

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 06.01.2017

Coram

The Honourable Mr.Justice K.K.SASIDHARAN

and

The Honourable Mr.Justice V.PARTHIBAN

W.P.No.36500 of 2015 &

M.P.No.1 of 2015

C.Baskaran

... Petitioner

Versus

1. The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai-600 104.

2. Union of India, represented by
Director General
Department of Posts,
Dak Bhavan,
New Delhi-110 001.

3. The Chief Postmaster General,
Tamilnadu Circle,
Chennai-600 002.

4. Shri A.Durai

.. Respondents

Prayer: This Writ Petition is filed under Article 227 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the first respondent relating to the impugned order dated 21.8.2015 in O.A.No.1240 of 2013 and quash the same and direct the respondents 2 and 3 to conduct the review after awarding applicable grace marks to the petitioner as provided for in letter No.7-14/91/SPB II dated 03.01.1992 issued by D.G.Posts and promote the petitioner to the cadre of Inspector RMS for the vacancy year 1996 under SC quota with retrospective effect will all consequential benefits.

For Petitioner : Mr.P.R.Satyanarayanan
for M/s.M.S.Velusamy
For Respondents: Mr.V.P.Sengottuvel, SCGC
for R2 & R3
R1 Tribunal
R4 No Appearance (Party-in-person)

ORDER

V.PARTHIBAN, J.

This Writ Petition has been filed against the order of the Central Administrative Tribunal, dated 21.8.2015 passed in O.A.No.1240 of 2013, dismissing the application filed by the petitioner herein.

2. The petitioner approached the Tribunal with the following prayer:

"To call for, examine the record relating to the proceedings No.A-34013/3/2009-DE dated 17.11.2009 passed by the first respondent and the proceedings No.REP/9-2/98 IP Review dated 21.5.2013 passed by the second respondent and quash them as arbitrary and illegal and consequently direct the respondents to conduct the review after awarding applicable grace marks to the applicant as provided for in letter No. 7-14/91/SPB II dated 03.01.1992 issued by D.G.Posts and as upheld by the Hon'ble High Court of Madras in WP 23362 of 2006 and promote the petitioner to the cadre of Inspector RMS for the vacancy year 1996 under SC quota with retrospective effect will all consequential benefits."

3. The facts, which gave rise to the filing of the OA, are stated as under:

4. The petitioner was an employee of the Postal Department and was working as Sorting Assistant and belongs to SC community. In 1996, he participated in the departmental competitive examination for appointment to the post of Inspector RMS (IPO/IRM). The vacancies notified for the said post were, 4 for Unreserved, 2 for SC and 1 for ST. However, the Department had cancelled the scheduled examination due to certain alleged malpractices and later in January, 1998, re-examination was conducted wherein, the petitioner had also appeared and the results were announced on 12.8.1998. However, the name of the

petitioner did not find place in the list of qualified candidates under SC category. Out of two vacancies earmarked for SC category, one vacancy was filled up and another was left unfilled. Non-selection of the petitioner was due to the fact that he did not secure minimum qualifying marks, i.e. 33% in respect of one of the papers, which qualifying marks were applicable to SC category. According to the petitioner, normally, in such a situation, review would be conducted and in case of marginal shortfall, the same would be relaxed in order to make the SC candidate eligible for appointment. However, the petitioner did not choose to approach the competent authority for review of his marks for over four years and he finally approached the authority only on 16.12.2002, seeking to add grace marks in his favour by way of review. Thereafter, he did not pursue the remedy before the authority and kept quiet for considerable length of time. While so, the third respondent who appeared along with the petitioner, had approached the competent authority for review in respect of his marks. Having failed in his attempt before the authority, the third respondent approached the Tribunal by filing O.A.No.1230 of 2001. The learned Tribunal allowed the said O.A., by order dated 1.7.2002, directing the authority to examine the case of the third respondent by applying the relaxed standards and accordingly, rejection orders came to be set aside by the Tribunal. Against the said order of the Tribunal, the Department filed a Writ Petition in W.P.No.6719 of 2003 and by order dated 11.11.2005, this Court dismissed the same as having become infructuous since the Department reviewed the case of the 3rd respondent pursuant to the direction of the Tribunal in O.A.1230 of 2001. However, the Department filed another Writ Petition in respect of the 3rd respondent herein in W.P.No.23362 of 2006 assailing the relaxation given by the Tribunal in O.A.No.1230 of 2001 on certain grounds. However, this Court has passed an order in the said Writ Petition in favour of the 3rd respondent, against which, Special Leave Petition was moved before the Hon'ble Supreme Court and the same was dismissed on 30.10.2009. Thereafter, 3rd respondent came to be promoted to the post of the Inspector vide proceedings dated 17.11.2009 by adding grace marks.

5. After all the events which had taken place and culminated in the promotion of the 3rd respondent in 2009, the petitioner herein had been keeping quiet without pursuing any kind of remedy before the authority concerned or before the Tribunal or this Court. Only after the 3rd respondent successfully got the benefit of promotion after review of his performance in the selection conducted in 1998 by virtue of directions passed by the learned Tribunal and this Court, the petitioner once again approached this Court contending that he was also entitled to the benefit of the review as extended to the 3rd respondent

since the the issue was common to both of them.

6. In that view of the matter, he challenged the review that was conducted only in favour of the 3rd respondent before the Tribunal in the subject O.A. as according to him, he has better case than the 3rd respondent since he required lesser grace marks than the 3rd respondent. The Original Application, ultimately, came to be filed by the writ petitioner in 2013 after a lapse of 15 years from the date of selection held in 1998.

7. From the materials placed on record, there appears to be no explanation from the petitioner for not taking initiative against his non-selection in the year 1998 with the competent authority or in approaching the legal forum for appropriate remedy. Once the 3rd respondent got the benefit by virtue of his pursuing the remedy promptly before the Tribunal, and writ petition filed the Department and the SLP before the Supreme Court and the pendency of the proceedings had been kept all along alive as far as 3rd respondent is concerned, cannot be a reason for extending the cause of action for the petitioner herein. Therefore, the learned Tribunal correctly held that there was inordinate delay in filing the application and accordingly, rightly dismissed the same on the ground that the O.A. cannot be entertained at this distant point of time.

8. Heard the learned counsel for the petitioner and the respondents and perused the materials available on record.

9. Learned counsel for the petitioner strenuously placed his submissions that once the review was conducted in respect of 3rd respondent, the issue of awarding grace marks being common, the case of the petitioner ought to have been considered by the Department. According to him, the case of the petitioner is more deserving than the 3rd respondent and as such, in all fairness, the Department ought to have extended the grace marks and granted the promotion to him under SC category which was unfilled. He also made an attempt to argue that the vacancy has not been filled as yet as he may be considered in respect of the unfilled vacancy by conducting the review, presently.

10. Mr.Sengottuvel, learned counsel for the respondents while refuting the above said fact, would state that the subject vacancy had already been filled and thereafter several changes had taken place and any review in respect of selection pertaining to the year 1988 if conducted now, it would completely upset and unsettle the settled position which stood for more than 15 years.

11. Considering the submissions of the learned counsel and

the order passed by the learned Tribunal, we are of the view that the petitioner is not entitled to any relief, which he sought for after a lapse of nearly 15 years and the conduct of the petitioner in not pursuing the remedy and not being vigilant about his right, cannot persuade this Court to grant any relief, since, it would certainly result in unsettling the settled position which may not advance the cause of administration. It is not only appointment of the petitioner which has to be taken into consideration, but also subsequent relief of grant of seniority of further promotion in the service which will have far reaching implications as far as administration is concerned and vis-a-vis other employees who have been appointed and promoted in the cadre during all these years. In such view of the matter, we do not find any infirmity in the order passed by the Tribunal in order to interfere with the same.

Accordingly, the Writ Petition fails and it is dismissed as devoid of merits. There shall be no order as to costs. Consequently, connected MP is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai-600 104.

2. Union of India, represented by
Director General
Department of Posts,
Dak Bhavan, New Delhi-110 001.

3. The Chief Postmaster General,
Tamilnadu Circle,
Chennai-600 002.

+1cc to Mr.M.S. Velusamy, Advocate, S.R.No.1401

rp(CO)
md(30/01/2017)

W.P.No.36500 of 2015