

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A.NO.629/88

New Delhi, this the 25th day of August, 1995

Hon'ble Shri N.V. Krishnan, Vice-Chairman (A)

Hon'ble Mrs. Lakshmi Swaminathan, Member (J)

Shri Pradeep Kumar,
s/o Shri Hari Shanker,
R/o 144, Gurdwara,
Nagra Jhansi,
Jhansi.

... Applicant

By Advocate: Shri B.B. Raval

Vs.

The Divisional Railway Manager,
Central Railway,
Bombay (VT)

... Respondents

By Advocate: None

ORDER

Hon'ble Mrs. Lakshmi Swaminathan, Member (J)

This application was originally filed as O.A. No. 174/87 before the Allahabad Bench of the Tribunal on the ground that the applicant is the resident of Jhansi which is within the jurisdiction of that Bench. However, the Allahabad Bench returned the application to the applicant holding that as the cause of action arose at Bombay, the Allahabad Bench has no jurisdiction to deal with the matter. The

applicant, therefore, moved a MP No.612/88 u/s 25 of the Administrative Tribunal Act,1985 which was allowed by the then Hon'ble Chairman vide order dated 22.4.88 and the O.A. was retained at the Principal Bench for hearing and disposal. By the order dated 3.6.88 the O.A. was admitted.

2. The case of the applicant, in short, is that he had applied for the post of Khallasi in the Electrical Department of the respondents in response to the notification issued by them ~~respondents~~ dated 26.6.85. He submitted his application and he was called for interview. He was selected and placed on the panel vide letter dated 26.6.85 (Annexure IV). By this letter he was directed to report to the office of the respondents at 10.30 hours on 8.7.85 for medical examination, bringing with him his school/college certificates showing his date of birth and qualifications, Rs.8/- for medical examination fee, character certificate, caste certificate, if he belongs to SC/ST category and 2 passport size photographs. The applicant fulfilled all the formalities but he has not been given the letter of appointment so far. He has, therefore, prayed for the following reliefs:-

(a) Respondents be issued a direction to appoint the applicant forthwith to the post of Khallasi to which he had been selected in the applicable revised pay scale and

(b) Respondents be further directed to pay to the applicant a lumpsum amount of Rs. 10,000/- for harassment and the expensive cost in undertaking extensive journeys to Bombay on several occasions.

3. The respondents have filed a reply that the first application which was filed on 11.4.88 is barred by limitation. They have also submitted that although the applicant was selected for the post of Khallasi consequent upon the notification and interview dated 19.1.83, 11.8.83 and was placed at S.No.227 of the panel, ^{respectively 13} the panel which was formed on 22.9.84 had since expired and hence the applicant could not be given the appointment letter. However, they have stated that due to mistake in the office some call letters were issued, which included the name of the applicant. Since the currency of the panel had expired, the matter was

referred to the Headquarters office for extending the currency which was ultimately rejected by that office. Accordingly, the respondents submit that the applicant could not be given the appointment as Khallasi. The respondents state that the panel was operated upto Sr.No.190 during the currency of the panel which was for one year. They have clarified that only ~~one~~ candidates who belonged to SC/ST class ~~were~~ called with lower merit than the applicant because of the fact that other reserved candidates were not available. They have also admitted the fact that they have received certain representation from the applicant which they say has been replied to. In the circumstances, the respondents have submitted that the application should be dismissed.

4. This is an old case. It had been appearing in the cause list a number of times, but unfortunately on the last three occasions none had appeared for the respondents. We, therefore, heard Shri B.B. Raval, learned counsel, for the applicant and have perused the pleadings and record.

5. Shri B.B.Raval, learned counsel for the applicant drew our attention to the representation made by the applicant dated 18.2.1986 together with Annexure IV letter dated 26.6.85 informing him that he has been selected. In this annexure, the original of which was also shown to us at the time of hearing, attention was drawn to the postponement of dates mentioned in the right hand corner from 8.6.85 to 25.7.85 and further to 28.8.85. In the representation, the applicant has stated that when he went for the medical examination as informed by letter dated 26.6.85, on 8.7.85, he was informed by one Shri M.Y.Pawar, D.S.(P) (REC.) to come again on the subsequent dates mentioned above. The reply given by the respondents to the specific averments made by the applicant in this regard is vague because they have stated that "from the record it cannot be said whether Annexure I and II have not received." Hence the respondents denied the averments in this paragraph. The applicant has filed a rejoinder in which he has vehemently denied the averments made in the reply. He has further alleged and shown the receipts

of the registered letters that his letter of 18.2.86 and subsequent reminder of 14.3.1986 were sent by registered post to the respondents. Shri B.B.Raval, learned counsel for the applicant, therefore, submits that the respondents have admitted that call letters were, in fact, sent to the applicant calling him for interview on various dates at Bombay and he has undertaken these costly journeys at his own expense. He submits if the respondents have in fact admitted that they had issued the call letter by mistake, it was for them to show by proper proof the currency of the select panel and whether in fact they had written to the Headquarters office for extension of the same and so on. He, therefore, submits that having issued the call letter the respondents ought to be held responsible for negligence action which they have done without any application of mind and rashly causing mental harassment and financial loss to the applicant.

6. We are satisfied that from the reply filed

PK by the respondents, they have admitted the fact

that the applicant had been duly selected and placed in the panel of Khallasi in 1983. They have also issued him the letter dated 26.6.1985 informing him of the same and requiring him to come for further medical examination together with the requisite documents. The applicant had also categorically informed the respondents by the registered letter dated 18.2.1986 together with Annexure-II that one Shri M.Y.Pawar, D.S.(P) (REC) had endorsed his call letter requiring him to come on subsequent dates to Bombay to complete the formalities. The respondents reply that the currency of the panel had expired and hence they could not issue the appointment letter to the applicant is without any basis. The respondents have neither substantiated their averments by annexing the necessary panel or their further letters to the Headquarters Office for extension of time. They have also not cared to explain as to how they had admittedly issued the letter dated 26.6.1985 informing the applicant that he has been placed in the select list. Normally the total number of names included in a panel is equal to the vacancies. The respondents have not also explained why such a larger panel was prepared, when only 190 appointments had to be made. Even after the applicant had been

22

unnecessarily required to appear before the respondents at their Bombay office from Jhansi on a number of occasions, the respondents have not explained as to what action, if any, they have taken to ascertain whether the endorsement made by the said Shri M.Y.Pawar was in fact done by one of their officers or not. Taking the totality of the circumstances in the case, therefore, we are of the view that the respondents have not acted in any reasonable manner or shown sufficient care firstly, in dealing with the applicant before this application was filed and thereafter, in defending this case before this Tribunal.

7. Regarding the objection taken by the respondents on the ground of limitation, we find that the applicant had made his first representation against non-appointment to Group 'Q' post on 18.2.1986 against the letter dated 26.6.1985 issued by the respondents in respect of which he was asked to attend " after 28.8.85 " but not given a date. He had originally filed the application on 13.2.1987 in the Allahabad Bench which was later transferred to this Bench. Having regard to the provision of section 21(1) (b) of the Administrative Tribunals Act, 1985 therefore,

we find that this application is within the period of limitation.

8. We are of the view that, even if the respondents are correct in contending that a larger panel was prepared than necessary they ought to have informed the applicant on time.

Hence the applicant is entitled to some relief.

We are however unable to conclude, in the circumstances, that he is entitled to benefits from 1986 or when the 190th person in the panel is appointed. In our view justice will be done if a prospective direction is given. Accordingly, this D.A. is allowed with the following directions:-

(a) The respondent (D.R.M. Central Somabay VT) is directed to appoint applicant on the post of Khalasi (Electrical Department) on the next available vacancy in his Division after waiving the condition of age, but subject to the fulfilment of medical examination and other formalities as per rules. The applicant shall, however, be given an intimation within 2 months from the date of this order, as to when the next vacancy is likely to arise or when he can expect the order of appointment.

(b) In the meanwhile, the applicant shall be engaged as a casual labourer in

12

that Division,- if the need to engage such labourer is felt,- on a priority basis,in preference to those who may have been engaged from 1.1.1986 or thereafter, without prejudice to his right to be regularly appointed under (1) above.

(c) The respondent is further directed to pay a lumpsum amount of Rs 2,000/- (Two thousand only) ^{Refused} to the applicant as costs.

Lakshmi
(Smt. Lakshmi Swaminathan)

Member (J)

(N.V. Krishnan)

Vice Chairman (A)