

CASE NO.:
Appeal (civil) 5340 of 1997

PETITIONER:
K.L. NANDAKUMARAN NAIR

RESPONDENT:
K.I. PHILIP AND ORS.

DATE OF JUDGMENT: 10/09/2001

BENCH:
S. RAJENDRA BABU & DORAISWAMY RAJU

JUDGMENT:
JUDGMENT

2001 Supp(3) SCR 14

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 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. 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 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 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 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 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 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 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.