

A

K.L. NANDAKUMARAN NAIR

v.

K.I. PHILIP AND ORS.

SEPTEMBER 10, 2001

B

[S. RAJENDRA BABU AND DORAISWAMY RAJU, JJ.]

Service matter:

C

Selection of electricians (HS) after conducting trade test—Appellant secures qualifying minimum marks—Promoted to electrician (HS)—O.A. filed challenging the selection—Rejected—Respondents not preferred appeal or review petition against the order but preferred another O.A. challenging the selection—Division Bench of the Central Administrative Tribunal directed the Chief Engineer to dispose of the representations by the respondents—Against the order of Chief Engineer rejecting the representation another O.A. filed—Held, Tabulation sheets/mark sheets destroyed and not made available to the Tribunal—

D

Directed fresh selection—Review rejected—On appeal held, Tribunal erred by ignoring the affidavit by Selection Committee that note sheet destroyed only after entries in tabulation sheet—Also ignored pleading—Available records sufficient to conclude the matter—Ought to have exercised great care.

E

Respondents challenged the selection of appellant as Electrician (HS) before the Central Administrative Tribunal and the Tribunal dismissed the O.A. on the ground that they had not obtained qualifying minimum marks.

F

The respondents did not prefer appeal or review petition against the order but filed another O.A. which was disposed of with the direction to the Chief Engineer to dispose of the representation of the respondents. The representation was rejected by the Chief Engineer upon which another O.A. was filed in which the issue was that trade test had not been conducted for the respondents. The Tribunal gave directions for fresh selection since the tabulation sheets/mark sheets had been destroyed and were not made available to the Tribunal. However, no reference was made to its earlier order. The Review Petition filed against the said order was dismissed.

G

Hence these appeals.

Allowing the appeals, the Court

H

HELD : The Tribunal ought to have considered the facts recorded in the course of judgment by another Bench of the Tribunal in which the records of selection and the mark sheets had been examined by the Tribunal.

Further, the affidavit of Selection Committee was also available on record declaring that note sheets were destroyed soon after entries was made in the minutes and tabulation sheets, but the document does not reveal that the tabulation sheets or the mark sheets were destroyed and the available records were sufficient to conclude the matter. The Tribunal ought to have exercised great care in these matters where interests of several employees were involved and should have allowed the review when it was pointed out in the counter affidavit that mark sheets and tabulation sheets were available. However, the Tribunal totally ignored the pleadings and the material available. [16-G-H; 17-A-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5340 of 1997.

From the Judgment and Order dated 8.8.96 of the Central Administration Tribunal, Ernakulam at Kerala in R.A. No. 17/95 in O.A. No. 418 of 1994.

WITH

C.A. No. 5341/1997.

K.Sukumaran, Ms. Baby Krishnan, Ms. Karthika S. and N.R. Shonker for the Appellant.

M.N. Krishnamani, Ms. Kiran Bhardwaj, K. Misra, M.T. George and T.G. Narayanan Nair for the Respondents.

The Judgment of the Court was delivered by

RAJENDRA BABU, J. These appeals arise out of certain proceedings in O.A. No. 418/94 filed before the Central Administrative Tribunal, Ernakulam Bench (hereinafter referred to as 'the Tribunal'). Respondent Nos. 1 to 4, who were working as Electricians (HS), Grade II, by O.A. No. 771/93 challenged the selection of the appellants as Electricians (HS). A Division Bench of the Tribunal after going through the record of the selection and the mark sheets found that out of the total marks of 100, 35 marks have been allotted to written test, 40 marks for practical test and 25 marks for *viva voce*. All the applicants had not obtained the qualifying minimum marks of 50 per cent prescribed for general candidates and 40 per cent marks for SC/ST candidates. On the basis of the marks obtained by them, the appellants have been promoted to the higher grade, which is a selection grade, and dismissed the application of respondent Nos. 1 to 4. Subsequently another application in O.A. No. 1308/93 was filed by respondent Nos. 1 to 4 before the Tribunal challenging

A this very selection which had been upheld in O.A.No. 771/93 without seeking
review of the said order or preferring appeal to this Court in the ordinary
course. However, the new application in O.A. No. 1308/93 came to be disposed
of with a direction to dispose of the representation to be made to the Chief
Engineer. The Chief Engineer rejected the said representation upon which O.A.
B No. 418/94 was filed. The Tribunal on the third occasion examined the matter
at the instance of the same set of applicants and adverted to the direction in
O.A. No. 1308/93 however without any reference to the disposal of the matter
finally in O.A. No. 771/93. It is rather strange that that course was adopted by
the Tribunal. Further the dispute before the Tribunal was that the trade test had
not been conducted in respect of the applicants. The Tribunal proceeded to state
C that the tabulation sheets or the mark sheets have been destroyed and were not
made available to the Tribunal and on that basis directed for a fresh selection.
Thereafter review application filed against the same having failed, these appeals
are filed by special leave.

That the records of the selection and the mark sheets have been examined
D by the Tribunal while disposing of O.A. No. 771/93 is a fact recorded in course
of its judgment by another bench of the Tribunal. The Tribunal when examining
the matter again ought to have given weight to this aspect of the matter. Further
in the affidavit filed by one S.K. Shangari, who was one of the members of the
selection committee along with Mr. A.K. Ayyappan and A.W. Khedkar stated
E in the affidavit filed in O.A. No. 1308/93 that the applicants before the Tribunal
were given the trade test and the duration for the practical test of the candidates
depended upon their performance and the practical test given to each individual
varied and depended upon his knowledge as Electrician Grade HS II. Notes
were made by the Board members and marks were awarded separately in note
sheets kept by them and that such note sheets were destroyed soon after the
F entries were made in the minutes and tabulation sheet. This document does not
reveal that the tabulation sheets or the mark sheets have been destroyed. The
Tribunal did not also attach any significance to the submission of the learned
counsel for the respondent that records were available and the Tribunal, on the
other hand, ought to have seen what those records were to find out whether
those records were sufficient to conclude the matter one way or the other and
G give a finding on the same. The Tribunal instead of adopting this course merely
brushed aside that submission characterising it as 'faint attempt'. In matters
where the interests of several employees are involved selection process has
taken place, the Tribunal ought to have exercised great care in deciding such
matters, particularly in examining the records maintained by the selection
H committee. The fact remained that the records have been made available to the

Tribunal on the earlier occasion and that though subsequently it was brought to the notice of the Tribunal that tabulation sheets or the mark sheets were available and only the notes were destroyed the Tribunal without giving any weight to the same could not have disposed of the matter in the manner it did.

At any rate, the Tribunal should have allowed the review when it was pointed out that mark sheets and tabulation sheets were available and a statement to that effect had already been made in the counter affidavit. Genesis of the problem appears to be the order made by the Tribunal while disposing of O.A. No. 1308/93. In the affidavit of S.K. Shangari to which we have adverted to earlier, it was stated that notes prepared at the time of practical test were destroyed soon after the entries in the minutes of the tabulation sheets were made, but the Tribunal, however, felt that the entire records have been destroyed while it is not so. What was destroyed was only the notes and not the entries made in the minutes and tabulation sheet, which would indicate the necessary marks obtained by each of the candidates. When these facts were brought to the notice of the Tribunal and which facts have been averred in the counter affidavit, there was no fresh attempt on their part to produce any new evidence which was not referred earlier and it is a case where the Tribunal totally ignored the pleadings and shut its eyes to the material available. In the circumstances, review should have been allowed.

In that view of the matter we set aside the Order of the Tribunal, both in the review application and the original application, setting aside the earlier order made by the Tribunal in O.A. No. 418/94. The order made in O.A. No. 771/93 is restored. The appeals are allowed accordingly. No costs.

S.K.S.

Appeals allowed.