

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.682/2015

Date of Decision: 04.03.2020.

CORAM: DR. BHAGWAN SAHAI, MEMBER (A)
R.N. SINGH, MEMBER (J)

Shri Amol Arjun Pachpande,
Age 29 years,
S/o Late Shri Arjun Pachpande,
R/at Post Sakari, Taluka: Bhusawal,
Dist. Jalgaon – 425 201.

... *Applicant*

*(Advocate Shri Vishal Shirke, proxy for
Advocate Shri S.V. Marne)*

VERSUS

1. Union of India,
Through the General Manager,
Western Railway Headquarters Office,
Churchgate, Mumbai 400 020.
2. The Divisional Railway Manager
Western Railway Mumbai Division
Mumbai Central Mumbai 400 008.
3. The Chief Works Manager (E&U)
Mahalaxmi Workshop, Western Railway,
Mumbai 400 013.

... *Respondents*

(Advocate Shri V.S. Masurkar)

ORDER (Oral)

Per : R.N. Singh, Member (J)

Heard Shri Vishal Shirke, learned
proxy counsel for Shri S.V. Marne, learned
counsel for the Applicant and Shri V.S.
Masurkar, learned counsel for the
Respondents.

2. The Applicant in the present OA, filed under Section 19 of the Administrative Tribunals Act, 1985 has challenged the Medical Certificate dated 30.04.2013 (Annex. A-1), issued by the Sr. Divisional Medical Officer, Western Railway, Health Unit, Mumbai Central, Mumbai and also a report dated 03.09.2013 (Annex.A-2) given by the Board of Doctors about the medical fitness of the applicant.

3. The Applicant in the present OA, has prayed for the following reliefs;

"8.a) This Hon'ble Tribunal may graciously be pleased to call for the records of the case from the respondents and after examining the same direct the respondents to appoint the applicant as Substitute in Group D category in pursuance of letter dated 22.03.2013 with all consequential benefits.

8.b) Costs of the application be provided for.

8.c) Any other and further order as this Hon'ble Tribunal deems fit in the nature and circumstances of the case be passed." ."

4. The brief facts leading to the present application are that the applicant applied for engagement as an Apprentice under the respondents in the year 2009 and on being selected for such engagement under the

Apprentices Act, 1961 vide letter dated 01.02.2010, the applicant was examined by the Sr. Divisional Medical Officer and he was declared fit in 'C-1' category. On 25.02.2010, the applicant joined the Apprenticeship in EMU Workshop, Mahalaxmi, Mumbai. In May 2011, after completion of Apprenticeship course, the applicant was subjected to Trade Test Examination and he was declared pass. In 2013, the applicant received letter dated 22.03.2013 from the respondents for engagement as a fresh substitute in Group 'D' post in Mumbai Division and for such engagement, the applicant was required to undergo medical examination. The nominated Doctor vide impugned certificate dated 30.04.2013 has declared the applicant 'unfit' for all category after examining him. On appeal from the applicant against the impugned medical certificate dated 30.04.2013, the competent authority of the respondents ordered re-medical examination of the applicant by a Medical Board as per rules and the Medical Board issued the impugned

order dated 03.09.2013 after examining the applicant. In the aforesaid background, the applicant has prayed for the reliefs as noted here above.

5. In pursuance to the notice from this Tribunal, the Respondents have filed a detailed affidavit-in-reply and has opposed the claim of the applicant.

6. Learned counsel for the applicant argues that the applicant was declared fit for 'C-1' category by the Doctor of the Railways on 17.02.2010 and therefore there was no reason or justification for the Doctor(s) of the same respondents in the year 2013 to declare the applicant as 'unfit' for all categories.

7. With the assistance of the reply affidavit filed by the respondents, Shri Masurkar, learned counsel for the respondents argues that the OA is not maintainable for being barred by limitation. He submits that admittedly the applicant has challenged the medical certificates dated 30.04.2013 and 03.09.2013 by filing the present OA on 23.11.2015 i.e. well beyond

the period of one year and therefore, the OA is barred by limitation keeping in view the provisions of Section 21 of the Administrative Tribunals Act, 1985. He also contends that though the Tribunal is having the jurisdiction to condone the delay if sufficient and good reasons are shown by the party concerned. He further submits that though the applicant has filed application seeking condonation of delay, however the same does not disclose good and sufficient reasons i.e. the reason beyond the control of the applicant. He has placed reliance upon various judgments of the Hon'ble Supreme Court including *S.S. Rathore Vs. State of M.P.*, 1989(2) ATC 521 and *Union of India Vs. M.K. Sarkar*, (2010) 1 SCC (L&S) 1126 to contend that the issue of limitation or delay and laches had to be considered with reference to the original cause of action and not with reference to the date on which an order is passed. He further argues that even on merit the applicant has failed to make out any case in his favour inasmuch as even as per the condition No.1 in the

letter dated 01.02.2010 it was provided as under;

"..... You will receive training as an Apprentice for 01 year in the trade, subject to your passing the requisite medical examination for which you are required to pay a sum of Rs.24/- towards medical examination fees."

8. He further argues that the impugned medical certificates have been issued by the competent authority and nominated Doctor and a Board of Doctor(s) duly nominated by the competent authority and it is not a case of the applicant that the Doctor(s) who have issued the certificates have been either incompetent or have issued the same on account of any *mala fide*. He further argued that in absence of the applicant being found medically suitable, this Tribunal may not like to grant the relief as sought by the applicant.

9. We have perused the pleadings available on record and have also considered the submissions made on behalf of the parties.

10. We are of the view that the applicant has not been able to give any sufficient and good reason not to approach this Tribunal

within the period prescribed under Section 21 of the Administrative Tribunals Act, 1985. Further more, in absence of anything to prove that the impugned certificates have not been issued by the competent authorities or the same are result of *mala fide*, we are of the considered view that this Tribunal may not interfere or comment upon the impugned certificates issued by the experts.

11. In view of the aforesaid facts and discussion, we find the OA to be devoid of merit. Accordingly, the same is dismissed. However, keeping in view the fact that the applicant is stated to be jobless, we refrain ourselves from imposing any cost.

(R.N. Singh)
Member (J)

(Dr. Bhagwan Sahai)
Member (A)

dm.

JD
29/03/2020

