

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.5638 OF 2004

Ramchander

.....Appellant

Versus

Union of India and others

....Respondents

J U D G M E N T

1. Feeling aggrieved by dismissal of the writ petition filed by him against the order of the Central Administrative Tribunal, Jodhpur Bench (for short, "the Tribunal"), which declined his prayer for quashing the order of his reversion from Group 'C' post to Group 'D' post and to direct the competent authority to regularise his service on Group 'C' post, the appellant has filed this appeal.

2. The appellant joined service as Farash in the Jodhpur Division of the Northern Railway. After seven years, he was sent on deputation in the construction organization of the Northern Railway at Bikaner and was directed to work as a Material Checking Clerk.

His pay was fixed in the pay scale of Rs.800-1150/-. In 1997, his service was regularised on Group 'D' post. After two years, he was declared successful in the test conducted for promotion to Group 'C' posts. However, he failed to clear the type test despite repeated opportunities. As a consequence, the competent authority passed an order dated 01.07.2002 for reversion of the appellant to Group 'D' post.

3. The appellant challenged the order of reversion in O.A. No.178 of 2002. He also prayed for issue of a direction to the respondents to regularise his service on Group 'C' post in accordance with the policy framed by the Ministry of Railways, Government of India. The Tribunal rejected his prayer for quashing the order of reversion by observing that having failed to clear the type test within the maximum permissible chances, the appellant is not entitled to continue on Group 'C' post as of right. The appellant's prayer for issue of a direction to the respondents to regularise his service was rejected by the Tribunal primarily on the ground of delay.

4. The writ petition filed by the appellant questioning the order of the Tribunal was summarily dismissed by the Division Bench of the High Court by recording the following order:

"The main point urged by the learned counsel for the petitioner is that similarly situated persons were regularised under the Policy of the year 1991, while the petitioner was not given the same benefit. The petitioner

approached the Central Administrative Tribunal only in August, 2002 and, one of the ground for dismissal of the application before the Central Administrative Tribunal is delay.

We see no infirmity in the decision of the Tribunal that the cause of action with respect to the point of discrimination arose in the year 1993, when similarly situated persons are alleged to have been regularised. The petition is liable to be dismissed on this ground alone."

5. We have heard learned counsel for the parties and carefully perused the record including the additional documents filed with the rejoinder affidavit and I.A.No.1 of 2005. In our view, the High Court committed an error by non-suiting the appellant only on the ground of belated filing of the application before the Tribunal. The High Court should have taken note of the fact that the appellant had not only claimed regularisation on Group 'C' post by asserting that similarly situated persons had been regularised in service but had also challenged his reversion and the Tribunal had not dismissed the application on the ground of delay insofar as his prayer for quashing the order of reversion was concerned. That apart, we feel that the claim of the appellant for regularisation of service on Group 'C' post deserves to be examined in the light of the documents filed by him along with the rejoinder affidavit and I.A. No.1 of 2005.

6. For the reasons stated above, the appeal is allowed, the impugned order is set aside and the matter is remitted to the High

Court for disposal of the writ petition on merits. The parties may file supplementary affidavits and documents before the High Court within a period of three months.

7. Since the matter is more than 9 years old, we request the High Court to make an endeavour to dispose of the writ petition as early as possible but latest within six months from the date of receipt/production of a copy of this order.

New Delhi,
April 07, 2011.

.....J.
(G.S. Singhvi)

.....J.
(Asok Kumar Ganguly)



JUDGMENT