

THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR
ORDER SHEET

ORDERS OF THE TRIBUNAL

03.04.2009

RA 01/2009 (OA No. 50/2008)

Mr. Nand Kishore, Counsel for applicant.

Heard learned counsel for the applicant.

For the reasons dictated separately, the RA is dismissed with no order as to costs.

(B.L. KHATRI)
MEMBER (A)

(M.L. CHAUHAN)
MEMBER (J)

AHQ

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 03RD day of April, 2009

REVIEW APPLICATION NO. 01/2009
IN
ORIGINAL APPLICATION NO. 50/2008

CORAM:

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. B.L. KHATRI, ADMINISTRATIVE MEMBER

Babu Lal Dholuria son of Shri Parsa Ram Dholuria, aged about 44 years, working as Law Assistant, DRM Office, Kota of West Central Railway, Kota (Rajasthan), resident of 10/4, PWD Colony, Vigyan Nagar, Kota.

.....APPLICANT

(By Advocate: Mr. Nand Kishore)

VERSUS

1. Union of India through General Manager, West Central Railway, Jabalpur.
2. The Divisional Railway Manager, West Central Railway, Kota.
3. The General Manager, Western Railway, Churchgate, Mumbai.

.....RESPONDENTS

(By Advocate : -----)

ORDER (ORAL)

The main contention raised by the applicant in the Review Application is that he has specifically taken ground 5(H) in the OA, which has not been decided by the Tribunal and besides it; the applicant has also raised other issues.

2. We have heard learned counsel for the applicant. At the outset, it may be stated that as can be seen from Para 5 of the judgement, relevant portion is being reproduced below, this Tribunal dismissed the OA mainly on the ground that the same is hopelessly time barred and the same cannot be entertained. Thus in view of the law laid down by the Apex court in the case of State of Bihar vs. Amrendra Kumar Mishra, JT 2006 (12) SC 304, while disposing of the matter on ground of delay, Bench should not express any opinion on merit, the contention raised by the applicant that

he may be re-heard on merit and also that ground H has not been considered by the Tribunal is wholly misconceived when the OA has been dismissed solely on limitation. At this stage, it will be useful to quote relevant portion of Para No. 5, which thus reads as under:-

"5. We are of the view that the applicant is not entitled to any relief for more than one reason. First of all, we will deal with the preliminary objections raised by the respondents regarding maintainability of the OA. As can be seen from relief clause, prayer of the applicant is that panel dated 30.09.99 (Annexure A/3) may be amended by giving him benefit of Para 3.9.2 of the railway board letter dated 7.12.90 which provides awarding of 10% relaxation to the SC candidate. According to us, the cause of action, if any, arose to the applicant in the year 1999 when his name was not included in the revised panel dated 30.9.99 which panel was prepared pursuant to the judgement rendered by the Mumbai Bench of this Tribunal which has been upheld upto the Apex Court. The contention raised by the applicant that he was pursuing the remedy before the Hon'ble High court and subsequently before the Hon'ble Apex Court is of no consequence. The matter which was in issue before the Hon'ble High court as well as before the Hon'ble Apex Court was regarding the correctness of the decision rendered by the CAT, Mumbai Bench whereby the Mumbai Bench has held that 15 marks for seniority could not have been awarded and direction was given to the railway authorities to prepare revised panel ignoring marks of seniority. Once name of the applicant was not found in the amended panel dated 30.9.99, it was permissible for him to challenge validity of that panel on all permissible grounds, which he has raised in this OA. Having not done so, we are of the view that the present OA is hopelessly time barred and the same cannot be entertained."

3. As can be seen from portion quoted above, this Tribunal has specifically observed that it was permissible for the applicant to challenge the validity of the panel on all permissible grounds, which was available to him as he has raised in the OA. The applicant has pleaded the ground (H) based on the judgement of the Apex Court in the case of **R.C. Srivastava vs. Union of India & Another**, SLP NO. 9866/1993, which was decided 03.11.1995. In this case, the Apex court has held that once a person has qualified the written examination, he should not have been failed in viva-voce examination especially when he is officiating/working on the higher post for which purpose the selection is to be made. As already noticed above, this Judgement was delivered in November 1995. Amended panel which was subject matter in OA was prepared on 30.09.1999 much after the decision rendered by the Apex Court in the case of R.C. Srivastava.

109

Thus, it was permissible for the applicant to challenge the validity of the panel dated 30.09.1999 on the ground that once he has passed the written examination, he could not have been failed in viva-voce and he should be declared as empanelled in the light of the judgement rendered in the case of R.C. Srivastava. Thus the submission made by the learned counsel for the applicant that ground (H) has not been taken into consideration is wholly misconceived in the light of the observations made in Para 5 of judgement (supra), whereby this Tribunal has observed that it was permissible for the applicant to challenge validity of panel on all permissible grounds raised in OA. Learned counsel for the applicant further argued that he became aware about the fact that he has obtained 1 marks less than the prescribed for being empanelled, which fact came to his knowledge as he has sought information under the Right to Information Act, Thus ground 'H' could have been pleaded in OA subsequently cannot be entertained and is wholly misconceived. As can be seen from the ratio laid down by the Apex Court in the case of R.C. Srivastava, the question whether the applicant has been failed by 1 or 2 marks is irrelevant as Hon'ble Supreme court has held that once a person has qualified the written examination, he could not have been declared unfit on the basis of viva-voce.

4. Thus in view of what has been above, the contention raised by the review applicant is wholly misconceived. While exercising the power in Review, we are not supposed to go into merit of the case. In case the judgement is erroneous, it is permissible for the review applicant to challenge the same before the higher court and admittedly, review is not the proper remedy.

5. Accordingly, the Review Application is dismissed at admission stage itself.

(B.L. KHATRI)
MEMBER (A)

AHQ

(M.L. CHAUHAN)
MEMBER (J)