

Reserved on 19.02.2021

Pronounced on 03.03.2021

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD**

Present:

Hon'ble Mrs. Justice Vijay Lakshmi, Member-J
Hon'ble Mr. Tarun Shridhar, Member-A

Original Application No. 330/000857/2018
(U/S 19, Administrative Tribunal Act, 1985)

1. Jivan Lal aged about 49 years S/o Late Jwala Prasad,
R/o-Village-Gadaiya Kala, Post-Jari Bazar, District-
Allahabad.

.....Applicant.

By Advocate – Shri M.K. Dhruvbanshi.

VERSUS

1. Union of India, through General Manager, North
Central Railway, Headquarter Office, Subedarganj,
Allahabad.
2. General Manager, North Central Railway, H.Q. Office,
Subedarganj, Allahabad.
3. Divisional Railway Manager, North Central Railway,
DRM'S Office, Allahabad.
4. Chief Personnel Officer, North Central Railway, H.Q.
Office, Subedarganj, Allahabad.
5. The Secretary (Estt.) (Reservation), Ministry of
Railways, Railway Board, Rail Bhawan, New Delhi.
6. Member Staff/Railway Board, Ministry of Railways,
Railway Board, Rail Bhawan., New Delhi.

.....Respondents.

By Advocates : Shri P.K. Pandey.

ORDER

Delivered By Hon'ble Mr. Tarun Shridhar, A.M. :-

Shri M.K. Dhruvbanshi, learned counsel for the applicant and Shri P.K. Pandey, learned counsel for the respondents, both are present in Court.

2. The applicant Shri Jivan Lal is seeking appointment in the Railways to the post of Khalasi/Chaukidar/Safaiwala, in short as a casual labour. The brief facts of the case are that in order to clear the backlog of vacancies of casual labours reserved for Scheduled Castes and Scheduled Tribes, the Divisional Railway Manager North Central Railway prepared the panel of Scheduled caste candidates in the year 1987 vide Annexure No. A-1 vide order No. 831-bZ@30@v- vk-@v-t-tk-@lsy@87 Hkkx@&11 dated 15.09.1987. However, the panel has not been operated till date despite more than 30 years having been elapsed. The applicant seeks the following reliefs:-

"The Hon'ble Tribunal may graciously be please:-

- (i) To issue mandamus directing to the respondents to consider the claim of applicant for appointment in backlog vacancies of Group 'D', as per panel dated 15.09.1987.***
- (ii) To issue order and direction as this Hon'ble Tribunal deems fit and proper in the interest of justice.***
- (iii) To award the cost in favour of the applicant."***

3. The present OA was filed in the year 2018 but it had been preceded by series of litigations by several of the candidates in this and some other panels.

4. Learned counsel for the respondents argues, rightly so, that the matter is hopelessly time barred and deserves to be dismissed outrightly.

5. Learned counsel for the applicant on the other hand argues that it is continuous cause of action and the applicant has been repeatedly knocking at the door of the authorities to give effect to the panel by way of an offering him appointment.

6. No doubt it is a very old matter but at this stage it would be an ironical to dismiss it after a lapse of nearly 3 years after it was filed. We cannot ignore the fact that delay has occurred in the disposal of this application too and the issue of delay in filing should have been dealt with at the initial stage itself. Therefore, in the interest of the justice we dispose of this OA with a specific direction to the respondents to consider the claim of the applicant for appointment to a Group 'D' Post against the backlog SC

vacancies as was determined at the time of the formation of the panel.

7. We have in a similar and identical matter in ***OA No. 608 of 2014*** in the case of ***Pappu Kumar & Ors. Vs. Union of India & Ors.*** given directions that if the candidate has been selected and kept in a panel his right to appointment should firstly determined and provided before considering the claim of the candidates selected in subsequent panels. It is quite obvious that panels for Group 'D' Posts especially in respect of SC candidates for the post of Khalasi/Chaukidar/Safaiwala would have been made several times over since 1987. Therefore, since the claim of the applicant would pre date those appointment, this claims deserves to be considered sympathetically. Further, the respondents would be well advised to refer to the judgment of the Hon'ble Supreme Court in Civil Appeal No. 11364 of 2018 in the case of ***Dinesh Kumar Kashyap & Ors. ETC. Vs. South East Central Railway & Ors. ETC.*** wherein Hon'ble Apex Court while allowing the candidates had specifically observed as under:-

7. Our country is governed by the rule of law. Arbitrariness is an anathema to the rule of law. When an employer invites applications for filling up a large number of posts, a large number of unemployed youth apply for the same. They spend time in filling the form and pay the application fees. Thereafter,

they spend time to prepare for the examination. They spend time and money to travel to the place where written test is held. If they qualify the written test they have to again travel to appear for the interview and medical examination etc. Those who are successful and declared to be passed have a reasonable expectation that they will be appointed. No doubt, as pointed out above, this is not a vested right. However, the State must give some justifiable, non-arbitrary reason for not filling up the post. When the employer is the State it is bound to act according to Article 14 of the Constitution. It cannot without any rhyme or reason decide not to fill up the post. It must give some plausible reason for not filling up the posts. The courts would normally not question the justification but the justification must be reasonable and should not be an arbitrary, capricious or whimsical exercise of discretion vested in the State. It is in the light of these principles that we need to examine the contentions of the SECR".

8. Since the matters are strikingly similar, the OA is disposed of accordingly with the above directions contained in Para 6 above i.e. to consider the claim of the applicant for appointment against backlog vacancies of Group 'D' as per the observations made in this order and pass appropriate orders within a period of eight weeks from the date of receipt of this order. The delay in filing this O.A. is condoned and the Misc. Application No. 330/1810/2018, 330/1190/2020 and Misc. Application No.330/1191/2020 stand disposed of. No order on costs.

(Tarun Shridhar)
Member (A)

(Justice Vijay Lakshmi)
Member (J)

/Shakuntala/