

9

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET

ORDERS OF THE TRIBUNAL

16.09.2011

OA No. 127/2011 with MA 85/2011

None present for applicant.

OA as well MA are disposed of by a separate order.

Anil Kumar
(Anil Kumar)
Member (A)

K. S. Rathore
(Justice K.S.Rathore)
Member (J)

ahq

8/2011

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 16th day of September, 2011

ORIGINAL APPLICATION No. 127/2011
With
MISC. APPLICATION NO. 85/2011

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

Chander Shaker son of Shri Beni Gopal by caste Jangid, aged 47 years, Armature Winder I, Ticket N. 7868, posted at AEE/PR, North Western Railway, Ajmer, resident of 476/26, Vashwakarma Marg, Ramgunj, Ajmer.

... Applicant

(By Advocate : None

Versus

1. Union of India through the General Manager, North Western Railway, Jaipur.
2. The Deputy Chief Electrical Engineer (W), North Western Railway, Nagra Power House, Ajmer.
3. Gurmeet Singh, Ticket No. 05265, Railway Station, North Western Railway, Ajmer.
4. Shemsher Kathat, Ticket No. 80482, Loco Motors, Western Railway, Ajmer.
5. Narain Singh, Ticket No. 91169, Train Lighting Carriage, North Western Railway, Ajmer.

... Respondents

(By Advocate : -----)

ORDER (ORAL)

The matter was listed for admission on 19.04.2011.

The arguing counsel was not present on that date. On the request of the proxy counsel for the applicant, the matter was adjourned for 27.04.2011. On 27.04.2011, the applicant's counsel appeared and asked for time. The matter was ordered to be listed 09.05.2011. Again on 09.05.2011, on the request of the learned counsel for the applicant, the matter was adjourned to 19.07.2011. On



19.07.2011, the matter was adjourned on the request of the proxy counsel appearing on behalf of the applicant for 04.08.2011. Again on 04.08.2011, the same request was made for adjournment of the case and the case was adjourned to 11.08.2011. On 11.08.2011, nobody appeared on behalf of the applicant and the case was adjourned for 17.08.2011. On 17.08.2011, when the case was listed before the Deputy Registrar, none appeared on behalf of the applicant and it was adjourned to 16.09.2011. Today also, i.e. 16.09.2011 none appeared on behalf of the applicant. Therefore, we have no option but to decide the OA as well as MA.

2. The applicant has filed ~~b7c~~ this OA thereby challenging the impugned order dated 15.01.2008 (Annexure A/1) by which the selection/final panel has been declared and order dated 05.11.2007 (Annexure A/2), whereby the applicant has not been declared pass in the examination conducted by respondent no. 1 & 2 on 09.10.2007 for the post of JE-II under 25% intermediate category. The applicant wants directions to the effect that respondent no. 1 & 2 be directed reevaluate the answer book of the applicant in respect of paper I & II in the Examination conducted on 09.10.2007.

2 The applicant has filed an MA No. 85/2011 for seeking condonation of delay as the aforesaid impugned orders dated 15.01.2008 and 05.11.2007 (Annexure A/1 &



A/2 respectively) have been challenged after a delay of more than three years and to explain this inordinate delay. The ground which the applicant has taken in the MA is that he came to know about the order dated 28.01.2008 after obtaining the copy of the answer book under Right to Information Act. It is also not disputed that the answer books were supplied to the applicant on 13.10.2008. The applicant has not given any explanation in the MA why the OA has not been preferred well within time.

3. The Hon'ble Supreme Court in the case of **D.C.S. Negi vs. Union of India & Others** decided on 07.03.2011 [Petition for Special Leave to Appeal (Civil) 7956/2011] held that:-

"Before parting with the case, we consider it necessary to note that for quite some time, the Administrative Tribunals established under the Act have been entertaining and deciding the applications filed under section 19 of the Act in complete disregard of the mandate of Section 21, which reads as under:-

"21. Limitation..-

(1) A Tribunal shall not admit an application,-

(a) in a case where a final order such as it mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made,



within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where-

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court,

The application shall be entertained by the Tribunal if it is made within the period referred to in Clause (a), or as the case may be, clause (b) of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything, contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period."

A reading of the plain language of the above reproduced section makes it clear that the Tribunal cannot admit an application unless the same is made within the time specified in clause (a) and (b) of Section 21(1) or Section 21(2) or an order is passed in terms of sub-section (3) for entertaining the application after the prescribed period. Since Section 21(1) is couched in negative form, it is the duty of the Tribunal to first consider whether the application is within limitation. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under Section 21(3)."



4. Consequently, in view of the judgment of the Hon'ble Supreme Court in the case of **D.C.S. Negi vs. Union of India & Others**, we are of the view that the Misc. Application for seeking condonation of delay deserves to be dismissed and the OA also deserves to be dismissed on account of delay & latches.

5. Accordingly, the OA as well as MA are dismissed with no order as to costs.

Anil Kumar
(Anil Kumar)
Member (A)

K. S. Rathore
(Justice K.S.Rathore)
Member (J)

AHQ