

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

O.A. No. 305/1993

M.A. No. 915/1993.

(23)

New Delhi, this the 5/8 day of August, 1998.

HON'BLE MR. JUSTICE K.M. AGARWAL, CHAIRMAN.

HON'BLE MR. R.K. AHOOJA, MEMBER (A)

Shri Partap Narayan Singh,
s/o Shri Ram Avtar Singh,
Vill: Sonhula, P.O. Torwa,
Distt. Varanasi.

....Applicant.

(BY ADVOCATE SHRI B.S.MAINEE)

vs.

1. Union of India
through the General Manager,
Northern Railway, Baroda House,
New Delhi.

2. The Divisional Rly. Manager,
Northern Railway,
Allahabad.

3. The Chairman, Rly. Recruitment Board,
19, Sardar Patel Marg,
Allahabad.

....Respondents.

(BY ADVOCATE SHRI R.L.DHAWAN)

ORDER

JUSTICE K.M.AGARWAL:

This is an application under Section 19 of the Administrative Tribunals Act, 1985 for directing the first two respondents "to appoint the applicant as a Coaching Clerk in accordance with his position on the panel submitted by the Railway Recruitment Board to Respondent No.1 with consequential benefit of seniority etc." M.A.No. 915/93 for condoning delay has also been filed.

2. Briefly stated, pursuant to an advertisement issued by the third respondent, the applicant applied for a post of Coaching Clerk in the grade of Rs.260-430. After written and oral tests, he was selected for one of the posts of Coaching Clerks and accordingly he was informed in November 1986 by letter, Annexure A-1, by further saying that out of 68 candidates selected, his position was at S.No.30 in the merit list. He was

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advised to await appointment letter from the General Manager (P), Northern Railway, Baroda House, New Delhi. It is asserted that in 1988, he was called for medical test and that he was found medically fit for the said post. However, he did not get any appointment letter in spite of his representation dated 1.7.1989, Annexure A-4. In paragraph 4.10 of the application, it has been averred:

"4.10. That the applicant, who is the resident of a village near Varanasi came to New Delhi personally to find out as to when the offer of appointment will be given to him. On contacting the dealing clerk in Northern Railway H.Q. Office, Baroda House, New Delhi, the applicant was informed that the appointment letters have been sent to Coaching Clerks on 4.9.1990 for undergoing training. The applicant was also informed that an appointment letter was also sent to him at his village address, which was however never received by the applicant." (Emphasis given).

It is said that the applicant, thereafter, made another representation on 4.9.1991, asserting that he did not receive any appointment letter, though all other letters sent to him were received by him. In paragraph 4.13 of application, it is alleged that he again visited the office of the first respondent "in the last week", i.e., prior to the date of filing the present application, which is 9.2.1993 and "on enquiries made from the despatch section found that the appointment letter sent to the applicant was wrongly addressed, i.e., the address given by the applicant on the application form was not correctly mentioned while sending the appointment letter and as such the said letter did not reach the applicant." (Emphasis given). On being contacted, the concerned officers refused to provide him any employment, though the circumstances

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aforesaid were brought to their notice. He, therefore, filed the aforesaid O.A. for the said reliefs.

3. Though represented by a counsel, the respondents could not file their counter in spite of opportunities being given to them. Ultimately by order dated 10.11.1994, the right to file counter was forfeited by observing that: "Counter has not been filed in spite of last opportunity given. Pleadings may be treated as complete. Case may be placed on Board." It may also be mentioned that on 21.2.1994, i.e., before admission, an objection about limitation was raised and on 8.3.1994, it was said that the "question of limitation is left open to be considered at the time of final hearing. On 25.4.1994, the case was admitted for hearing after recording the following order-sheet:

"The 1d. counsel for the respondents have no objection for the matter being admitted subject to limitation, which will be considered at the time of hearing."

4. In the aforesaid background, the applicant does not automatically get a right to have a judgment in his favour. Without depending upon the weakness of defence, he must stand or fall on the strength of his own case. Further, in the absence of a counter, the respondents do not forfeit their right to address the Court or a Tribunal. On available materials, they can show that no case is made out by the applicant for the relief claimed by him. They can further show that the application is barred by time, particularly when their right to raise objection about limitation at the time of final hearing was protected by orders dated 8.3.1994 and 25.4.1994.

5. We must confess that when the case was initially heard on 29.7.1998, we were under the

impression that the recruitment claimed was promotion, but after the case was closed for orders and we went through the record, it was detected that the claim was for direct recruitment pursuant to an advertisement No.1/82 issued by the Railway Board. We, therefore, directed the case to be relisted for hearing on 3.8.1998 and after giving further hearing to the parties, this order is passed.

6. The learned counsel for the applicant cited Prem Prakash v. Union of India, AIR 1984 SC 1831; and Prabhu Ram v. State of Haryana, 1992 (2) SLJ 159 (P&H) to submit that after selection, the applicant could not be denied appointment and that in a case where no reply is filed, inference is that the allegations in the petition are admitted. On limitation, nothing substantial was said, except that in the circumstances of the case, delay deserved to be condoned by allowing the M.A. No.915/93 filed for the purpose, or that the application was within time, if limitation was counted from the date of second representation.

7. The learned counsel for the respondents made two fold submissions. One about jurisdiction and the other about limitation. According to the learned counsel, the cause of action arose within the territorial jurisdiction of Allahabad Bench of the Tribunal, and therefore, this Principal Bench has no jurisdiction to entertain the application. About limitation, it was contended that on his own showing, the applicant had filed his first representation in 1989 and that subsequently he came to know that appointment letters were sent to various candidates, including the applicant in 1990. He should have, therefore, approached the Tribunal in 1991, but came in 1993. The learned counsel also submitted that In inclusion of his name in the Select List did not confer

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any right on the applicant to get appointment. He cited Shankarasan v. U.O.I., JT 1991 (2) S.C. 380; and State of Bihar & Ors. v. Md. Kalimuddin & Ors., JT 1996 (1) S.C. 271 in support of his contentions.

8. Any objection about jurisdiction has to be raised at ~~an~~ earliest opportunity. Since 1993, the respondents have been appearing in the case, but objection about jurisdiction was never raised at any time before the date of hearing. Further, there is no basic want of jurisdiction and, therefore, the objection about jurisdiction deserves to be over-ruled and is hereby over-ruled.

9. By filing an application for condoning the delay, the applicant has conceded that there has been delay in approaching the Tribunal. Considering that wrong admission of law is not binding on him, we perused the record and found that the selection was made in 1986 and the applicant was medically examined in 1988. This medical test could not be for his casual appointment for 23 days as casual Coaching Clerk. By their letter of November, 1986, Annexure A-1, the Recruitment Board had advised him to await letter of appointment from the first respondent. After the medical test, he ought to have contacted the first respondent, instead of making representation, if within a reasonable time, no appointment letter was received by him. Again after having come to know that appointment letters were despatched to all the selected candidates, including the applicant, his duty was to ascertain from the postal department what happened to the letter, instead of alleging that it was not on correct address. All other letters were received by him, except the appointment letter. Under these circumstances, presumption is that the appointment

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letter was also sent on the same address on which other letters were sent and delivered to him by the postal department. Select Panels are generally operative for one year. How the Select Panel of 1986 in the present case survived till 1990, is difficult to understand. However, believing the facts stated by the applicant to be true in the absence of counter from the respondents, we find that the applicant is guilty of laches. The reasons given for condoning the delay do not disclose any just or sufficient cause for condoning the delay. The M.A. No.915/93 is, therefore, rejected. As a necessary consequence, the O.A. deserves to be dismissed as barred by time.

10. Though after selection, the applicant was entitled to appointment as Coaching Clerk, he is late in approaching the Tribunal and, therefore, not entitled to the benefit of the decision of Supreme Court in Prem Prakash (supra). In Prabhu Ram (supra), it has been held that where no reply is filed, inference is that the allegations in the petition are admitted. It does not say that in the absence of reply, the applicant gets immediate or automatic right to the relief claimed in the application.

11. In Shankarasan (supra), the Supreme Court said:

"7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant Recruitment rules so indicate, the State is under no legal duty to fill up all or any

Two of the vacancies."

But this was not the end of the matter. The Supreme Court further said:

".....However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted."

Accordingly the said case cannot be applied in the present case. But for his laches, the applicant would have been entitled to the main relief sought in the application. The other case of Md. Kalimuddin & others (supra), relied on by the learned counsel for the respondents is also of no help to the respondents, because they have not filed their counter and on the available materials, it is difficult to say, what was the life of the panel prepared by the Recruitment Board in 1986. Moreover, it cannot be the case of the respondents that the applicant could not be appointed, because by the time the vacancy arose, the panel had ceased to operate. The reason is simple. As alleged in paragraph 4.10 of the application, appointment letter was despatched to the applicant, but was not received by him. Even then the applicant can get no relief, because after expiry of so many years, no vacancy may be existing to accommodate him. Had he come in time, he might have perhaps got the desired relief.

12. For the foregoing reasons, this O.A. fails and it is hereby dismissed, but without any order as to costs.

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(K.M. AGARWAL)
CHAIRMAN

R.K. Ahuja
(R.K. AHOOJA)
MEMBER (A)