

(2003) 02 MAD CK 0076

In the Madras High Court

Case No : W.A. No. 315 of 1998 and C.M.P. No. 3145 of 1998

Union of India (UOI)

APPELLANT

Vs

T.M. Marimuthu

RESPONDENT

Date of Decision : 06-02-2003

Acts Referred:

Administrative Tribunals Act, 1985 — Section 28
Constitution of India, 1950 — Article 226, 227

Citation : (2003) 02 MAD CK 0076

Hon'ble Judges : V.S. Sirpurkar, J; F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : V.G. Suresh Kumar, for the Appellant; Ammu Balanchadran, for the Respondent

Final Decision : Allowed

Judgement

V.S. Sirpurkar, J.—This appeal is filed by the Railway administration, challenging the judgment of the learned single Judge, who allowed the

writ petition filed by T.M. Marimuthu, respondent herein, and directed the railway administration to pass the consequential orders and paying all

the monetary benefits due to him within ninety days.

2. The writ petition was against the order passed by the railway administration, de-reserving the posts of Scheduled Castes/Scheduled Tribes by

Lr. No.P(G)/532/I-81 dated 11-5-1981. The writ petition was filed in the year 1995. It was inter alia contended in the writ petition that the writ-

petitioner, who is belonging to Scheduled Caste, was working in the railways and had put in three decades of service and the railway

administration had been de-reserving the posts entitled for the Scheduled Caste/Scheduled Tribe candidates even though meritorious Scheduled

Caste/Scheduled Tribe candidates were available for such posts. The petitioner stated that he had completed eighteen years of service in Group B

yet he was not promoted to Group A service. Even though as per the policy of the railway administration, separate rosters were to be maintained,

they were not so maintained. It was pointed out by the writ petitioner that he was promoted in the year 1979 to Group B services on ad hoc basis

and promoted to the post of Executive Engineer (Senior Scale) on 26-8-1983 and though he had failed in the viva voce test for Scheduled

Caste/Scheduled Tribe candidates, he was placed fourth out of the six reserved posts and in spite of this, his services were not regularised and,

thereby he could not be further promoted. He also took exception to the exercise of de-reservation of the posts which was taken up in the year

1981. He then complained that though he had worked on ad hoc basis for five years and earned good name yet, he was not promoted to the next

higher post. It was further pointed out that the services of M/s.A.S. Raman and Appukuttan, who were juniors to the writ petitioner, were

regularised in Group B services without passing the written test and that their promotion was throughout upheld up to the Supreme Court. The writ

petitioner, therefore, had prayed that that decision should have been acted upon to regularise him also. It was stated in paragraph 14 of the

affidavit filed in support of the writ petition as follows:

I state that I had approached the Administrative Tribunal in 1990 and my application was dismissed nearly after three years saying that the

Tribunal had no jurisdiction and hence I am before this Hon"ble Court.

3. The railway administration had opposed this writ petition on various grounds including lack of jurisdiction on the part of the High Court. It was

pointed out that the exercise of de-reservation of the posts was done as enough number of Scheduled Caste/Scheduled Tribe candidates were not

available to fill up the reserved vacancies and the proposal for de-reservation for gazetted cadre were checked and approved by the Railway

Board. It was further pointed out that only after satisfying that the zonal administration had taken every effort to find a suitable Scheduled

Caste/Scheduled Tribe candidate and had failed in its attempt, the posts came to be de-reserved.

4. As regards the writ petitioner, it was pointed out that he was promoted to the

post of Assistant Engineer (B Group cadre) on ad hoc basis with effect from 19-1-1977 and the petitioner thereafter appeared for regular selection for the post of Assistant Engineer in the year 1978 and again in May 1981 but failed to get selected. He was ultimately regularised as Assistant Engineer on 18-9-1981 after passing the selection held during September, 1981. It was, therefore, pointed out that the petitioner's seniority in the post of Assistant Engineer counted only from the date of his regularisation on 18-9-1981. It was specifically pointed out in the counter that the petitioner was trying to rake up the issue after a period of fifteen years. It was also pointed out that the petitioner had not explained the laches at all.

5. Learned single Judge held that the impugned order of de-reservation was not valid in law and he, therefore, quashed that order and directed the writ petitioner to be promoted.

6. Learned counsel appearing for the appellants pointed out at the outset that admittedly the respondent herein had filed an original application

before the Central Administrative Tribunal (in short "the Tribunal") vide O.A. No.936 of 1991, which was disposed of by the Tribunal, by its

order dated 16-8-1998. In that original application also the respondent had claimed the relief of regularisation of his ad hoc period of service from

9-1-1977 to 18-9-1981 and thereby promoting him and granting him the seniority and other consequential benefits. It was pointed out with

respect to the order passed by the Tribunal that the Tribunal had dismissed the original application taking the view that the cause of action for the

said application had arisen for the first time in the year 1978 and thereafter again subsequently in the year 1981 when the respondent herein was

not selected and that the respondent had not approached the appropriate forum at that time. The Tribunal, therefore, came to the conclusion that

the respondent could not be allowed to come before the Tribunal for the first time in the year 1995. The Tribunal noted that the impugned order,

which was challenged in those proceedings, related to the promotion of the respondent from Group B service to Group A service and in fact

everything depended upon his promotion to the post of Group B Service. The Tribunal, therefore, took the view that the cause of action had arisen

on account of his non-promotion to Group B services during 1977-81 and not due

to his non-promotion to Group A service later. The Tribunal, therefore, held that the application filed in the year 1995 was hopelessly barred by time. The Tribunal also took note of the fact that the respondent did not have any such claim.

6. The whole order of the Tribunal is placed before us by the learned counsel for the appellants. He points out that this order, however, was not challenged by the respondent herein in any manner when it could have been challenged. Learned counsel points out that because of that the respondent could not have filed W.P. No.3940 of 1995 on a so-called independent cause of action of de-reservation exercise taken up by the appellants vide order dated 11-5-1981. In fact, the basic demand of the respondent herein was for the promotion and by filing the writ petition, challenging the order dated 11-5-1981, the respondent herein was only indirectly trying to seek the very relief which he had prayed for before the Tribunal and that could not be permitted. Learned counsel, relying on Sec. 28 of the Administrative Tribunals Act, 1985 (in short "the Act"), pointed out that this being a question related to the services of a person under the Central Government, the learned single Judge could not have interfered in the matter in his writ jurisdiction under Art. 226 and/or Art. 227 of the Constitution of India. Learned counsel pointed out that in fact the order of the Tribunal itself could have been challenged by the respondent which the respondent failed to do and as held by the Apex Court in *L. Chandra Kumar Vs. Union of India and others*, : the orders passed by the Administrative Tribunals could have been interfered with by the Division Bench of the High Court.

8. Seeing the express language of Sec. 28 of the Act, we are of the clear opinion that in the name of assailing the impugned order, what has been done by the respondent herein is firstly by-passing the adverse decision of the Tribunal and secondly trying to activate the High Court's extra-ordinary original jurisdiction in a service matter for which the jurisdiction lay specifically with the Central Administrative Tribunal. When the learned counsel for the respondent, Ms. Ammu Balachandran, was asked, she very fairly submitted that the respondent herein had not challenged the order of the Tribunal. However, she tried to justify the filing of the petition on the ground that even though there was availability of an alternative remedy,

the respondent herein could still file the writ petition. We do not agree. In the first place, there will be no question of any alternative remedy here.

The respondent herein had prayed for his promotion to Group A service before the Tribunal. He failed before the Tribunal. The decision of the

Tribunal was adverse to him and he had suffered that decision. He should have, therefore, challenged that decision. He could have filed a writ

petition, challenging that decision, either before the Division Bench of this Court or before the Supreme Court, as the law then stood. He did not

do that. In filing a fresh writ petition again challenging the exercise of de-reservation of the posts in 1981, the respondent was doing nothing but

asking this Court to decide a dispute regarding his service which this Court could not have done directly as per the decision of the Apex Court in

L. Chandrakumar's case, cited supra. That could have been done only by the Division Bench of this Court against the order of the Tribunal. This is

besides the point that the writ petition was hopelessly belated inasmuch as in that petition, the respondent herein was trying to get the order

quashed which was passed about fourteen years prior to the filing of the writ petition. For all these reasons, we are of the clear opinion that the

learned single Judge had erred in entertaining the writ petition firstly, on the ground of jurisdiction and secondly, on the ground of laches. We,

therefore, set aside the order of the learned single Judge and would choose to order the dismissal of the writ petition filed by the respondent herein.

9. The appeal is allowed. No orders as to the costs. Connected C.M.P. is closed.