

(2003) 03 OHC CK 0058

In the Orissa High Court

Case No : Original Jurisdiction Case No. 11351 of 2001

K. Ravichandran

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 29-03-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2003) 96 CLT 118

Hon'ble Judges : B.P. Das, J;B. Panigrahi, J

Bench : Division Bench

Advocate : A.R. Dora, J.K. Lenka and Mrs. G.R. Dora, for the Appellant; Bijay Pal, Avijit Pal and B.P. Mohapatra and Mrs. Pramila Mohanty, for the Respondent

Final Decision : Allowed

Judgement

B. Panigrahi, J.—The petitioner has challenged the legality, propriety and validity of the order of the Central Administrative Tribunal in O.A. No. 267 of 2000 dated 20th August, 2001 whereby and whereunder the petitioner's prayer for giving him appointment as AEN Group "B" with effect from 12.8.96 with all consequential benefits was rejected.

2. The case suffered a chequered history. The petitioner after having passed Three Years" Diploma Course in Civil Engineering on completion of S.S.C. Examination was appointed as a "Work Mistri" and joined as such on 9.12.1988 in the scale of pay Rs. 1400-2300/- by virtue of a competition (written and viva voce) pursuant to an advertisement made to that effect. His service was regularised on satisfactory completion of probation on 10.6.89. By a letter dated 28.2.95 applications were invited for filling up 30% of the vacancies in the post of Assistant Engineer (AEN) from all staffs of Civil Engineering Department who had completed five years" of regular service in the scale of pay Rs. 1400-2300/- as an 1st November, 1994. The petitioner is said to have completed 5 years" of regular service without any fortuitous service in the said scale. Therefore, he applied for the post of Assistant Engineer, AEN and accordingly he was permitted

to sit in the written test held on 12.11.95. The petitioner was selected along with other 38 candidates in the written test by securing more than 60% marks. From out of 38 candidates only 22 candidates were called to attend the interview on 19.2. 96, vide Annexure-1 to the writ petition, but the said interview was postponed and it was finally held on 12.8.96 and a panel of 16 candidates was prepared vide Annexure-2 to the writ petition. It was further noticed that the petitioner was included among 22 candidates in order of merit, vide Annexure-1, but he was improperly excluded from the panel, the reason which he could ascertain after the judgment passed by this Court in OJC No. 14206 of 1998 upholding the judgment of the Central Administrative Tribunal in O.A. No. 128 of 1996 was that he was not a party in that earlier case. Even though the petitioner was more meritorious than Sri A. R. Jena, whose name was included in Serial No. 16 of the panel, but the name of the petitioner was excluded.

3. The designation of "Work Mistri" was changed as IOW, Grade III, but the scale of pay remained unaltered which was fixed at Rs. 1400- 2300/-. Five years" experience was required for the post of AEN in the scale of Rs. 1400- 2300/-. So the change of nomenclature was held to be inconsequential. But unfortunately the opp. parties counted five years" service as on 1.11.94 from 18.12.92 instead of from the date of regularisation,, i.e., 10.6.89 and the period between 10.6.89 and 17.12.92 was treated as non-fortuitous (not continuous). Therefore, the opp. parties felt inclined in not communicating the petitioner the result of the interview. The opp. parties similarly rejected the prayer of other 12 candidates who were not regularised till 17.12.92 on the ground that they possessed below 5 years" of service. Therefore, they filed a case in O.A. No. 128/96 before the Central Administrative Tribunal and the Tribunal directed the opp. parties to count five years" of service from the date of regularisation in the scale Rs. 1400-2300/- and the period from 10.6.89 to 18.12.92 was held to be non-fortuitous and as such the petitioner as well as other candidates were held to have completed five years" service as on 1.11.94.

4. The opp. parties being undeterred by the order passed by the Central Administrative Tribunal challenged the same in a writ petition in this Court in OJC No. 14206 of 1998 and this Court by judgment dated 4.5.99 upheld the order of the Tribunal and dismissed the writ petition.

5. Immediately after the dismissal of the writ petition filed by the opp. parties 1 to 4, the petitioner submitted a representation on 21st May, 1999 claiming the same benefit to be given to him as that of other candidates opp. parties in the writ petition. It appears that the opp. parties 1 to 4 implemented the order passed by the Tribunal and the applicants in O.A. No. 12B/96 were appointed on 31.12.99. The Railway Board after consulting the Addl. Solicitor General decided to implement the judgment of the Tribunal which was confirmed by this Court. It has further transpired that after Railway Board"s decision six other candidates who were not petitioners in O.A. No. 128/96 were also called to interview. When the petitioner"s representation was not disposed of by the opp. parties, he was

again constrained to submit a second representation on 8.5.2000.

6. It has been claimed by the petitioner that although he has secured 239 marks which will show that he is more meritorious compared to candidates in serial Nos. 8 to 12 and 16 to 18 in the list, he was not selected. It is further alleged that opp. party No. 5, who was placed in serial No. 33 by securing much less marks than the petitioner was shown in serial No. 16. The panel was rearranged by including 16 names in the original panel dated 12.8.96. There is a patent error committed by opp. parties 1 to 4 in not including the name of the petitioner in the merit list. It has been alleged by the petitioner that there has been no inexplicable or unexplained delay committed by the petitioner in filing of the case. Opp. parties 1 to 4 have never taken pains in informing the petitioner about their decision on the representation submitted by him. He was always under the impression that opp. parties 1 to 4 would properly consider his case and appoint him in the post of AEN. But, when finally the opp. parties 1 to 4 issued an order of appointment vide Annexure-6 after holding supplementary viva voce test, the petitioner has filed an application before the Tribunal. The cause of action as disclosed in the petition accrued after the Railway Board's decision dated 31.12.96 and after implementing the direction of the Tribunal on 5.5. 2000.

7. Most of the factual aspects have been admitted by the opp. parties 1 to 4. The only question that has been raised in this case is that the application filed by the petitioner appears to have been hopelessly barred by limitation. It is, inter alia, stated that a railway employee like any other individual person is entitled to the relief on the basis of his legal rights which has to be enforced in a legal proceeding. But the same is to be done within the four corners of the procedural law. In this case, the cause of action had accrued on 28.2. 95 when the opp. parties 1 to 4 issued a letter/circular in the matter of filling up 30% of the vacancies in the post of AEN in Civil Engineering Department. It is claimed that while other applicants filed an application before the Tribunal by ventilating their grievances why the petitioner slept over his rights for so many years. Therefore, it should be construed that the petitioner had slept over his rights and remained content with the administrative action of opp. parties 1 to 4. Therefore, the petitioner cannot claim the same treatment which was given to the other candidates. Accordingly the application was rightly dismissed by the Tribunal.

8. Most of the essential facts involved in this case are not in dispute. The opp. parties 1 to 4 have, however, admitted that the petitioner was a successful candidate in the written test held on 12.11.1995 and he was asked to appear in the viva voce test. The opp. parties 1 to 4 passed an order to look into the annual confidential report for 5 years. When the name of the petitioner was not included in the list of successful candidates, he submitted a representation on 21st May, 1999. It does not turn out that the opp. parties have ever disposed of the said representation. The petitioner further submitted a representation whereby he has alleged that in the written test as well as viva voce test he came

out successful for being appointed in the post of AEN. He has also indicated in his representation dated 8.5. 2000 that the persons who secured less percentage Of marks could be accommodated in the post of AEN, but how the petitioner's case was over-looked. Therefore, in case the petitioner's claim for being appointed as a AEN is ignored, it would only amount to be a travesty of fate.

9. The other candidates, those who appeared for the post of AEN filed an original application being O.A. No. 128 of 1996 and the Tribunal by its order dated 4th August, 1998 directed the opp. parties to declare the results of the viva voce test conducted in respect of the applicants and decide whether they could be included in the panel of successful candidates on the basis of their performance in the written test and viva voce test in which they have already appeared by virtue of the interim order. The opp. parties 1 to 4 challenged the decision of the Tribunal by filing a writ petition in this Court being OJC No. 14206 of 1998 and this Court by virtue of the order dated 4.5.1999 upheld the order of the Tribunal. Thereafter the matter was referred to the Railway Board as to whether or not the opp. parties 1 to 4 should prefer Special Leave application in the Supreme Court. The matter was, however, examined by the Additional Solicitor General who expressed his opinion that there was no merit in this case so that it could be challenged in the Supreme Court and advised them to immediately implement the orders passed by the Tribunal. Supplementary viva voce test was conducted on the basis of the performance in the written test in so far as the candidates whose viva voce test was not earlier conducted and after such viva voce test was conducted few more candidates were selected. It may be stated here that the petitioner K. Ravichandran though had shown better performance, but his name was not included in the select list. The General Manager, South Eastern Railway by his letter dated 4.4.2000 sent to O.S.D. (Management Services) vide, Annexure-8, held that by virtue of the orders of the Central Administrative Tribunal and the High Court, the petitioner along with 33 others were found to have been selected. It is most unfortunate that even the persons who ranked below the petitioner were appointed by virtue of the Court's order, but the authorities failed to consider the administrative action of the opp. parties in any court by filing a case.

10. Mr. Dora, learned counsel appearing for the petitioner has contended with strong intensity of conviction that such pedantic and parochial approach is unsustainable in law inasmuch as the authorities should have adopted uniform principle as a model employer while giving promotion to its employees. When the other employees who appeared in the interview and secured lesser position than that of the petitioner could be given due promotion under which circumstances the petitioner's right for consideration of promotion can be constricted. We noticed that the submission advanced by Mr. Dora appears to be quite germane. In this case the authorities found the petitioner as well as other applicants eligible to appear in the written test for the post of AEN. Therefore, they cannot subsequently turn round and raise an objection that they were ineligible to appear in the written test. In this case, the doctrine of promissory estoppel is

squarely applicable. It be noted here that the authorities not only permitted the petitioner to sit in the written test, he was also asked to appear in the interview and found successful in the same. In this back-ground, we are at a loss to understand how the petitioner could be deprived of getting his promotion to the rank of AEN.

11. The claim of the petitioner was rejected on the ground that although he was eligible for consideration to be appointed in the post of AEN, but on account of long delay, the petitioner did not deserve to claim promotion. Mr. Dora, learned counsel has advanced a formidable plea by stating that the other candidates were given promotion after the judgment passed by this Court, i.e. some time in the month of May, 1999. The petitioner submitted the representation on 21.5.1999 after the High Court's judgment to extend the same benefit. But the authorities adopted a careless and casual attitude in avoiding such a representation. Six candidates other than the petitioner in the said O.A. No. 128 of 1996 were called to an interview and accordingly some of them were given appointment. This time also the petitioner submitted a representation on 8.5.2000. But the authorities appeared to have taken a very pendantic approach by cleverly avoiding the petitioner's claim for promotion. In this case, we rely on a judgment reported in *The State of Madhya Pradesh Vs. Bani Singh and another*, . From th'e ratio of the above judgment it is crystal clear that the opp. parties 1 to 4 has acted illegally, unreasonably and erroneously in dismissing the petitioner's application on the ground of delay. He has also submitted representations without taking any positive action. Therefore, the petitioner was in dark till he finally knocked at the doors of the Tribunal. In another judgment reported in *R.M. Ramual Vs. State of Himachal Pradesh and Others*, where it has been held :

"It is true that the seniority list was prepared in 1971, but no prejudice was caused to the appellant by the seniority list, as he was holding the position of District Public Relations Officer all through. Moreover, the appellant was given proforma promotion by the Government on or about August 7, 1973. It is only by the impugned order dated April 28, 1982 that the Government accepted the representation of the respondents Nos. 4 and 5 and directed that the inter se seniority of the appellant and of the said respondents was to be determined on the basis of their substantive ranks on November 1, 1966 and further directed that the respondents Nos. 4 and 5 would rank senior to the appellant. The cause of action really arose to the appellant for moving the writ petition after he was communicated with the impugned order dated April 28, 1982. In our opinion, therefore, there has been no unreasonable delay on the part of the appellant to challenge the impugned order and, consequently, the final seniority list."

12. Mr. Pal, learned Senior Advocate appearing for the opp. parties 1 to 4 has strongly relied upon a judgment reported in (2001) 1 SCC 240 in the case of *A. J. Ferandis v. Divisional Manager, South Central Railway and Ors.* and contended that the appellant in that case did not challenge the seniority list for quite some time and he remained satisfied with the gradation list prepared by the

Department. Therefore, after passage of considerable time it was not open to the appellant to unsettle the seniority list prepared by the Department. But on a careful reading of the judgment we, however, noticed that the fact situation of that case was based on a different footing. The appellant was not empanelled nor found suitable for promotion, therefore, he was ranked junior to the other rival candidates who were found suitable to hold the promotional post.

13. Mr. Dora has argued with vehemence by relying a judgment reported in 1997 (4) SLR 774 in the case of K. C. Sharma and Ors. v. Union of India and Ors.. The Constitution Bench of the Supreme Court held on the basis of the facts stated in the above case as follows :

"Having regard to the facts and circumstances of the case, we are of the view that this was a fit case in which the Tribunal should have condoned the delay in the filing of the application and the appellants should have been given relief on the same terms as was granted by the Full Bench of the Tribunal. The appeal is, therefore, allowed, the impugned judgment of the Tribunal is set aside, the delay in filing of O.A. No. 774 of 1994 is condoned and the said application is allowed. The appellants would be entitled to, the same relief in the matter of pension as has been granted by the Full Bench of the Tribunal in its judgment dated December 16, 1993 in O.A. Nos. 395-403 of 1993 and connected matters."

Further reliance was placed on a judgment reported in Balajinath Padhi Vs. Central Administrative Tribunal and Others, in which it has been held :

"The Tribunal also committed illegality in not considering the prayer for condonation of delay merely because no petition was filed. A bench of this Court as back as 1971 (presided over by Chief Justice G. K. Misra) in Hari Sankar Dikshit v. Dharanidhar Dikshit ILR 1971 Cut 1387, has ruled that Section 5 of the Limitation Act, 1963 does not prescribe that an application must be filed in writing though the invariable practice is that an application is filed. In absence of an application, if sufficient evidence is available in the case record to condone the delay and the Court is satisfied with it, delay can be condoned. Therefore, merely because the petitioner's application was not accompanied with an application for condonation of delay, the Tribunal ought not to have taken it as a ground to reject the application. It may be seen that after the petitioner's appeal was dismissed by the appellate authority on 6.8.1983, he seems to have made representation to the concerned Ministry in the Department of communication on 31.5. 1989 (Annexure-4), but there was no response. After waiting for some time, he finding no other way moved the Tribunal in the year 1993. Ordinarily, the petitioner should have filed an application u/s 5 of the Limitation Act, 1963 for condonation of delay. But because of apparent mistake committed by his lawyer, he should not suffer. The Tribunal could have asked him to furnish reasons for the delay. As the petitioner was removed from service about twenty years back, instead of requiring the Tribunal to examine the sufficiency of ground for not making the application within the prescribed time, we, on the basis of materials available on record hold that there was sufficient cause for him in not

approaching the Tribunal in time."

14. Thus on a combined reading of the judgments cited above indelible impression has been created in our mind that the appointment of the petitioner as AEN has been avoided on the pretext of some flimsy or trivial grounds by the opp. parties 1 to 4. Denial of such right would amount to rancour, ill-feeling brow-beating and jealousy among the employees working under opp. parties 1 to 4. Thus, the case of the petitioner be considered for promotion from the date when his juniors were given appointment in the said post.

15. With the above directions, the writ, petition is allowed and consequently the order of the Tribunal dated 20.8.2001 passed in O.A. No. 267 of 2000 is quashed.

B.P. Das, J.

I agree.