

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

LIBRARY

No. O.A. 350/00527/2013

Reserved on: 26.2.2020
Date of order: 16.03.2020Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

1. Raj Kumar Prasad,
S/o Late Ramji Prasad,
Aged about 45 years,
Unemployed,
At present residing at Retirement Colony,
P.O. Chotamuri,
Dist. Ranchi;
2. Md. Muzaffar Jamal,
S/o Md. Azimuddin (Late)
Aged about 46 years,
Unemployed,
At present residing at 3 Miajan Ostagar Lane,
Calcutta – 700 017.

..... Applicants.

Versus

1. Union of India,
Through General Manager,
South Eastern Railway,
Garden Reach,
Calcutta – 43.
2. Chief Personnel Officer,
South Eastern Railway,
Garden Reach,
Calcutta – 43.
3. Divisional Railway Manager,
South Eastern Railway,
Adra.

..... Respondents.

For the Applicant : Mr. C. Sinha, Counsel

For the Respondents : Mr. P. Prasad, Counsel

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O R D E R**Per Dr. Nandita Chatterjee, Administrative Member:**

The applicants have approached this Tribunal in 4th stage litigation to challenge the speaking order dated 8.8.2012 and seek relief as under:-

"a) To set aside and quash the impugned Speaking Order no. E/CC/CAT/KOL/339/09/RKP dated 08.08.2012 issued by Chief Personnel Officer, S.E. Rly. served under covering letter no. E/CC/CAT/KOL/339/09/RKP dated 16.08.2012.

b) To direct the respondents to grant appointment in any Group 'D' post as has been done in the case of those candidates who have been borne in the same panel dt. 13.5.2004 are similarly situated and similarly circumstanced.

c) To direct the respondents to grant all other consequential benefits as has been granted to the other 27 candidates who have been given appointment in Group 'D' post.

d) Any other order(s) as the Hon'ble Tribunal deems fit.

e) Liberty be granted under Rule 4(5)(a) of CAT Procedure Rule 1987 to file and maintain the case jointly."

2. Heard both Ld. Counsel, examined available pleadings and annexed documents. No rejoinder is found on record.

3. As prayed for by the applicants, given their commonality of interest and the fact that they are pursuing a common cause of action, liberty is granted to the applicants to pursue this Original Application jointly under Rule 4(5)(a) of Central Administrative Tribunal (Procedure) Rules, 1987, subject to their payment of individual court fees.

4. The admitted facts are that the applicants had responded to Employment Notice dated 1.2.1999 for appointment in Gr. 'D' category and consequent to the same, a provisional list of 1170 successful candidates including the applicants, was published on 11.5.2003. All candidates, who had accepted the offer of appointment, were sent for pre-recruitment medical examination but 37 of such candidates were found medically unfit in the A-1 and B-1 category. Of these 37, 27 candidates were given alternative appointment as Store Khalasi but

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instant applicants were denied appointment on the ground that they were overaged i.e. they were more than 33 years old as on 18.10.2005, on the date of approval of the General Manager. The applicants submitted a detailed representation dated 23.8.2007 to the General Manager indicating that while they were within the prescribed age limit but for the time taken in procedural formalities.

Not having received any response thereupon, the applicants approached this Tribunal in O.A. No. 190 of 2008 which was disposed of on 12.3.2008 by this Tribunal directing the respondents to consider the representations of the applicants within a specified time frame. In compliance thereof, the respondent authorities issued a speaking order dated 27.11.2008 denying any extension of benefits to the applicants. The applicants, thereafter, filed CPC No. 110 of 2008 in response to which the CPO of S.E. Railway filed a detailed reply. This Tribunal disposed of the said Contempt Application after noting that both the Ld. Counsel had submitted that the orders had been complied with and, therefore, the CPC will not stand on its legs.

The applicants filed another O.A. bearing No. 339 of 2009 which was disposed of on 24.4.2012 by this Tribunal with the following orders:-

"(c) It is thereafter that the impugned order is passed. The relevant part of the speaking order reads as under:-

" Out of 37 medically unfit candidates, only cases of 27 candidates were considered by the General Manager, South Eastern Railway for engagement as fresh face (Substitute) merely on the humanitarian grounds. All of 27 candidates fulfilled the eligible criteria for such fresh (Substitute) appointment as on the date of approval of the General Manager, South Eastern Railway. On the other hand, the remaining cases of 10 (ten) candidates (including the four applicants) could not be considered due to overage i.e. more than 33 years of age prescribed for such appointment as on 18.10.2005, the date of approval of the General Manager, South Eastern Railway. As the power of overage relaxation of the fresh face (Substitutes) engagement do not vest with General Manager in the Zonal Railway, therefore, the case of overage relaxation cannot be considered.

Apart from this, Hon'ble CAT in the case of Sri Sohail Akhtar -vs-UOI in O.A. No. 616 of 2008, a similarly placed candidate i.e. one of the 10 candidates who was overage at the time of approval of the General Manager, had ordered for consideration of representation for engagement as fresh face (Substitute). In compliance with Hon'ble CAT's order, Sri Shohail Akhtar's case was considered, however, it was regretted for engagement as fresh face substitute on ground of being overage."

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3. The respondents have filed detailed reply and have indicated that age of the candidates has been reckoned as on the date of approval i.e. as on 18.10.2005. The contempt application i.e. CPC 110 of 2008 has been dismissed as the order had been complied with. The power of age relaxation of the fresh face substitutes does not vest with the General Manager in the Zonal Railway and, therefore, the case for age relaxation could not be considered.

We have heard the learned counsel and gone through the record.

Relevant part of para 13 of the decision in Bhupinder Singh vs. State of Punjab 2000 (5) SCC 252, is as under:-

“13. Placing reliance on the decisions of this Court in Ashok Kumar Sharma v. Chander Shekhar, A.P. Public Service Commission v. B. Sarat Chandra, District Collector and Chairman, Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi, Rekha Chaturvedi v. University of Rajasthan, M.V. Nair (Dr.) v. Union of India and U.P. Public Service Commission U.P., Allahabad v. Alpana the High Court has held (i) that the cut-off date by reference to which the eligibility requirement must be satisfied by the candidate seeking a public employment is the date appointed by the relevant service rules and if there be no cut-off date appointed by the rules then such date as may be appointed for the purpose in the advertisement calling for applications; (ii) that if there be no such date appointed then the eligibility criteria shall be applied by reference to the last date appointed by which the applications have to be received by the competent authority. The view taken by the High Court is supported by several decisions of this Court and is therefore well settled and hence cannot be found fault with.”

6. The communication of CPO dated 26.4.2004 is not on record of this O.A. It is also not clear that if this was as per the decision of competent authority to provide alternative employment. If such a decision has already been taken and the intervening time was spent in procedural formalities, then this subsequent decision would amount to modifying the earlier decision. Alternatively the Railway Board has a well-defined policy of offering alternative employment to direct recruits, who were found medically declassified. The above decision also refer.
7. The impugned order is unsustainable for not considering the above aspects. The respondents are directed to reconsider the matter in the light of what has been discussed above. This exercise is to be completed within three months of the receipt of this order. No costs.”

In compliance thereof, the respondent authorities issued another speaking order dated 8.8.2012, challenging which the applicants have approached this Tribunal in the instant Original Application.

5.1. To examine the legality of the claim of the applicants, *prima facie*, we would examine the speaking order, which is under challenge. The said speaking order at Annexure A-14 of the O.A. is reproduced as under:-

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SOUTH EASTERN RAILWAY

No. E/CC/CAT/KOL/339/09/RKP

Dated: 8/08/2012

To
 Shri Raj Kumar Prasad
 S/o Late Ramji Prasad
 Retirement Colony,
 PO: Chotamuri
 Dist: Ranchi.

SPEAKING ORDER

Sub: Implementation of the judgement / order passed by the Hon'ble CAT/Calcutta Bench on 24/04/2012 in OA No. 339 of 2009 - Sri Raj Kumar Prasad & Others - Vs-Union of India & Others

Pursuant to Hon'ble CAT/Kolkata's judgement dated: 24/04/2012 in OA No. 339 of 2009 which you have filed alongwith three others, seeking quashing of identical orders dated: 27/11/08 passed by CPC/South Eastern Railway as per direction of OA 190 of 2008, and further direction to grant appointment in Group 'D' post as has been done to other similarly situated persons, the undersigned being the competent authority to re-consider the matter, has examined your case in the light of Hon'ble CAT/Kolkata's directions and earlier decision taken in the matter.

It is a fact that the applicants were selected for appointment in Group 'D' post in ADA Division against notification dated: 01/02/1999 for the post of Trackman. It is also a fact that the required medical fitness of Trackman is A2. However, the candidates were found medically fit in B1 & below categories. Railway Board's extant circular at the material time provided for alternate appointment to candidates who were medically unfit in the prescribed medical category, by General Manager, **only for RRB Recruits** (RBE No.211/99).

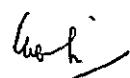
In the instant case 37 candidates who were medically unfit were considered for alternate appointment by General Manager as fresh face Substitutes as per power vest in him, purely on humanitarian grounds keeping in mind the large number of vacancies. Hence, question of delay in processing the case does not arise, since this alternate appointment was not a right, as per extant rules.

The case of Shri Raj Kumar Prasad and 03 others (the applicants) for alternate appointment was regretted at the material time since they were over aged. The General Manager took the decision, as zonal Railways are not vested with powers of relaxation of upper age in any open recruitment. In a similar case OA.291 of 2009 of Shri Shohail Akhtar - Vs - Union Of India, (who were one of the candidate whose case was regretted due to over aged) had been dismissed by the Hon'ble Tribunal, vide its judgement dated: 19/11/10.

In view of the circumstances and facts indicated above, the undersigned finds no fresh grounds to review the case for alternative appointment to the applicants. The matter is disposed off accordingly.

This may please be acknowledged.


 (Mario Pande)
Chief Personnel Officer
General Manager



5.2. We infer as follows from the above mentioned speaking order:-

- (i) The applicants were selected for appointment in Gr. 'D' posts against notification dated 1.2.1999 for selection to the post of Trackman.
- (ii) The required medical fitness of the Trackman being A-2 and the candidates having been found medically fit in B-1 and below categories, they could not be provided with alternative appointment as per RBE No. 211/1999.
- (iii) 37 candidates having been declared as medical unfit, the General Manager, purely on humanitarian grounds, and, keeping in mind the large number of vacancies, allowed appointment to 27 of them as fresh face Substitutes.
- (iv) The applicants in the instant O.A., however, were found to be overaged at the material point of time, namely, when the General Manager took his decision on 18.12.2005.
- (v) The General Manager not being vested with relaxation of upper age in any open recruitment, was unable to provide appointment to the instant applicants.
- (vi) One Sohail Akhtar, who was one of such candidates denied appointment on account of overage, filed an O.A. No. 291 of 2009 but the same was dismissed by this Tribunal vide its orders dated 19.11.2010.

Accordingly, the authorities regretted their inability to provide appointment to the applicants in the instant O.A.

5.3. We find upon a detailed perusal of the orders of this Tribunal dated 24.4.2012 in O.A. No. 339 of 2009, that this Tribunal had quashed the speaking order dated 27.11.2008 as unsustainable. The speaking order dated 8.8.2012, presently under challenge in this O.A. is almost identical



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in its contents to the earlier speaking order in as much it refers to overage of the applicants as on the date of approval of the General Manager and also cites the judgment in **Sohail Akhtar (supra)**.

This Tribunal, after hearing the Ld. Counsel and having perused the contents of such speaking order, and, while referring to **Bhupinder Singh vs. State of Punjab, 2000 (5) SCC 262**, clearly came to the conclusion that if a decision had been taken to provide alternative employment to the applicants and if the intervening period was spent on procedural formalities then the subsequent decision of the respondents conveyed vide speaking order dated 27.11.2008 was a modification of the earlier decision. Accordingly, while referring to the policy of the respondents on providing alternative employment to direct recruits and also the earlier commitment of the authorities before the Court, the Tribunal held the speaking order to be unsustainable and the respondents were directed to reconsider the matter in the light of the Tribunal's orders.

We, however, note with surprise, that speaking order dated 8.8.2012 is nothing else but a complete reiteration of the speaking order dated 27.11.2008 struck down by the Tribunal. The Tribunal had clearly found the order, so impugned, as unsustainable as it was violative of the policy of the authorities and also that procedural delay cannot lead to modification of earlier decision of the respondent authorities. This Tribunal had also taken into account the judgment in **Sohail Akhtar (supra)**.

Accordingly, in reiteration of the directions of the Tribunal in O.A. No. 339 of 2009 dated 24.4.2012, we hereby hold the speaking order dated 8.8.2012 (Annexure A-14 to the O.A.) as unsustainable and direct the

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respondent authorities to honour their commitments as made before this Tribunal in CPC No. 110 of 2008.

5. This O.A. is disposed of with the above directions.

Parties will bear their own costs. The applicants will pay individual court fees.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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