

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 549 of 2014

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

J.Venkat Dev, aged about 50 years, S/o Late J.Papa Rao, at present working as Commercial Inspector, East Coast Railways, Bhubaneswar, Dist.-Khurda (Odisha).

.....Applicant

VERSUS

1. Union of India represented through the General Manager, 1st Floor, South Block, Rail Sadan, Chandrasekharpur, Bhubaneswar (Odisha), Pin – 751017.
2. The Senior Deputy General Manager, 1st Floor, South Block, Rail Sadan, Chandrasekharpur, Bhubaneswar (Odisha), Pin – 751017.
3. The Chief Personnel Officer, 2nd Floor, South Block, Rail Sadan, Chandrasekharpur, Bhubaneswar (Odisha), Pin – 751017.
4. The Chief Commercial manager, Ground Floor, North Block, Rail Sadan, Chandrasekharpur, Bhubaneswar (Odisha), Pin – 751017.
5. Mr. Hemanta Kumar Panda, aged about 52 years, S/o Madhu Sudan Panda, Commercial Inspector, Office of the Dy. Chief Commercial Manager (P.S & Plg.), East Coast Railways, Ground Floor, North Block, Rail Sadan, Chandrasekharpur, Bhubaneswar (Odisha), Pin – 751017.
6. Mr. Pramod Chandra Patra, Aged about 59 years, S/o R.K.Patra, Commercial Inspector, Office of the Dy. Chief Commercial Manager (P.S & Plg.), East Coast Railways, Ground Floor, North Block, Rail Sadan, Chandrasekharpur, Bhubaneswar (Odisha), Pin – 751017.
7. Mr. Pradeep Kumar Dash, aged about 54 years, S/o Narahari Dash, Commercial Inspector, Office of the Dy. Chief Commercial Manager (F.S), 1st Floor, North Block, East Coast Railways, Rail Sadan, Chandrasekharpur, Bhubaneswar (Odisha), Pin – 751017.
8. Mr.Buddhanath Jaysingh, aged about 55 years, S/o Late Digambar Jaysingh, Commercial Inspector, Office of the Commercial Control, South Block, East Coast Railways, Rail Sadan, Chandrasekharpur, Bhubaneswar (Odisha), Pin – 751017.

.....Respondents

For the applicant : Mr.P.V.Balakrishna, counsel

For the respondents: Mr.B.B.Patnaik, counsel (Resp. No.1 to 4)
Mr.S.K.Ojha, counsel (Resp. No. 5 to 8)

Heard & reserved on : 14.2.2020

Order on : 16.3.2020

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant was working as Head Commercial Clerk under the respondent-Railway when he applied in response to the notification dated 30.6.2006 (Ann. 1 of the OA) issued for selection to the post of Commercial Inspector-IV (in short CI). The candidates who had applied for the post of CI, including the applicant, were called to appear in the viva voce test on 25.10.2006 and the applicant was declared suitable for the post vide order dated 31.10.2006 (Ann. 2 of the OA). The applicant was posted against the ex-cadre post of CI which was not to be considered as promotion (order dated 9.8.2007 (Ann. 3 of the OA) and he joined in the said post. At this juncture, another notification dated 5.6.2009 (Ann. 4 of the OA) was issued calling for option for regular posting of 19 posts of CI. The applicant submitted his option as per the said notification. When no decision on his option was taken by the respondents, he submitted a representation dated 23.10.2009 (Ann. 6). The respondents issued the order dated 28.1.2011 (Ann. 7 of the OA) absorbing the respondent Nos. 5 to 8 as CI in zonal headquarters, while ignoring the applicant's option for similar benefit.

2. Being aggrieved, the applicant made an appeal to the respondent no.1 raising the point that the respondent Nos. 5 to 8 were ineligible for absorption as CI. The representation was forwarded to the respondent No. 2 against whom the applicant had raised allegation of illegally appointing the respondent Nos. 5 to 8 as CI. The respondent No.3 issued a letter dated 13.4.2012 (Ann. 9 of the OA), stating as under:-

"Sub : Absorption against the HQrs cadre post of Commercial Inspector.
Ref: Your application No-Nil, Date-27-01-2012.

With reference to the above, it is to be informed that your application regarding absorption against the HQrs cadre post of Commercial Inspector has been received and put up to GM/ECoR/BBS & as per order of GM/BBS, no further action can be taken at this stage. You should apply for post of Commercial Inspector as and when applications are called for."

3. It is further averred in the OA that the respondent No. 5 was not eligible for the post of CI as per the notification dated 11.5.2007 (Ann. 10) and thus the order dated 28.12.2007 (Ann. 11), appointing the respondent No. 5 is unsustainable and it is liable to be quashed. Another ground for the OA is that the applicant's appeal was not considered properly. Under the circumstances, the applicant has prayed for the following reliefs in this OA:-

"(i) quash the appointment letter No. 569/2007 Dt/-28.12.2007 and letter No.44/2011 Dt/-28.01.2011 issued by the Respondent No.2, 3 and 4 and Respondent No.3 and 4 respectively vide Annexure-7 and 11;

- (ii) further direct the Respondent No.3 and 4 to consider the appeal submitted by the applicant and appoint him in the post of Commercial Inspector – IV, Headquarters, Bhubaneswar with effect from 30.06.2009 the date on which the appeal has been acknowledged by the office of the Respondent No.4;
- (iii) And may pass such other order(s)/direction(s) as deemed just and proper.

And for this act of kindness, the applicant shall as in duty bound, ever pray."

4. The respondent Nos. 1 to 4 have filed their Counter without disputing the facts and stating as under at para 4 (e) and (f):-

"(e) After selection was over and due to non-fulfillment of the posts as so advertised, basing on a representation submitted by the Respondent Nos.5 to 8 a proposal was received from Respondent No.4 regarding absorption of four employees [who were working Commercial Inspector-IV on ex cadre basis] on regular basis in the category of Commercial Inspector at Head Quarter. However, they were absorbed at Head Quarter in the category of Commercial Inspector on regular basis on their own request vide Chief Personnel Officer/Bhubaneswar's Office Order No.44/2011, Dtd-28.1.2011 (Annexure-7 to OA). It may kindly be taken note of that the present applicant has never submitted any application to that effect nor a joint signatory of the representation submitted on 22.10.2009 basis on which the proposal was considered.

(f) Then the applicant for the first time has submitted his representation dtd.27.01.2012 (Annexure-8 to OA) to Respondent No.1 for his absorption in Head Quarter. After examining his grievance he was replied vide Chief Personnel Officer/Bhubaneswar's letter No. ECoR/Pers/06/Cadre/GM-Grievance/52/JDV/15, Dtd 13.04.2012 (Annexure-9 to OA) that at that stage the appeal could not be considered and in future when applications would be called for to fill up the vacancies in the post of Commercial Inspector-IV, the applicant's case would be considered for the said post of Commercial Inspector-IV. However, no option has been called for after 13.04.2012."

5. It is averred by the respondents that the applicant represented first time on 27.1.2012 (Ann. 8 of the OA) for absorption at headquarter against post of CI and he was informed by letter dated 13.4.2012 (Ann. 9) that his case will be considered against the post of CI as and when the post will be advertised. The ground of delay has been urged since the applicant has challenged the order dated 28.12.2007 (Ann. 11) which is the respondent No. 5's appointment as CI on ex-cadre basis. It is also stated that the representation dated 23.10.2009 (Ann. 6) has not been received from the applicant. The ground of delay in filing the OA has also been mentioned in the Counter.

6. Respondent Nos. 5 to 8 have filed Counter opposing the OA on the ground that it is filed with multiple prayers, which is not permissible. It is averred that the respondent No. 5 vide order dated 28.12.2007 (Ann. 11) was appointed against ex-cadre post and by that the applicant's interest is not prejudiced. It is stated that after appointment of the respondent Nos. 5 to 8, there are many regular posts of CI lying vacant. It is further stated that the applicant has never made any representation dated 23.10.2009 (Ann. 6) as claimed in the OA and he approached the authorities for the first time on 27.1.2012 (Ann. 8 of the OA) addressed to the respondent No.1. It is also stated in the Counter that the applicant who was working against ex-cadre post was not eligible to apply for

the regular post of CI as per the notification dated 5.6.2009 (Ann. 4). It is stated the respondent No. 5 was eligible for the post of CI.

6. Rejoinder has been filed by the applicant for both the Counters. Regarding delay, it is stated that the applicant has filed the MA for condoning the delay in filing the OA.

7. Heard learned counsel for the applicant, the official respondents and private respondents. We have also considered the pleadings of the parties on record. The applicant's counsel has filed a written note of submissions. In the MA No.457/2014 filed by the applicant, it is stated that after the order dated 28.1.2011 (Ann. 7) was passed regularly posting the respondent Nos. 5 to 8 as CI, the applicant submitted the appeal to Respondent No.1, which was disposed of a routine manner vide order dated 13.4.2012 (Ann. 9). Thereafter, he had contacted his counsel to file the OA in the Tribunal, but the concerned counsel fell ill and subsequently he expired. It is stated that he engaged another counsel to file this OA thereafter, for which the delay in filing this OA be condoned.

8. On perusal of the grounds mentioned in the MA No. 457/2014, it is seen that the applicant has explained the delay in filing the OA after disposal of his appeal/representation dated 27.1.2012 by order dated 13.4.2012. However, there is no explanation for the delay in challenging the order dated 28.12.2007 (Ann. 11 of the OA) by which the respondent No. 5 was appointed as CI on ex-cadre basis after appointment of the applicant. If the applicant is aggrieved by the said order dated 28.12.2007, he should have challenged it as per the provisions of law within the time as stipulated under the provisions of law. Hence, while we find the grounds mentioned in the MA for delay in filing this OA challenging the order dated 28.1.2011 to be satisfactory, there is no explanation for the delay in challenging the order dated 28.12.2007. The MA No. 457/2014 is, therefore, allowed and the delay in filing the OA, with all reliefs excluding the relief in respect of the order dated 28.12.2007 (Annexure-11) is condoned. We also hold that the challenge of the order dated 28.12.2007 (Ann. 11) in this OA is barred by limitation and the relief in respect of the said order is to be rejected on the ground of delay/limitation.

9. Regarding merit of the OA, the applicant avers that the respondent no. 5 was ineligible to apply in response to the letter dated 11.5.2007 (Ann. 10 of the OA) as he was in the pay scale of Rs. 4500-7000/- and working as Enquiry – cum-Reservation Clerk. It is noticed that the applicant, in his pleadings, has not mentioned any specific reason for averring that the respondent Nos. 6 to 8 to be ineligible for being posted as CI. In case the respondent No.5 was not eligible to be appointed as CI on ex-cadre basis in response to the letter dated 11.5.2007 (Ann. 10), then he should have challenged the said decision taken in the year 2007 within the time stipulated under law. As discussed earlier, his

challenge to the order passed on 28.12.2007 at this stage is not tenable on the ground of delay/limitation, since no explanation has been furnished by the applicant in the MA No. 457/2014 for the delay in challenging the order dated 28.12.2007 (Ann. 11).

10. Regarding non-consideration of the applicant's case for regular posting as CI for which he had given option in response to the notification dated 5.6.2009 (Ann. 5), it has been explained by the respondent Nos. 1 to 4 in their Counter that due to non-fulfillment of the eligibility criteria indicated in the notification, the applicant could not be selected for regular absorption as CI. However, why the applicant was not considered, has not been mentioned. The case of the respondent Nos. 5 to 8 for regular absorption was considered for regular absorption as CI on the basis of a representation submitted by them after the selection process vide notice dated 5.6.2009 was over. When the applicant submitted an appeal dated 27.1.2012 (Ann. 8 of the OA) to the respondent No. 1, it was disposed of by the order dated 13.4.2012 (Ann. 9) which is extracted in paragraph 2 of this order. It is seen that the order dated 13.4.2012 is a non-speaking order since no reason has been mentioned as to why the applicant's case cannot be considered for regular absorption as CI like it was done for the respondent Nos. 5 to 8 after they were found unsuitable as per the notice dated 5.6.2009. By not communicating the decision through a speaking order, the respondents have clearly violated the principles of natural justice.

11. In the circumstances as discussed above and taking into consideration the fact that the respondents have averred that vacant posts of Commercial Inspectors-IV are available and that there is nothing on record to show that the applicant was ineligible to be considered for regular absorption as Commercial Inspector-IV, we direct the Respondent No. 1 to reconsider the applicant's case for regular absorption as Commercial Inspectors-IV on the same criteria as applied for the respondent No. 5 with effect from the date of regular absorption of the respondent No.5, who was appointed against the said post on ex-cadre basis in 2007 after applicant's appointment and to extend all consequential service benefits to the applicant as per the rules, by passing an appropriate speaking order, copy of which is to be communicated to the applicant within 2 (two) months from the date of receipt of a copy of this order.

12. The OA is partly allowed in terms of the paragraph 11 above. There will be no order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

