

26.04.2024
Court No. 15
Item No. 01
(Suvendu)

RVW 277 OF 2019
With
CAN 1 of 2020(CAN 200/2020)
CAN 2 of 2023
IN
WPCT 34 OF 2016

Bidya Nand Thakur
-Versus-

Union of India & Ors.

Mr. A.K.Gayen
Mr. A.A.Gayen
...for the petitioner/applicant

Mr. Pradip Kumar Das
.....for the Union of India

Mr. Anirban Datta
.....for the respondent no.5

Affidavit of service filed on behalf of the
applicant is taken on record.

The applicant has filed one application
being CAN 1 of 2020 (old no. CAN 200/2020)
seeking condonation of delay in presenting the
memorandum of review.

We have perused the report of the Stamp
Reporter wherein it has been certified that the
memorandum of review was presented in time.

In view of such report of Stamp Reporter,
no order need be passed in the application being

CAN 1 of 2020 (old no. CAN 200/2020) and the same is accordingly disposed of.

The order dated 22nd March, 2024 needs to be corrected. In the second line of the first paragraph of the first page of the said order dated 22nd March, 2024 the number and year of the application shall be read as “CAN 2 of 2023” instead of “CAN 200/2020”.

The department is directed to incorporate necessary correction in the said order dated 22nd March, 2024.

The review application is directed against an order dated 27th September, 2019 passed by a Coordinate Bench on a writ petition being WPCT 34 of 2016.

The matter has been extensively heard today by us in presence of the learned advocates representing the applicant, Eastern Railway and respondent no. 5.

Mr. Gayen, learned advocate representing the applicant in support of the prayer couched in this review application has urged before this Court that it was not Indian Railway Establishment Manual (for short, IREM) and its paragraphs 204.8 and 204.9 but the rule framed under proviso to Article 309 of the Constitution titled No. 84/E(GR)I/14/1 dated 20th July, 1992

was required to be followed while preparing the panel for the post of Group B Law Officer.

According to the applicant, failure to comply with the aforesaid rules dated 20th July, 1992 has led the applicant to approach this Court with the present review application.

Accordingly, the applicant has prayed for review of the order dated 27th September, 2019 in order to permit the concerned authorities of Eastern Railway to prepare the panel afresh for promotion to the post of Group -B Law Officer.

On perusal of the order dated 27th September, 2019 passed by the Coordinate Bench, which is prayed to be reviewed, it appears that the facts of the case are narrated in details but for consideration of merits of this review application it needs to be recorded that the panel was prepared far back on 30th July, 2012 for recruitment in the post of Group -B Law Officer on promotion. The petitioner participated along with other eligible candidates knowing fully well that paragraph 204.8 and 204.9 of IREM would be pressed into service for the purpose of preparation of panel.

A panel was prepared where petitioner stood fifth and there were six posts but by dint of the peculiar rule 204.9 applicant was

excluded from the zone of consideration which triggered Original Application before the tribunal being OA 73 of 2013. Ultimately considering the entire gamut of the issue, the tribunal dismissed the Original Application on 20th November, 2015 against which one writ petition was preferred being WPCT 34 of 2016 and the same stood dismissed vide order dated 27th September, 2019.

Most significant aspect which needs to be considered while dealing with this review petition is the steps taken by the present applicant during pendency of the original application being OA 73 of 2013. The applicant first filed one interim application being MA 93 of 2013 praying for inclusion of prayer in the original application for declaring paragraph 204.9 of IREM is *ultra vires*. The said application being MA 93 of 2013 was dismissed vide order dated 3rd September, 2013. Against that order the writ petition being WPCT 424 of 2013 was preferred and the same was disposed of by another Coordinate Bench vide order dated 1st October, 2013. Relevant part of the said order was quoted by the Coordinate Bench while disposing of the writ petition being WPCT 34 of 2016 by the order dated 27th September, 2019

against which the present review application has been preferred.

From the said order dated 1st October, 2013, it transpires that prayer was made before the Coordinate Bench that the panel should not be prepared in terms of the paragraph 204.8 of IREM. This Court while dealing the contention of the applicant directed the tribunal to decide the Original application being OA 73 of 2013 on merits upon considering the submissions of the learned advocates of both the parties and also taking note of the relevant rules including IREM Volume -I.

We find that while presenting this review application the learned advocate representing the applicant has prayed for similar prayer which was negated by the Coordinate Bench vide order dated 1st October, 2013. Without challenge being thrown to the said order dated 1st October, 2013 by filing the present review application same point cannot be urged before this Court.

Before parting with, it is also recorded that the panel prepared on 30th July, 2012 was given effect to long ago granting promotion to the selected candidates to the post of Group -B Law Officer and subsequently the applicant in this

review application has retired in the month of January, 2021.

Accordingly, this Court does not find any error apparent on the face of the record requiring review of the order dated 27th September, 2019.

The memorandum of review and the connected application are dismissed.

There shall be, however, no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertakings.

(Saugata Bhattacharyya, J.)

(Subhendu Samanta, J.)