

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

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OA.2204 of 1993

Dated at New Delhi, this the 26 th day of July, 1994

Hon'ble Shri J. P. Sharma, Member (J)
Hon'ble Shri B. K. Singh, Member (A)

Shri Khazanchi Lal
E/118, Govt. Quarters
Dev Nagar
NEW DELHI

... Applicant

By Advocate: Shri B. S. Mainee

VERSUS

Union of India through

1. The General Manager
Northern Railway
Baroda House
NEW DELHI
2. The Divisional Railway Manager
Northern Railway
State Entry Road
NEW DELHI

... Respondents

By Advocate: Shri Romesh Gautam

ORDER

Shri B. K. Singh, M(A)

This application ^{by} Shri Khazanchi Lal as applicant and Union of India through the General Manager, Northern Railway, New Delhi and the Divisional Railway Manager, Northern Railway, New Delhi as respondents, has been filed against denial of appointment even after selection and being called for medical examination.

2. The admitted material averments are these. In pursuance of the selection held for appointment for SC/ST candidates as directed by the Railway Board (Annexure A-1), the applicant was selected and an offer of appointment was sent to him in August, 1989 requesting him to attend the Divisional Railway Manager's

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office for medical examination. The applicant appeared in the Divisional Railway Manager's office within the stipulated time but the medical examination was not held. Some of the candidates who had already been selected along with the applicant and were lower in the merit were, however, appointed and the applicant was ignored. The applicant represented against this order of the respondents vide Annexure A-4 followed by a reminder at Annexure A-7. There were eight other candidates who were selected but who were also ignored like the present applicant, and they also represented to the Chief Personnel Officer as a result of which the Senior D.P.O. vide his letter 27.12.90 called for comments from the concerned authorities for proper disposal of these representations. Having received no reply from the respondents eight colleagues of the applicant filed a petition in this Tribunal OA.No.2643/91 Ravinder Nath & 7 ors Vs U.O.I. which was allowed by the Hon'ble Tribunal. Having filed his representation and having received no reply and having denied the benefit of the judgement of this Tribunal in OA.2643/91, the applicant filed the present OA along with MP. No.3190/93. The applicant has prayed for the following reliefs:

- (a) That applicant be appointed in Group 'D' category for which he was selected;
- (b) The applicant be appointed from the date from which his juniors were appointed protecting their seniority;

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(c) Any other or further orders which the Tribunal may deem fit and proper under the facts and circumstances of the case may also be passed in favour of the applicant; and

(d) That the cost of the proceedings may also be awarded in favour of the applicant.

3. A notice was issued to the respondents who filed their reply and contested the application and grant of reliefs prayed for by the applicant.

4. We heard Shri B. S. Mainee, counsel for the applicant and Shri Romesh Gautam, counsel for the respondents and perused the record of the case and the departmental file which was produced before us.

5. We have carefully gone through the departmental file. There is an order regarding appointment of Shri Khazanchi Lal, son of Shri Kishore Chand. It is clear that he was selected for appointment in Class-IV category against the shortfall of SC/ST vide merit No.83 of the panel, issued vide letter No.969-E/RP Cell/Policy/86-87 dated 9.10.87. He was also called for appointment in Group 'D' category. Sl.3 is the offer of appointment and it was duly signed by the competent authority and it was issued to the applicant. There is a noting which says that medical memo is placed at sl.No.10 for signature. That is dated 1.9.89. The Appointment Letter is dated 17.8.89. The departmental file is not properly numbered and dealt with. The paper regarding appointment is also of a different

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colour and appears to have been inserted in the file after this OA was filed. It is also not clear how PP-4 comes first and PP-1 comes later. The colour of the pages are different. It is not a departmental file showing the date-wise issue of appointments of the candidates and the medical memos issued to them. It is jumbled up with a counter reply filed by the respondents in regard to the various averments made in the OA where it shows from Para-4.1 to para-4.9 are all admitted and only para-4.10 is not admitted and in a very cryptic manner it says that those who attended the concerned branch of D.R.M. Office within a time limit, were given medical memos and **their** marks of identification obtained including their signature. But Shri Khazanchi Lal (applicant) did not approach the concerned branch despite the fact that **his name** was called ^{out} loudly again and again on 18.9.89. Para-4.11 and Para-4.12 are all admitted by the respondents and similarly **most of** the averments made by the applicant have been admitted. The date which will be seen from the particular page whose genuineness is doubtful, shows the issue of appointment letter on 17.8.89 and that of medical memo on 1.9.89. Therefore, the question of the applicant's **name having been called out** loudly again and again on 18.9.89, cannot be accepted as true. The only argument that the respondents have advanced was that the applicant did not turn up and therefore he lost his chance automatically. The

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various representations filed by the applicant are all available in this file. The panel has been placed in the file.

6. Counsel for the applicant cited following authorities in support of his argument:

- 1. O.A. No.2643/91 Ravinder Nath & Ors Vs UOI & Ors (Annexure A-7 to the present OA)

The case of the applicant is fully covered by this judgement which was rendered on 12.11.92.

- 2. SLR 1975(1) page.153 Amril Lal Beri Vs Collector of Central Excise.

"When a citizen aggrieved by the action of the Government department has approached the Court and obtained a declaration of law in his favour, others in like circumstances, should be able to rely on the sense of responsibility of the department concerned and to accept that they will be given the benefit of this declaration when without the need to take their grievances to the Court."

- 3. ATR 1988(2) page.518 (A. K. Khanna & Ors Vs UOI & Ors.)

"Where the benefit of judgement can be extended to those who were not party to the judgement but were similarly placed as petitioners therein. Held, not extending similar benefit would amount itself to discriminate, violative of Article 14 & 16 of the Constitution."

- 4. ATJ 1991(2) page 53 (Mrs Paramjit Kaur Vs UOI)

"Limitation - filing an application by a similarly placed person for the benefit of higher pay scale on the basis of a judgement which was allowed by the Tribunal - in such cases bar of limitation will not arise."

- 5. ATC 1994(26) page.883 (P. Narayanan Nair & Ors Vs Chief G.M.)

"Held such judgements by the Government - hence every employee should not be compelled to approach the Tribunal."

- 6. ATC 1991(15) page.274 (Gautam C. Meshram Vs Divl. General Manager)

"Continuing cause of action - wrongful denial of appointment gives rise to continuous cause - hence where the applicant was all along pursuing the matter, his application through filed after a long period of 6 years entertained."

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7. AIR 1984, SC 1934

"Once a person is declared successful according to merit list of selected candidates, the appointing authority has the responsibility to appoint him even if the number of vacancy undergoes a change after his name is included in the list of selected candidates."

8. The respondents had argued that the applicant did not attend the office when he was called for medical examination. On the direction of this Tribunal, relevant file was produced which, however, clearly proves that the applicant had appeared on the date when he was called but the medical memo was not issued. One of the documents in the file shows that the applicant after having deposited fees for medical examination in the booking office at Delhi had produced the money receipt which is in the file (Flagged).

Another document in the file (flagged) shows that the medical memo was prepared, signed by the competent authority and signatures of the applicant was also obtained on the said memo but it was not given to the applicant and was cancelled.

Subsequently another medical memo (flagged) was prepared but was not signed by the competent authority and was not issued to the applicant. Unsigned medical memo is still in the file.

The official file produced by the respondents clearly proves that the medical memo was not issued to the applicant for extraneous reasons although the applicant had attended office.

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9. A perusal of the judgement in OA 2643/91 decided on 12.11.1992 by this Tribunal will indicate that the applications filed by similarly situated persons who were selected but denied appointments, were allowed. The case of the present applicant is fully covered by this judgment (in OA No.2643/91 decided on 12.11.1992).

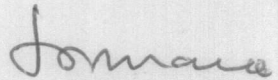
10. Taking a synoptic view of all the facts and circumstances of the case, the present application is partly allowed with the following directions:

The applicant shall report to the office of the D.R.M., New Delhi from where he was issued offer of appointment, within two weeks from the date of receipt of a certified copy of this order and thereafter memo for medical examination shall be issued to him. If he is found medically and otherwise fit, he will be appointed to Group 'D' post within a period of one month from the date of his medical examination. Verification of his character and antecedents may follow later. The appointment shall take effect from the date the applicant joins the post and he would be entitled to pay and allowances only from that date.

With these directions, we dispose of the present application leaving the parties to bear their own costs.



(B.K. Singh)
Member (A)



(J.P. Sharma)
Member (J)