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Court : Central Administrative Tribunal CAT Delhi

Decided On : May-24-2000

Reported in : (2003)(2)SLJ282CAT

Judge : L Swaminathan, G A H.O.

Appellant : Anil Kumar Sharma

Respondent : Union of India (Uoi) and ors.

Advocate for Def. : Mr. R.L. Dhawan

Judgement :

1. The applicant has impugned the order passed by the respondents dated 21.11.96 (Annexure A-1) in the reply to his representation regarding his seniority in the post of Booking Clerk.

2. The brief relevant facts of the case are that the applicant was initially appointed as Peon in July, 1977 with the respondents and was later selected to the post of Coaching Clerk in 1983. After having passed the necessary examination, he was placed in the panel of successful candidates for the posts of Booking Clerk and was deputed to undergo two months training at the Zonal Training School (ZTS), Chanduasi from 4.2.84 to 3.4.84. In that training, admittedly, he did not pass in one paper, namely, Coaching Theory and, therefore, had to do it in the supplementary examination. According to the rules, the applicant was required to pass the supplementary examination for the training course within one year. The

issue raised in this case is whether the applicant had done so or not or whether the delay in passing the supplementary examination held at ZTS, Chandausi, had resulted from any lapse on his part, as alleged by Mr. R.L. Dhawan, learned Counsel for the respondents or not.

3. Mr. B.S. Mainee, learned Counsel has relied on the letter dated 11.6.91 issued by the Station Superintendent, Rewari. From this letter, it is seen that as regards the facts mentioned by the applicant in paragraphs 4.10 and 4.13 of the O.A., that the Officer has confirmed that firstly no information for the course was given to the Office regarding supplementary examination dated 29.12.84; secondly, when it was held on 3.6.85 because of administrative reasons, the applicant was not relieved and thirdly, on 20.3.86 his candidature was returned with an objection that the certificate to the effect that he could not be spared on administrative grounds had not been given. Finally, the applicant was spared and attended the supplementary examination on 22.3.88 along with the required certificate. In the letter placed at Annexure A-2, the Station Supdt., Rewari has also stated that the office of Respondent 2, who have been informed of the facts, had also not issued the certificate to be forwarded to the Principal, ZTS, Chandausi, whenever the applicant was booked for the supplementary examinations which were held on 29.12.84, 3.6.85 and 20.3.86. Mr. B.S.Mainee, learned Counsel has, therefore, submitted that the delay and laches in passing the supplementary examination was not on the part of the applicant and could not result in depriving him of his seniority in the grade of Booking Clerk, to which he was otherwise entitled, as he could not appear in the earlier supplementary examination for the reasons mentioned above.

4. The respondents in their reply have raised the preliminary objection that the O.A. is barred by limitation under Section 21 of the Administrative Tribunals Act, 1985. Mr. R.L. Dhawan, learned Counsel has also drawn our attention to the reply filed by the respondents, in particular to paragraphs 4, (x) - (xii) to the averments made in the O.A. His contention is that in spite of the letters having being issued to the concerned Office where the applicant was working, he deliberately and wilfully did not attend the supplementary examinations in connection with his training course which he was required to complete within the stipulated period of one year.

He has, therefore, submitted that by his inaction, the applicant cannot now claim seniority over others because he himself did not attend the supplementary examinations, which were held in 1984, 85 & 86. The respondents have submitted that the applicant had been assigned seniority as Booking Clerk in the pay scale of Rs. 975-1540 in 1994, after he was given regular promotion in that grade on passing the pre-requisite promotions, course and the seniority list was issued on 26.6.96 (Annexure A-6), on which the applicant also relies. They have submitted that his seniority list has been issued after a decision was taken in consultation with both the recognised Unions regarding assignment of seniority of loyal staff appointed in excess of 20% quota on ad hoc basis in Commercial Department. Learned Counsel has submitted that this seniority, therefore, does not give any cause of action to the applicant to challenge the seniority assigned to him from 13.10.94 as Booking Clerk. As the O.A. was filed only on 7.5.97, he contends that it is barred by limitation. He has also submitted that the application suffers from nonjoinder of necessary parties. He relies on the judgment of the Supreme Court in Bharat Ram Meena v. Rajasthan High Court, 1997 SCC (L&S) 797=1997(3) SLJ 156 (SC). According to him, while exercising the power of judicial review, this Tribunal ought not to interfere in disputed questions Of facts. He also relies on the provisions of the relevant rules (copy placed at Annexure R-7), in which it has been stated, inter alia, that seniority will be regulated as per the extant instructions, i.e., an employee from the select list qualifying the course in the second chance will rank junior to those who have qualified in the first attempt and have been promoted.

5. We have carefully considered the pleadings and submissions made by the learned Counsel for the parties.

6. From the facts available on record and as briefly mentioned above, it is seen that from the averments made by the respondents themselves that they have issued a seniority list of Booking Clerks on 26.6.96. In the reply to the averments made by the applicant in paragraph 4.26, the respondents have no-here stated that any earlier seniority list of Booking Clerks has been issued prior to this date showing the seniority of the applicant in that grade. In this O.A., the main claim of the applicant is with regard to the proper assignment of seniority to him as Booking

Clerk. In the facts and circumstances of the case, we are, therefore, unable to accept the contentions of the respondents that this O.A. is barred by limitation under Section 21 of the Administrative Tribunals Act, 1985. The preliminary ground is, therefore, rejected.

7. In the light of the categorical statements made by the Station Superintendent, Rewari, in his letter dated 10.6.91 (Annexure A-2), we are also unable to accept the contentions of the learned Counsel for the respondents, based on the replies given by them to paragraphs 4 (x)-(xii) that the applicant had wilfully been absent from attending the supplementary examinations which were held on 29.12.84, 3.6.85 & 20.3.86, Mr. R.L. Dhawan, learned Counsel has contended that the applicant cannot rely on this internal Departmental letter. While that might be correct, however, in the facts of the case, as the respondents themselves have neither refuted this letter nor placed on record what further action, if any, they have taken in this regard, we cannot agree with the contentions of the respondents that after receiving due information of the supplementary examinations, the applicant had wilfully refused to attend the same. We are also unable to agree with the contentions of the learned Counsel for the respondents that this a question of facts which the Tribunal is barred from doing. In the facts and circumstances of the case, the judgment of Hon'ble Supreme Court in Bharat Ram Meena's case (supra) will not assist the respondents because they have not placed documents record to show that the applicant was duly informed about the supplementary examinations which were held earlier in 1984, 1985 & 1986, which he had wilfully refused to attend.

In the facts and circumstances of the case, we, therefore, find merit in the contentions of the learned Counsel for the applicant that the respondents ought to have issued the certificate to the effect that he could not be spared earlier on administrative grounds within the period of one year to enable him to take the supplementary examinations.

8. The adverse result of the delay in taking the supplementary examinations by the applicant in the present case cannot, therefore, be attributed to the applicant so as to deprive him of the seniority which should be otherwise assigned to him in

accordance with the Rules. In this view of the matter, as the respondents were required to assign proper seniority to the applicant in terms of the relevant rules and instructions, we are also unable to agree with the contentions of the learned Counsel for the respondents that the O.A. suffers from non joinder of necessary parties, as it is a question of principle of law to be applied. It is also relevant to note that the applicant was promoted temporarily on ad hoc basis to the post of Coaching Clerk, which is equivalent to a Booking Clerk w.e.f. 17.4.84 (Annexure R-1).

9. In the result, for the reasons given above, the impugned order dated 21.11.96 (Annexure A-1) is quashed and set aside. The O.A. is allowed and disposed of with the following directions:- Respondents are directed to assign proper seniority to the applicant as Booking Clerk, taking into account the observations made above that it was not due to his fault that he did not complete the supplementary examination within one year, in accordance with the relevant Rules, Necessary action in this regard shall be taken within a period of three months from the date of receipt of a copy of this order with intimation to the applicant.

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