

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:938/98

DATE OF DECISION: 4.1.2001

Shri Achankunju John Applicant.

Shri D.V. Gangal Advocate for
Applicant.

Versus

Union of India and others Respondents.

Shri R.K. Shetty Advocate for
Respondents

CORAM


Hon'ble Shri Kuldip Singh, Member (J)

Hon'ble Ms. Shanta Shastry, Member (A)

(1) To be referred to the Reporter or not?

(2) Whether it needs to be circulated to
other Benches of the Tribunal?

(3) Library.


(Kuldip Singh)
Member (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO:938/98

THURSDAY the 4th day of JANUARY 2001.

CORAM: Hon'ble Shri Kuldip Singh, Member (J)

Hon'ble Ms. Shanta Shastry, Member (A)

Achankunju John
Residing at
Parijat Building
Flat No. 5, C.S.D.
Estate Golibar Road,
Ghatkopar (W), Mumbai.

...Applicant.

By Advocate Shri D.V. Gangal.

V/s


1. Union of India, through
The Secretary to
The Government of India
Ministry of Defence
New Delhi.
2. The Secretary
Board of Control
Canteen Services
L-I, Block, Room No. 16,
Church Road, New Delhi.
3. Quarter Master General
(Appellate Authority)
Q.M.G's Branch (Q/CAN)
Army Headquarters
DHQ, P.O. New Delhi.
4. The General Manager and
Chairman
Board of Administration
Canteen Stores Department
Ministry of Defence
"Adelphi" 119, M.K.Road,
Mumbai.

....Respondents.

By Advocate Shri R.K. Shetty.

ORDER (ORAL)
{Per Shri Kuldip Singh, Member (J)}

By this OA the applicant has assailed the result of the examination which was held for promotion to the post of Stenographer Grade II. The applicant who was officiating



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Stenographer Grade III had appeared for promotion to the post of Stenographer Grade II vide order dated 11.2.1997. He was declared failed in the test. The applicant claims that this result be quashed and he be declared as passed in the said examination.

2. In support of his claim the applicant has stated that he has worked as Stenographer Grade III for more than 12 years and worked as P.A. to various controlling officers i.e. Deputy General Manager and other senior officers. He also claims that he had appeared in the test and had transcribed the dictation at least 99% correctly, if not 100% and it is practically impossible for the applicant to have failed in the test. The applicant alleges that there was some malafide and arbitrariness in declaring the applicant having failed in the test, since the applicant had approached this Tribunal for redressal in earlier OA 245/91 and had levelled certain allegations against the respondents.

3. The respondents ~~were~~^{have} pleaded that the examination was conducted by Senior Officers. However they were asked to produce the record. The respondents have filed a sur-rejoinder stating that the records of examination ~~are~~^{is} not available and the same is mis-placed and ~~have~~^{has} been lost. It is pertinent to mention that the applicant categorically stated that the examination has been conducted twice. The respondents stated that the proceedings of both examination are not available as the same ~~have~~^{has} been

mis-placed, which were kept in one file. But the respondents pleaded that the examination has been conducted in most fair manner by senior officers, therefore they ^{had} ~~were~~ not deliberately failed the applicant.

4. The respondents department had fairly stated that they had offered to conduct the examination 3rd time and if the applicant would like to appear in the third test he can give his willingness. The applicant submits that since he had transcribed the dictation at least 99% correctly, if not 100%, the department had mis-placed the records of both the examinations and adverse inference should be drawn against them under Section 114 of Evidence Act.

5. We have heard the learned counsel for the parties. The learned counsel for the respondents had drawn our attentions to the representation of the applicant.

6. The applicant had himself admitted in his representation that he could not have attained the prescribed speed. So the applicant is now estopped to level the allegations of malafide. The learned counsel for the respondents also referred to ruling reported in 2000 SCC (L & S) 313 Suneeta Aggarwal, V/s State of Haryana and others. As far as malafide alleged in respect of the second test is concerned the respondents submits that ~~since~~ the examination was conducted by senior officers of department. The

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records of the examination proceedings are mis-placed. The respondents fairly considered and offered for conducting the third test so the applicant can appear in the third test. In the circumstances the OA should be dismissed.

7. In view of the admission that the applicant could not attain the prescribed speed in the first test, now he could not categorically state that he must have transcribed the dictation 99% correctly, if not 100%. In the absence of the examination papers which have been mis-placed by the department, We have no reason to disbelieve the same since asw per reply an officer of the level of General Manager has offered to get the test conducted under his supervision.

8. Merely, because the department has lost the proceedings of the result, the applicant cannot be allowed to have undue benefit of the same.

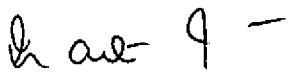
9. The applicants' reliance on Section 114 of the Evidence Act is also misplaced ~~and~~ in the ordinary course of conduct in the present situation, *no inference can be drawn that the applicant must have passed the examination*


10. The Tribunal cannot draw an adverse inference to declare the applicant as having passed the examination. Nor the adverse inference can be drawn to quash the result because in that event, the candidates who have passed the examination would be unnecessarily put to hard ship. Moreover, in that event^{to} applicant will still ~~to~~ have appear afresh for the examination.

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11. Malafide of the department is otherwise ruled out, because when the applicant failed for the first time, the department conducted the test again for the second time at his request. Now again the applicant has failed but still as the respondent have lost the papers they very fairly offered to conduct the test 3rd time that too under the supervision of General Manager.

12. In view of these circumstances we are of the considered view that OA has no merits same is hereby dismissed. However, as the respondent has offered to conduct the test, respondent shall accordingly conduct the test at the earliest.


(Ms. Shanta Shastri)
Member(A)


(Kuldip Singh)
Member(J)

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