

(2014) 12 KAR CK 0258

In the Karnataka High Court

Case No : Writ Petition Nos. 108338 and 109825/2014 (C-CAT)

The Union of India

APPELLANT

Vs

V.S. Thippeswamy

RESPONDENT

Date of Decision : 17-12-2014

Acts Referred:

Citation : (2014) 12 KAR CK 0258

Hon'ble Judges : Mohan M. Shantana Goudar, J;K.N. Phaneendra, J

Bench : Division Bench

Advocate : Ajay U. Patil, Advocate for the Appellant; V.S. Koujalagi for V.M. Sheelvant, Advocate for the Respondent

Judgement

K.N. Phaneendra, J.—The writ petitioners, who were the respondents before the Central Administrative Tribunal, Bangalore Bench, Bangalore (hereinafter referred to as "the CAT" for short) in O.A. No. 531/2013, have challenged the order dated 02.04.2014, wherein the CAT has directed the petitioners herein for the revaluation of the answer script of the respondent - Thippeswamy; if the applicant secures qualifying marks under the revaluation, the writ petitioners have to consider the case of the applicant for the post of Junior Loco Inspector within 15 days from the date of declaration of the results under the revaluation. The said order is called in question on several grounds, which we are going to discuss little later.

2. The brief facts which are not in dispute between the parties are that, the respondent Thippeswamy was appointed as Diesel Assistant on 1.5.1994 and promoted to the post of Goods Driver on 21.5.2002 and later, promoted as Passenger Driver on 1.3.2011. He has also worked in a tenure post of Crew Controller from 14.4.2007 to July, 2011.

The writ petitioners have invited applications to fill up the post of Junior Loco Inspector in the scale of Rs. 6,500 - 10,500 vide notification dated 24.10.2007. Out of 15 posts notified, 4 posts were reserved for SC and one post for ST.

Volunteers were called for filling up the post from-

- i. Mail and Express Driver in scale of Rs. 6000-9800
- ii. Passenger Driver/Senior Goods Driver in scale of Rs. 5500-9000 and
- iii. Goods Driver in scale of Rs. 5000-8000 with three years experience as driver as on 24.10.2007.

It is also not in dispute that the respondent, who is a Scheduled Caste and who has taken examination by virtue of the above said notification has secured 56 marks out of 60, the minimum eligibility marks in order to be selected. The writ petitioners have conducted the examination and there is no dispute that the respondent has secured 56 marks. The examination was conducted on 30.04.2008 and the results were announced on 02.06.2008. At that time, nobody was qualified under SC category and all four posts were unfilled for non-availability of candidates. The respondent suspected that the key answers are wrong and he has written proper and correct answers to the questions in the written examination, therefore, after getting information under the Right To Information Act, 2005 about the key answers to the questions, for which he has answered in the written examination, he made representation to the writ petitioners to review the results on the ground that certain of the key answers provided by the department to the valuer were not correct and contrary to the Railway Board circular. There is no dispute that he made such representation on 05.05.2011 at the first instance and thereafter, a reminder representation on 20.07.2012 which came to be rejected on 27.08.2012, on the ground that there are no rules which empower the writ petitioners to reevaluate the paper already valued; further there is already a delay of more than three years and the panel prepared and notified has exhausted within the period of two years.

Being aggrieved by the rejection of representation, the respondent made further representation on 22.11.2012. No useful purpose is served. From the date of announcement of the results, there is a delay in approaching the Tribunal for a period of 4 years 12 days.

The respondent questioning the discriminate action of the writ petitioners department that the department has revalued the matter in respect of another person by name Sri T. Sabu after the period of 2 years 4 months and incorporated his name in the panel. Therefore, there was discrimination insofar as the respondent is concerned.

Along with the application for condonation of delay, the respondent filed the Original Application before the CAT and in fact the CAT has allowed the said application condoning the delay in filing the application and also the application on merits and a direction was issued to the writ petitioners in the above said manner, which is impugned in these writ petitions.

3. The application of the respondent was contested by the petitioners herein on the ground that there is no room for revaluation of the papers even though

certain of the key answers are wrong; Sri T. Sabu's case has been dealt with inadvertently and the same cannot be made as a precedent; even otherwise, said Sabu has filed his application within one year from the date of announcement of the results and perhaps, on that ground the revaluation has been done.

Secondly, it is contended that there is delay and latches on the part of the applicant in making the application for revaluation and also filing the petition before the CAT. The CAT has not properly appreciated the material on record and wrongly concluded that there is a discrimination with the applicant comparing his application with T. Sabu's application and also found that certain key answers given were wrong and after condoning the delay, passed the orders impugned in those writ petitions erroneously. Therefore, the writ petitioners have sought for quashing of the orders passed by the CAT.

4. We have carefully perused and re-evaluated the materials on record. In so far as the first ground is concerned, the respondent has admitted the dates of events with regard to the issuance of notification, conducting of the examination and results being announced. It is needless to note that the notification was issued as early in the year 2007 and written examination was conducted on 30.04.2008 and results were announced on 02.06.2008 and the panel was prepared on the basis of such announced results. Therefore, as on date 02.06.2008 itself, the respondent knew that he has secured 56 marks and he was not qualified for the selection to the post of Loco Inspector. It is an undisputed fact that the panel was prepared on the basis of the final results. Therefore, the cause of action arose to the respondent herein when the panel was released in June 2008. Since 2008, the panel would be there for a period of two years. Within that time the petitioners could have re-prepared the panel if there is any wrong or mistake being committed. But on the other hand, this respondent has filed his application after lapse of more than three years i.e., on 05.05.2011 and 27.03.2012 and later, on 22.11.2012. All these applications are barred by limitation. Added to that, he has not given any acceptable and proper explanation for the delay. The applicant (respondent) has not shown to us any rule, which contemplates or casts any duty on the petitioners for revaluation of the answer script even if the key answers given are wrong, after lapse of so much of delay. Of course the wrong key answers may give rise to a right in favour of the respondent to challenge the same. But that should have been done within the currency of the panel, i.e., within two years.

5. In this regard, it is worth to note the decision of the Apex Court reported in Union of India (UOI) and Others Vs. B. Valluvan and Others, , wherein the Apex Court has categorically held that;

"Life of a panel, as is well known, must be for a limited period. It is governed by the statutory rules. From the circular dated 26.6.1992 it is evident that ordinarily the life of the panel should be for one year. What had been indicated therein was that the panel prepared for recruitment should not be unduly inflated. Vacancies

should ordinarily be notified keeping in view the immediate future need. It has categorically been stated that only up to a maximum of 10 additional persons were kept in a panel against the existing vacancies which were likely to occur in future. The said circular letter was meant to be applied in a case where, thus, more than 10 vacancies were notified. It did not have any universal application. By reason of the said circular letter, the ordinary life of the panel was not to be extended. Thereby no new practice or rule was brought into force."

The CAT has not appreciated this particular aspect and the delay has been condoned by the CAT wrongly applying the principle that the discrimination has been made from one person to another i.e., the respondent and Sri Sabu. In our opinion, the said observation of the CAT is not proper. Of course, there is no dispute that Mr. Sabu's application was considered and his papers were reevaluated and his name was included in the panel after lapse of 2 1/2 years. But the documents placed before the Court at Annexure-17 discloses that the Divisional office of the Personnel Branch, South Western Railway has issued a letter on 02.01.2009 to Sri T. Sabu stating that the said person has filed an application for revaluation on 22.12.2008. In the said letter, it is stated that,

"the said T. Sabu has failed to secure 60% marks in the professional ability submitted representation under Right to Information Act, 2005 for re-evaluation of his answer sheets. Re-evaluation was taken up with the approval of the Competent Authority and the candidate obtained the qualifying marks in the written examination."

This was informed on 02.01.2009 itself to Mr. Sabu. This clearly indicates that, immediately after the results were announced on 02.06.2008 and the panel was prepared within six months, it appears the said T. Sabu has filed his application immediately thereafter. The revaluation of Sabu's papers have been done and therefore, the panel was modified and on 02.01.2009 intimation was given. Hence it is clear that, within the span of one year, Mr. Sahu had made an application and the writ petitioners have considered the said application.

6. Even the consideration of such application of Mr. Sabu without there being any rule is fairly admitted by the petitioners that it is not proper on their part. The writ petitioners have contended that the said exercise was done in respect of T. Sabu inadvertently and the same cannot be made a precedent.

7. In this regard, it is worth to mention the decision of the Apex Court relied upon by the writ petitioners reported in Pramod Kumar Srivastava Vs. Chairman, Bihar Public Service Commission and Others, , wherein the Apex Court has held that;

"in the absence of any provision for revaluation of answer books in the relevant rules, no candidate in an examination has got any role, whatsoever to claim or ask for revaluation of his marks."

The same principle has been reiterated in another ruling reported in Maharashtra

State Board of Secondary and Higher Secondary Education and Another Vs. Paritosh Bhupeshkumar Sheth and Others, .

8. Though these decisions are cited, the CAT has not properly considered the principles laid down in the said cases. Even accepting that Mr. Sabu's case has been considered by the writ petitioners erroneously and that illegality has been committed by the writ petitioners, the same cannot be allowed to be perpetuated by directing the writ petitioners to consider the application of the present respondent, in the absence of any rule being brought to our notice that the writ petitioners are bound to re-evaluate the answer scripts of the applicant.

9. The writ petitioners have not denied the fact that the key answers are incorrect. However, it is a specific case of the respondent that the answer to the questions had multiple choice, but key answers were wrong. In his representation he has given the tabulation narrating the answers written by him and the correct answers and also the wrong key answers. Though we find that there is some force in the arguments of the respondent herein that the key answers are wrong, in view of the delay and laches in approaching the writ petitioners for revaluation of his papers, in our view, the said panel cannot be upset as it would amount to redoing of the entire list which affects the rights of other persons after seven years. In view of the above said circumstances, we do not find any strong reason to direct the writ petitioners to consider his application.

10. The respondent has also relied upon a decision of the Apex Court in Civil Appeal No. 2525-2516 of 2013 in the case of Rajesh Kumar and Ors. etc. vs. State of Bihar and Ors. etc. In the said case also, the Apex Court dealing with the similar subject matter relating to the erroneous model key answer given by the employer has observed that such situation is bound to lead to erroneous results and an equally erroneous inter-se merit list of the such candidates.

11. We have carefully perused the said judgment of the Apex Court. In the said case, notification was issued in the year 2006; the result of the examination was, however stayed by the High Court while disposing of the appeal filed before it with a direction to the authority that the same shall be declared only after selection in pursuance of the first examination being completed; with the filing of the appeals, the restraint order against the declaration of the result pursuant to the second advertisement was vacated by the Court. In the meantime, aggrieved by the notification, one of the party filed his application in the year 2007 itself within the span of one year. Therefore, the Apex Court has also directed that the said applicant's request is to be considered for revaluation. But in the said case, the delay in making the representation and exhaustion of panel were not the issue before the Court. In this particular case, as we have observed, there is a long delay i.e., about three years in making the representation by the respondent and therefore, the CAT is not justified in condoning the delay and entertaining the said application and consequently directing the writ petitioners to consider the revaluation application of the respondent herein.

12. At the time of arguments before this Court, the learned Counsel for the Union of India has submitted that, subsequently, the respondent is promoted to the post of Junior Loco Inspector. Therefore, what could not be achieved by the respondent in the written examination, has in fact been achieved by means of promotion. The said submission made before this Court has not been disputed by the respondent herein.

13. Therefore, looking from any angle, we do not find any strong reason to accept the order of the CAT. Hence the same deserves to be quashed. Hence we proceed to pass the following order:

The writ petitions are allowed. Consequently, the order passed by the Central Administrative Tribunal, Bangalore bench at Bar-galore in Original Application No. 531/2013 dated 02.04.2014 is hereby quashed.