear for the viva-voce test. The applicant no. 1 has not faired well in the viva-voce test and could not ^{be included} ~~come~~ ^{up} in the select panel. Thus, the respondents submit that there is no merit in the O.A.

6. During the course of arguments, the Learned Counsel for the applicant submitted that the selection was not according to ^{the} rules and that it has vitiated the panel.

7. The respondent authorities have produced the selection proceedings. We have perused the selection proceedings. At page 24 of the file the selection of the eligible candidates for

promotion to Loco Electrical Chargeman is available. From that it is clear that four persons were called for viva-voce test, among them, one namely - Ramesh M. Dubhe, remained absent. Three persons including the first applicant appeared for the viva-voce test.

8. The grievance of the applicant no. 1 is that the Selection Committee has not assessed the marks of the candidates individually. For this he relies upon Rule 219 of the Indian Railway Establishment Manual, Volume-I (Revised), 1989. Further, he brought to our notice that as per the instructions contained in letter dated 23.12.1979, all the members of the Selection Board should independently assess the candidates under different headings of personality, leadership, etc. and record the marks awarded by them in the mark sheet given to them and the same should be signed and handed over to the Personnel Officer who should average the marks given by the Members of the Selection Board and be responsible to compile the result on the basis of marks given by the members of the Selection Board. Thus, he submits that the selection now made is not as per rules.

9. Admittedly, the Applicant No. 1 was holding the post of Electrical Chargeman on ad-hoc basis as on date. It is, however, his contention that the respondent authorities have failed to follow the Division Bench decision of this Tribunal in the case of B. N. Guin V/s. Union Of India & Others reported in 1995 (1) CAT MAT 221. In that case this Bench relied upon the Full Bench decision of this Tribunal in O.A. No. 306/90 to 308/90..(S. S. Shambus & Others V/s. Union Of India & Others) decided on 29.10.1991. The observations made by the Full Bench is as under:



"Thus, there remains no doubt in our mind that the performance of the applicants on the post of Assistant Surveyor of Works was found satisfactory and upto the mark. The only reasonable and just suggestion that in our opinion can be made to meet the ends of justice in the circumstances of the case is that for the period during which the applicants shouldered the higher responsibilities of the higher Class-I posts of ASW/SW their gradation as SA should be treated as one level higher than the grading awarded to them as ASW as per the ACRs for that period. That is, if the ACRs as ASW reflects 'Good', it should be taken as 'very good', and if 'Very Good', then it should be taken as 'outstanding'. In this manner they are placed on equal footing for the purpose of assessment of comparative merits. With this modification in the grading, the comparative assessment of the merits of the candidates may be made by the selection committee and they may be accordingly considered for empanelment."

Relying upon this observation, ^{like} applicant no. 1 submits that the selection and assessment by the Selection Committee is not correct. The Selection Committee has not taken into consideration the ad-hoc post held by the applicant on that date and if that was taken into consideration, his grading would have been next higher one in accordance with the principles laid down by the Full Bench.

10. So far as Applicant No. 2 is concerned, he has not come up in the written test. Therefore, we are not considering the case of Applicant No. 2. So far as Applicant No. 2 is concerned, we feel that the O.A. is liable to be dismissed.

11. The applicant no. 1 has prayed to set aside the panel dated 25.08.1995. It is to be noted that the persons included in the panel are not before us. In the absence of those persons, we cannot ~~pass~~ ^{or} set aside the panel. Therefore, the only

conclusion that can be drawn is that to direct the Select Committee to consider the case of the applicant no. 1 in accordance with Rule 219 of the I.R.E.M. and also take due note of the decision of the Full Bench extracted above.

12. Accordingly, the following directions are given :

(i) So far as Applicant No. 1 is concerned, the Review Selection shall be held and it shall consider the suitability or otherwise of the applicant no. 1 on the basis of principles ~~of enunciation~~ ^{enunciated} by the Full Bench, which we have extracted above. If ^{the} Applicant No. 1 is found eligible to be empanelled on the basis of such an assessment, the respondents shall place the applicant ^{No.1} in the same position in which his immediate junior who was selected in the panel came to be placed. In such an event, all the monetary and consequential benefits which shall flow from that promotion, shall be granted to the applicant ^{No.1}.

(ii) Time for compliance is four months from the date of receipt of a copy of this order.

(iii) With the above directions, the O.A. is disposed of. No order as to costs.

Selection proceedings perused and returned to the respondents.


(GOVIND S. TAMPI)
MEMBER (A).

OS*


26.7.2000
(B.S. JAI PARAMESHWAR)
MEMBER (J).

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Recd. on
21/4/08

WRIT PETITION NO.4096 OF 2002

Union of India. ...Petitioner

vs.

Shri.V.N.Mangalanadan. ...Respondent.

Mr.Sureshkumar, for Petitioner.

Mr.R.G.walia, for Respondent.

CORAM: D.K.DESHMUKH &

J.H.BHATIA, J.

DATED: 8th April, 2008.

P.C.:-

1. By this petition, the petitioner challenges the order passed by the Central Administrative

Tribunal dated 23.3.2001 in Miscellaneous Petition no.1044 of 2000. That petition by that order has been rejected. That petition had been filed by the petitioner for condonation of delay in filing review application. In the review application, the petitioner was seeking review of the order of the same tribunal dated 26.7.2000 passed in original application no.1210 of 1995. The grievance of the petitioner against the order of the tribunal passed on the application for condonation of delay is that though by that order the Tribunal has held in paragraph 10 of the order that case for condonation of delay has not been made out, in the entire order, the tribunal has not anywhere even indicated why the cause shown in the application for condonation of delay is not a sufficient cause. In the order, the Tribunal only discussed merit of the review application and refused to condone delay.

2. No doubt that there is no prima facie case made out can be one of the grounds on which Court can decline to condone the delay but only for that reason Court cannot decline to condone delay. The Court has to consider the cause shown for the delay

to find out whether sufficient cause for condonation of delay has been shown. Therefore, initially we indicated to the learned Counsel appearing for respondent that we will set aside the order impugned and remit the matter back to the Tribunal to consider the application for condonation of delay and to consider whether the cause shown in the application is sufficient or not. Because the Tribunal, as is evident from the order, has also proceeded on the assumption that it has power to condone the delay. The learned Counsel appearing for respondent however relying on the provisions of Rule 17 of the Central Administrative Tribunals (Procedure) Rule, 1987 submits that the Tribunal does not have power to condone delay in filing review application. In support of that submission, he relied on the judgment of the Full Bench of Andhra Pradesh High Court in the case of "G.Narasinha Rao Vs. Regional Joint Director of School Education, Warangal and other, 2005(4) Services Law Reporter 720" where full bench of Andhra Pradesh High Court relying only on the language of sub-rule (1) of Rule 17 of the Rules framed under the Administrative Tribunal Act has held that Sections 4 to 24 of the Limitation Act are not applicable to the

review application filed before the Administrative tribunal. The learned Counsel appearing for petitioner on the other hand relied on the judgment of the full bench of Calcutta High Court in the case of "Union of India and others vs. Central Administrative Tribunal and another, 2002(5) CTC 436" where the Calcutta High Court not only considered the provisions of sub-rule (1) of Rule 17 of the the Rules framed under the Administrative Tribunal Act and the Scheme of the Act and the Rules but also referred to the provisions of Section 29 of the Limitation Act and has held that when there is delay in making an application for review before the Administrative Tribunal, in view of the provisions of Section 29(2) of the Limitation Act, the provisions of Section 4 to 24 of the Limitation Act are applicable. We have considered the full bench judgment of the Andhra Pradesh High court as also the judgment of the Calcutta High Court. We find ourselves in complete and respectful agreement with the law laid down by the full bench of Calcutta High Court. We find that the view that has been taken by the Calcutta High Court apart from being in accordance and in consonance with the law it also

advances remedy. There are several situations likely to arise because of which not only condonation of delay may become necessary but also there may be situation where a litigant may be required to claim exclusion of time etc. , and that will become possible for a litigant only if the provisions of Section 4 to 24 of the Limitation Act are applicable. In our opinion, as the judgment of the Calcutta High Court advances remedy and as that judgment considers all the relevant aspects as also relevant judgments of the Supreme Court, the view taken by the Calcutta High Court is proper and appropriate. Accordingly, in our opinion also, the provisions of Section 4 to 24 of the Limitation Act are applicable when an application for review is to be made before the Administrative Tribunal. The submission of the learned Counsel appearing for respondent that section 5 of the Limitation Act does not apply to application for review filed before the Tribunal, is rejected.

3. As we find and as observed above as the Tribunal also proceeded on assumption that they have power to condone delay but did not actually consider whether the cause shown by the petitioner is

sufficient cause, the appropriate order, in our opinion, would be to remit the application back to the tribunal for reconsideration. In our opinion, therefore, the following order would meet the ends of justice:-

The order dated 23.3.2001 passed in Miscellaneous Petition no.1044 of 2000 is set aside. That petition is remitted back to the Central Administrative Tribunal for consideration and decision in accordance with law and in the light of the observations made above. Rule is made absolute accordingly. No order as to costs.

TRUE COPY
Vilave
10/9/08
Assistant Registrar
Decree Department
High Court, Appellate Side
Bombay
4/9/08