

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 1783 OF 2005

UNION OF INDIA & ORS.

Appellant (s)

VERSUS

A. DURAIRAJ (DEAD)

Respondent(s)

(With appln(s) for substitution and office report)

Date: 01/12/2010 This Appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE R.V. RAVEENDRAN
HON'BLE MR. JUSTICE P. SATHASIVAM
HON'BLE MR. JUSTICE A.K. PATNAIK

For Appellant(s) Mr. Arvind Kumar Sharma,Adv.

For Respondent(s) Mr. R. Nedumaran,Adv.

UPON hearing counsel the Court made the following
O R D E R

Application for substitution allowed. The
appellants are permitted to bring the legal heirs of the
deceased respondent on record. Cause title to be
amended. Heard.

We allow this appeal, set aside the order of the
High Court and restore the order of the Tribunal
dismissing the original application filed by the
respondent in terms of the signed order. If any terminal
benefits are withheld in view of this litigation, the
same should be released without further delay if there is
no other objection/claim.

(Ravi P. Verma) (Savita Sainani)
Court Master Court Master
[Signed reportable order is placed on the file]

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 1783 OF 2005

UNION OF INDIA & ORS.

.....APPELLANTS

Versus

A. DURAIRAJ (DEAD) BY LRS.

.....RESPONDENTS

O R D E R

R.V. RAVEENDRAN, J.

Application for substitution allowed. The

appellants are permitted to bring the legal heirs of the deceased respondent on record. Cause title to be amended. Heard.

2. The respondent, a diploma holder in mechanical engineering belonging to a schedule caste, while working as a Senior Section Engineer, Signal and Telecommunications, Southern Railways, in the year 1976, was considered alongwith others, for adhoc promotion to the post of Asst. Signal and Telecommunication Engineer ('ASTE' for short). Those who passed the medical examination (which included the tests to find out whether the candidates were not suffering from colour blindness) were given ad hoc promotions. However the medical examination report of respondent showed that he was colour blind and, therefore, he was not given ad hoc promotion as ASTE.

3. In the year 1980, the respondent appeared for the written examination for regular promotion to Class II Group 'B' Services (including ASTE), but failed to qualify and was not promoted. According to the respondent, three other schedule caste candidates who were earlier given ad hoc promotion as ASTE, and who also had failed in the written examination, were promoted in view of the policy of the government to select the best among the failed schedule caste candidates. According to respondent, if he had been given the ad hoc promotion in the year 1976, he would have had a better chance of been considered for regular promotion as ASTE inspite of failing in the written examination.

4. In 1981, the post of ASTE was declared to be a 'safety category' post, which meant that the candidates should be free from colour blindness apart from being medically fit. Though there were several subsequent

examinations for promotion to the post of ASTE, the respondent did not participate. After 1976, the respondent, however, made several attempts to find a cure for the colour blindness and continued to consult various doctors in India and abroad.

5. When the respondent acquired a B.E. degree in the year 1998, he was sent for medical examination for being empanelled as an eligible candidate for Group 'B' promotion. The report of Medical Board was favourable. He was therefore promoted as Asst. Works Manager on ad hoc basis on 24.9.1998. Thereafter the respondent gave representations dated 28.12.1998 and 3.9.1999 contending that he was unjustly refused ad hoc promotion in 1976 on the ground of colour blindness and he should be given such promotion as ASTE with retrospective effect from 1976, as also all consequential promotions. As that request was not acceded, the respondent filed an application before the Central Administrative Tribunal, Chennai ('Tribunal' for short) in OA No.1267/1999 praying for a direction to the appellants to promote him to the post of Deputy Chief, S&T workshop Padanur, by granting him the several promotions to which he would have been entitled form 1976, if he was not colour blind. In the said application, he alleged that the medical examination carried out in the year 1976 was done carelessly and negligently, thereby denying him the opportunity of being promoted as ASTE on ad hoc basis; and that, therefore the appellants ought to redress his grievance by giving all promotions to which he was entitled and deserved on the basis of his seniority. According to him if he had been promoted as ASTE in the year 1976, by the year 1999, he would have secured several further promotions and reached the position of Deputy Chief, S&T Workshop. The said application was disposed of by the Tribunal by order dated 22.12.1999 with a direction to consider his pending representations seeking promotion.

6. In compliance with the said direction, the General Manager, Southern Railway considered his representation and sent the following communication dated 8.2.2000 to the respondent:

"The old records have been traced out. They clearly reveal that you were having colour blindness, you also had accepted the same and had sought for permission to use "x-chrom" contact lens used for colour blindness available only in USA vide your letter dated 8.11.1976.

Probably with correction of such defect in vision you could have been declared fit in the medical examination held in the year 1998.

Ordinarily wearing of colour vision soft contact lens cannot be detected by naked eye examination. On further examination it is possible to confirm this. Accordingly, it is proposed to direct you for a special medical examination by a committee to be appointed by CMD shortly."

7. Respondent again approached the Tribunal by filing OA No.460/2000 for quashing the order dated 8.2.2000 and seeking a direction to the appellants to promote him to the post of Deputy Chief, S&T Workshop with retrospective effect from 1991 when his promotion to the said post became due. In this application, he reiterated the averments and contentions made in the earlier application (OA No.1267/1999).

8. In the meanwhile, the respondent was sent for medical examination to the Medical Director, Southern Railway Hospital, Perambur, as decided in the order dated 8.2.2000, who in turn referred him for a comprehensive testing for colour blindness. A team of Experts in Shankara Netralaya, a renowned eye centre in Chennai examined him, using the latest equipments and found his colour blindness to be minimal, which would not interfere or affect his work.

9. The Tribunal dismissed the respondent's application

(OA No.460/2000) by order dated 18.10.2000.

The Tribunal

held that if the respondent was aggrieved by his non-

promotion as ASTE on ad hoc basis in the year 1976, he

should not have kept quiet for more than 23 years and it

was not open for the respondent to seek reopening of the

issue in the year 1999-2000.

The Tribunal also held that

the medical examination in 1976 was only with reference to

a proposed ad hoc promotion for a temporary period, and as

the respondent had failed in the written examination for

regular promotion in the year 1980 and thereafter failed to

appear in any of the promotional examinations, he could not

make a grievance in regard to non-promotion to the post of

ASTE.

10. The respondent challenged the decision of the

Tribunal in WP No.407/2001. During the pendency of the writ

petition the respondent was given a promotion as ASTC on

22.11.2002 and he retired from service on 30.4.2003.

A

division bench of the Madras High Court ultimately disposed

of the said writ petition by the impugned order dated

10.3.2004 recording the following findings:

a) Colour blindness is incurable. The finding in 1998 and 2000 that the respondent was not colour blind, led to an inference that the earlier diagnosis in 1976 that he was colour blind, was erroneous.

b) But, even if he had been found to be not colour blind and medically fit in the year 1976, the respondent would have held the position of ASTE only on ad hoc basis, till regular promotions were made. Unless he succeeded in the regular written examination and fulfilled the minimum standards for promotion, he would not have been promoted as ASTE on regular basis. The respondent failed in the examination held in the year 1980-81 even after relaxing the standards and therefore he would not have been promoted as ASTE even if he was not colour blind and therefore the contention of the respondent that he had lost further promotions could not be accepted.

c) The post of ASTE was categorised as a safety post in the year 1981; that as the safety of the persons who used the railways was of paramount importance, and the medical opinion was that the respondent was colour blind, it could

not be said that the action of the appellants in not promoting him on ad hoc basis in the year 1976, was illegal. There was no mala fides on the part of the railways in not promoting him on ad hoc basis in 1976, and the appellants had not intentionally withheld any benefit legally due to the respondent.

d) Having regard to the nature and standard of eye testing equipments that were available in 1976, the opinion of the doctors that the respondent was colour blind, was rendered bonafide and could not be said to be on account of lack of competence or negligence and would not furnish any cause of action to the respondent for seeking any relief. The fact that more than two decades later, by using technologically advanced testing equipments, a team of Doctors in an internationally renowned hospital had found that he was not suffering from marked colour blindness, merely showed the second diagnosis was on account of comprehensive examination procedure with technologically advanced equipment available at that stage, and did not establish that the opinion in 1976 was mala fide or negligent.

e) However the respondent had been denied the opportunity of holding the higher post of ASTE on ad hoc basis from 1976-1981 on account of the medical opinion of 1976. If he had been permitted to hold the post of ASTE on ad hoc basis from 1976 to 1981, he might have possibly succeeded in the examination held in 1980-81 and promoted as ASTE on regular basis.

f) As the respondent became aware of the fact that he was not colour blind only in the year 1998, his applications for relief filed in 1999 and 2000 could not be termed as suffering from laches. The High Court held that on account of the fact that diagnosis in 1976 had denied him advancement in his career it was necessary to compensate him for the loss of opportunity and mental agony and therefore directed the appellants to pay a sum of Rs. Two lakhs as compensation to the respondent. The said order is challenged in this appeal by special leave.

11. On the contentions raised, the following questions arise for our consideration:

(i) Whether the claim of the respondent ought to have been dismissed on the ground of delay and laches?

(ii) Whether the order of the High Court calls for interference on the ground that the ultimate decision is contrary to the findings recorded by it?

(iii) On the facts and circumstances whether the High Court was justified in awarding a compensation of Rs. Two lakhs to the respondent?

Re: Question (i)

12. Section 21 of the Administrative Tribunals Act, 1985

prescribes the limitation for approaching the Tribunal. In

this case the medical examination of the respondent and the

non-promotion as ad hoc ASTE were in the year 1976.

The respondent accepted the diagnosis that he was colour blind

and did not make any grievance in regard to his non-

promotion. On the other hand, he attempted to get

treatment or correction contact lenses from USA (to aid the

colour blind to distinguish colours correctly). On account

of the non-challenge, the issue relating to his non-

selection in 1976 attained finality and the same issue

could not have been reopened in the year 1999-2000, on the

ground that medical tests conducted in 1998 and 2000 showed

him to be not colour blind.

13. It is well settled that anyone who feels aggrieved

by non-promotion or non-selection should approach the

Court/Tribunal as early as possible. If a person having a

justifiable grievance allows the matter to become stale and

approaches the Court/Tribunal belatedly, grant of any

relief on the basis of such belated application would lead

to serious administrative complications to the employer and

difficulties to the other employees as it will upset the

settled position regarding seniority and promotions which

has been granted to others over the years. Further, where a

claim is raised beyond a decade or two from the date of

cause of action, the employer will be at a great disadvantage to effectively contest or counter the claim, as the officers who dealt with the matter and/or the relevant records relating to the matter may no longer be available. Therefore, even if no period of limitation is prescribed, any belated challenge would be liable to be dismissed on the ground of delay and laches.

14. This is a typical case where an employee gives a representation in a matter which is stale and old, after two decades and gets a direction of the Tribunal to consider and dispose of the same; and thereafter again approaches the Tribunal alleging that there is delay in disposal of the representation (or if there is an order rejecting the representation, then file an application to challenge the rejection, treating the date of rejection of the representation as the date of cause of action). This

Court had occasion to examine such situations in Union of India v. M.K. Sarkar [2010 (2) SCC 58] and held as follows:

"The order of the Tribunal allowing the first application of respondent without examining the merits, and directing appellants to consider his representation has given rise to unnecessary litigation and avoidable complications.x x x x x

When a belated representation in regard to a 'stale' or 'dead' issue/dispute is considered and decided, in compliance with a direction by the Court/Tribunal to do so, the date of such decision can not be considered as furnishing a fresh cause of action for reviving the 'dead' issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

A Court or Tribunal, before directing 'consideration' of a claim or representation should examine whether the claim or representation is with reference to a 'live' issue or whether it is with reference to a 'dead' or 'stale' issue. If it is with reference to a 'dead' or 'stale' issue or dispute, the Court/Tribunal should put an end to the matter

and should not direct consideration or reconsideration. If the court or Tribunal deciding to direct 'consideration' without itself examining of the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the Court does not expressly say so, that would be the legal position and effect."

We are therefore of the view that the High Court ought to have affirmed the order of the Tribunal dismissing the application of the respondent for retrospective promotion from 1976, on the ground of delay and laches.

Re: Question (ii)

15. The fact that the respondent was subjected to medical examination in 1976 and that he was found to be colour blind is not disputed. The respondent did not challenge his non-promotion as ad hoc ASTE or the medical report that he was colour blind. He appeared for the examination in 1980 and failed. According to him, in a subsequent medical examination in the year 1998, he was found to be normal and a further detailed medical examination in 2000 showed his colour blindness was minimal which would not affect discharge of his duties as ASTE. The respondent therefore wants the court to infer that the 1976 diagnosis of colour blindness was erroneous and he could not be made to suffer due to the negligence of the then Medical Board.

16. The High Court has found that qualified Medical Board had examined him in the year 1976 and rendered a bonafide opinion based on the results of the medical examination. The High Court also found that the tests conducted in the year 1998 and 2000, disclosed a different condition. The High Court found that the equipment used in 1976 was unable to diagnose the extent of colour

blindness accurately; and the more sophisticated equipments available in 1998-2000 for testing, made it possible to measure and ascertain the exact extent of colour blindness. This is evident from the test report dated 11.3.2000.

17. We extract the relevant portion of the test report of Shankara Netralaya given on 11.3.2000 (extracted by the respondent in his counter affidavit):

"Colour vision test

Ishihara's test, mainly now a days is used as a screening method. We do not do the other out dated lantern tests. FARNS WORTH MUNSELL - 100 Hue test is the most advanced technique available for checking colour vision.

He underwent colour vision test by Ishihara's charts, which showed normal response in both the eyes. He later underwent FARNS WORTH MUNSELL - 100 HUE TEST in both the eyes, which showed a low error score suggestive of minimally impaired colour discrimination.

The error was felt to be due to the learning curve since FARNS WORTH MUNSELL - 100 HUE test is difficult to perform. We advice the patient to undergo repeat testing with FARNS WORTH MUNSELL - 100 HUE TEST in order to substantiate the diagnosis.

But the patient refused to undergo the test next day as he felt that it was not required according to Railway norms for colour vision testing. This he has submitted in writing to us."

(emphasis supplied)

Thus the 2000 test reiterated the 1976 diagnosis that respondent had impaired colour discrimination. But with the accuracy possible to attain by advanced equipment, the initial tests showed that the degree of colour blindness was marginal. But the respondent refused to undergo further tests to ascertain and confirm the actual extent of colour blindness. The above report makes it clear that the medical report of 1976 was neither erroneous nor the result of any negligence. We make it clear that even if the test report of 2000 had demonstrated that the test report of 1976 was erroneous, it would not be possible to attribute

any negligence or carelessness in regard to the earlier medical opinion or report, as subsequent test results were recorded by using equipment based on scientific and technological advances, which were not available at the time of earlier tests.

18. In view of the clear findings by the High Court that the medical opinion of 1976 was bonafide and that even if the respondent had been found medically fit in 1976, without passing the written examination in 1980 or thereafter, he could not have been promoted as ASTE on regular basis. The entire case of respondent becomes untenable. There was no negligence or arbitrariness either in regard to the Medical Examination or in regard to his non-promotion to an ad hoc position in 1976. No injustice has occurred in the case of respondent.

Re: Question (iii)

19. The prayer in the petition was for retrospective promotion. The High Court found that appellant was not entitled to such promotion. The High Court also held that what was denied was only an ad hoc promotion and found that the respondent failed in the written examination in the year 1980 and therefore would not have been entitled to regular promotion, even if he was not colour blind. The failure to promote the respondent on ad hoc basis in 1976 had no bearing on his chances of regular promotion. At all events the rejection of his candidature for ad hoc promotion was for justifiable reasons. Therefore the High Court was not justified in granting compensation on a vague assumption that respondent had suffered loss of opportunity and mental agony on account of what transpired in 1976. Sympathy cannot erase the clear principles of law and findings of fact, or the effect of delay and laches.

20. We, therefore, allow this appeal, set aside the order of the High Court and restore the order of the Tribunal dismissing the original application filed by the respondent. If any terminal benefits are withheld in view of this litigation, the same should be released without further delay if there is no other objection/claim.

.....J.
(R.V. RAVEENDRAN)

.....J.
(P. SATHASIVAM)

New Delhi;
December 01, 2010.

.....J.
(A.K. PATNAIK)