CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.1386 of 2003
with
Original Application No.1111 of 2003
and Original Application No.1077 of 2003

New Delhi, this the 17th day of December, 2003

HON'BLE MR.KULDIP SINGH, MEMBER(JUDL.)
HON'BLE MR. S.K. NAIK, MEMBER (A)

OA NO.1386/2003

U.C.Vashisht,
S/o late Sh. B.S.Vashisht,
Supervisor P.Way,
Northern Railway,
Bareilly.

OA NO.1111/2003

Sunil Kumar Sharma,
S/o Sh. Babu Ram Sharma
Supervisor P.Way,
Northern Railway,
Moradabad.

OA NO.1077/2003

Pradeep Kumar Sharma,
S/o Sh. R.G.Sharma,
Supervisor P.Way,
Northern Railway,
Mahrauli,
Distt. Ghaziabad. -APPLICANTS

(By Advocate: Shri G.D.Bhandari)

Versus

Union of India through

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. The Divisional Railway Manager,
Northern Railway,
Moradabad.

3. Sh. Arun Kumar Saxena,
Supervisor P.Way, Under SSE/P.Way, N.Rly.,
Shahjahanpur (UP).

4. Sh. Virender Kumar,
Supervisor P.Way, Through DSE(C),
DRM's Office/N.Rly.,
Allahabad. -RESPONDENTS

(By Advocate: Shri Rajender Khatter in OA-1386/2003
Sh. D.S.Jagotra in OA-1111/2003
Sh. R.L.Dhawan in OA-1077/2003).

O R D E R

By Hon'ble Mr.Kuldip Singh, Member (Judl)

By this common order we shall be deciding three OAs as all these involve common question of facts and law.

2. The brief facts, as alleged by the applicants in brief are that all the applicants had been working on the post of Permanent Way Supervisor in the grade of Rs.4500-7000 after having been appointed through a proper and formal selection process in the Engineering Department of the Northern Railway, Moradabad Division. The next post in the hierarchy is that of Junior Engineer-II, Permanent Way in the grade of Rs.5000-8000 which is a selection post and is filled up after conducting a written test followed by a viva-voce test and the select list is prepared on the basis of merit-cum-seniority. Respondents had held a selection for the said post on 31.1.1998 in pursuance of a circular dated 7.1.1998. All these applicants were in the consideration zone. All these applicants found their name in the list of candidates who had qualified in the written test. Based on the written test viva-voce test was held on 16.3.1998 which contained the names of 29 selected persons but name of applicants is not there nor the name of one junior to the applicants, namely, Shri Rajesh Kumar Mishra was there.

3. It is further stated that the rules for the selection are contained in the IREM Volume-I Chapter-II. Para 219 contains the procedure to be adopted by the Selection Board and sub-para (g) lays that selection

should be made on the basis of overall merit. Further for the guidance of the Selection Board the factors to be taken into account and their relative weightage are given hereinbelow:-

		Maximum Marks	Qualifying Marks
i)	Professional ability	50	30
ii)	Personality, Address Leadership and Academic qualification	20	
iii)	Record of service	15	
iv)	Seniority	15	

4. It is further provided that a candidate must obtain 30 marks in the professional ability and 60% marks of the aggregate for being placed on the panel. Where both written and oral tests held for adjudging the professional ability, the written test should not be of less than 35 marks and the candidate must secure 60% marks in the written test for the purpose of being called in the viva-voce test. Since neither the name of the applicants figure nor the name of Shri Rajesh Kumar Misra appeared in the panel, however, Shri Rajesh Kumar Misra filed an OA 1364/99 before the Allahabad Bench of the Central Administrative Tribunal. The Tribunal called for the record of the selection and found that two persons namely, S/Shri Virender Kumar and Arun Kumar Saxena had secured lesser marks than Shri Rajesh Kumar Misra who were placed on the panel whereas he was ignored. The Tribunal then observed that since promotion of the selectees had been made long back so the Tribunal did not disturb the panel but directed the respondents to include Rajesh Kumar Mishra also on the panel. An appeal was taken before the Allahabad High Court which was

dismissed. Thereafter the applicants made a joint representation and submitted that since there is nothing adverse against them and they being senior to Rajesh Kumar Mishra their names ought to have been interpolated in the panel.

5. Applicants further allege that all the three have obtained more marks than Shri Arun Kumar Saxena so they ought to have been included in the selected list. There has been no reply to the representation.

6. The applicants now submit that there are catena of cases of the Hon'ble Supreme Court that the benefit of the judgment/order should be given to all the similarly situated employees and the employees should not be compelled to knock the doors of justice. Thus it is prayed that the respondents be directed to extend the benefit of the judgment order dated 25.4.2001 of the CAT/Allahabad Bench which has been affirmed by the Allahabad High Court and the names of the applicants be also included.

7. The respondents are contesting the OA. Respondents in their reply pleaded that the OAs filed by the applicants is barred by time since the applicants are seeking placement in the panel dated 13.4.98 whereas the applicants had submitted representation on 6.8.2001 and the limitation period had already expired. It is also submitted that no application seeking condonation of delay was filed so court should not condone the delay also.

8. Besides that it was also pleaded that against the judgment of the Allahabad High Court the respondents had also taken a decision to file the SLP before the Hon'ble Supreme Court thus the judgment of the Allahabad High Court has not become final.

9. It is also pleaded that the selection made by the Selection Board has been made in accordance with the rules provided in the IREM Volume-I Chapter-II. No other contention has been raised.

10. We have heard the learned counsel for the parties and gone through the record of the case.

11. The short question to be answered is whether the OA is barred by time or not. The learned counsel appearing for the applicants submitted that the applicants are seeking benefit of the judgment dated 7.3.2003 filed by the Union of India against a similarly situate Permanent Way Supervisors assailing the judgment of the Central Administrative Tribunal, Allahabad Bench dated 25.4.2001. The learned counsel for the applicants submitted that since the judgment has been given on 7.3.2003 so the case of the applicants are well within the time.

12. The facts which are not in dispute go to show that the applicants in this case though are claiming the benefit of the order passed in Civil Writ Petition by the Hon'ble Allahabad High Court on 7.3.2002 but primarily the applicants have challenged the selection panel for the post of JE-II grade Rs.5000-8000 the result of which

was declared as long back as on 13.4.1998. In the case of the applicant in Allahabad High Court the applicant therein had also challenged the same panel but he had challenged the same well within time that is why his OA was allowed with certain observations made by the Tribunal and the order passed by the Tribunal had been confirmed by the High Court. The Tribunal while allowing the OA had summoned the record of selection and observed as under:-

" Heard counsel on interim order. Considering the circumstances of the case, it is ordered that the promotions consequent to impugned order shall be subject to the outcome of this OA".

13. Thus as we have found that the panel was not correctly drawn and it suffers from arbitrariness and illegalities, the applicant is entitled for the relief. The Tribunal had also compared the particulars of the applicant and two other general category candidates who had secured lesser number of marks so on the basis of the facts the OA was allowed which was affirmed by the Hon'ble High Court. The Hon'ble High Court also while affirming the judgment of the Allahabad Bench of the Tribunal observed as follows:-

" The Tribunal has held that two (no) persons, namely, Virendra Kumar and Arun Kumar, have been included in the panel for the selection though they secured less marks than the respondent No.1, hence the Tribunal rightly directed that the respondent No.1 should also be promoted as Junior Engineer-II. There is no illegality in the Tribunal's order. The petition is dismissed".

14. Thus the perusal of both these judgments go to show that the findings which were arrived at by the Tribunal as well as the High Court were based on facts i.e., the marks secured by the applicants therein which

were found to be on the higher side than those two general category candidates who were included in the panel.

15. So if on the basis of the marks secured one is challenging the select panel that has to be done immediately within the period of limitation after the declaration of the result of the selection which has not been done by the applicants herein. They have approached this court only after the judgment had been given by the Tribunal as well as by the Hon'ble Allahabad High Court. Even in paragraph 1 which is meant for particulars against which the order has been made the applicants have alleged that they being similarly situate as the applicant before the Allahabad Bench of the Tribunal, so they should also be given the benefit of the judgment of the Allahabad High Court and for this purpose we must say that the decision of the court of law in another case does not give a cause of action to the petitioner as the same has to be counted from the actual date as per the law laid down by the Hon'ble Supreme Court in Bhoop Singh Vs. U.O.I. and Others SLJ 1992 (2) SC 103.

16. A The perusal of the judgment given by the Tribunal at Allahabad goes to show that this has been done more or less on the facts of the case and not on the principle of law nor there is any comment about the selection procedure nor the court had quashed the procedure prescribed in para 219 of IREM Vol.I, so the applicants cannot base ~~his~~ their cause of action from the judgment delivered by the Allahabad High court. If at all they have to challenge the selection than they are

supposed to challenge the same within the prescribed period from the date of the result of selection ~~was declared~~ which was declared sometime on 13.4.98 whereas all the OAs have been filed on 10.4.2003. Thus these OAs are highly barred by time as per provision of Section 21 of the AT Act.

17. It is further submitted that because ~~of~~ the judgments given by the Allahabad Bench and Allahabad High Court are based purely on facts which could not give fresh cause of action in favour of applicants, as such the OAs have no merits and the same deserves to be rejected. Even the court had not upset the selection of two persons who were so called junior to applicants therein. The Tribunal had only directed the respondents to accommodate. but applicants in the present case have come to the court at a very late stage.

18. In view of the above, OAs have no merits and the same are dismissed. No costs.

MEMBER (A)

(KULDIP SINGH)
MEMBER (J)

Rakesh

Attested
Chaudhary
30(J.)