

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

D.A. No. 38 of 1997

Dated: This the 27th day of August 2004

HON'BLE MRS. MEERA CHHIBBER, MEMBER

Sri Nirmal Kumar Pandey aged about 29 years son of Sri C.P.Pandey, Ex Train Ticket Inspector, resident of 85, Mahal, P.O. Mughal Sarai, working as Group D Peon, under Station Manager, Mughal Sarai.

..Applicant.

By Advocate: S/Shri B P Srivastava and R K Pandey)

Versus

1. Union of India, through the General Manager, Eastern Railway, 17, Netaji Subhash Marg, Culcutta.
2. The Divisional Railway Manager, Eastern Railway, Mughal Sarai.
3. The Senior Divisional Personnel Officer, Eastern Railway, Mughal Sarai.

... Respondents.

By Advocate: Shri Lalji Sinha)

ORDER

By Hon'ble Mrs. Meera Chhibber, JM

By this D.A. applicant has sought the following relief(s):-

"(a) that a declaration may issued to declare that the petitioner is entitle to be appointed in Group C, Category III Post, on compassionate ground.

(b) that a declaration may issue to accord the benefit of Group C Class III post with effect from when he was illegally ordered to be appointed in class IV post.

(c) that is the order or direction which this Hon'ble Tribunal may deem fit and proper in view of the facts of the case."

2. It is submitted by applicant that his father

was permanently retired from service w.e.f. 1.12.1992 as he was medically incapacitated vide CMS/GMS letter dated 13.11.1992 for all categories. His father, therefore, gave an application to the authorities to appoint his son Class IV post like Office Clerk, Commercial Clerk or Ticket Collector etc. since applicant had passed his intermediate examination from U.P. Board.

3. Screening Committee consisting of Senior ~~D.P.O.~~, D.M.E (G&W), D.E.E (I.R.S) and D.E.E. (T.R.D.) was constituted for screening the appointment on compassionate grounds in Class C category. Applicant was called to appear in written as well as Viva Voce test on 22.07.1993 for Group 'C' post. He appeared but in the result published on 26.07.1993 only 09 candidates were declared as successful for Group 'C' out of 17 candidates and rest were recommended for Group D post (Pg.29). Applicant in this result was recommended for Group D post.

4. It is submitted by applicant that he was not recommended for Group 'C' because in interview he had scored only 06 marks out of 25 whereas minimum was 10 marks, therefore, he filed appeal. No order was passed on the appeal but he was given letter of appointment for Class IV by order dated 02.08.1993 (pg.35). He again gave appeal to the Chief Personnel Officer to consider him for Group 'C' as he is fully qualified for same. Applicant was informed vide letter dated 09.03.1996 that he was not found suitable for Class III post, therefore, he may send acceptance for Class IV post (Pg.39) so that appropriate orders may be passed. He again represented when he was sent the letter dated 22.03.1994 from Senior D.P.O Mughalsarai that he should give his acceptance as no further chance would be given (Annexure A-19) ultimately he was forced to join in Group 'D' (Pg.57).

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5. It is submitted by applicant's counsel that no marks were to be given in the Viva Voce at all, therefore, the screening itself was bad in law and there was no requirement to include Shri P.K. Saha, D.M.E. (C&W) on screening Committee as he was already under orders of transfer, therefore, constitution of selection committee itself was illegal.

6. Respondents on the other hand have submitted that Sri C.P. Pandey on T.F.S retired from service w.e.f. 01.12.1992 due to medical unfitness from service in all categories after attaining the age of 55 years 9 months and 20 days. He requested the authorities on 05.12.1992 to give compassionate appointment to his son. Applicant was called for screening test which was held on 21.07.1993 vide this office letter No.CS/CA/C1.III/312/(Traffic/93 dated 30.06.1993. The petitioner appeared in the screening test which was held on 21.07.1993 and was found suitable for the post category Group 'D' only on the compassionate ground. It is also submitted that the result of the screening test held on 21.07.1993 was published on the notice board of office. Accordingly, a letter was issued in favour of the applicant for submission of his acceptance for the post of Group 'D' vide his office letter No.CS/CA/C1.III/312/Traffic/93 dated 02.08.1993 within 10(ten) days failing which his candidature would be treated as cancelled because there is no provision of 2nd chance to appear in the screening test for appointment in class III category on compassionate grounds. It is further submitted that further reminder was sent to the applicant vide office letter dated 09.03.1994 but the acceptance for post of Group 'D' was not submitted by the applicant during the prescribed time limit. In the meantime the applicant represented to the Higher Authorities for re-screening test for the post of Group 'C' category

on compassionate ground. The applicant also approached the higher authorities through Hon'ble M.P. of this Constituency. The appeal of the Hon'ble M.P. was considered by the competent authority and regretted. The decision of the competent authority was communicated to the Hon'ble M.P. as well as to the representative of the petitioner. The applicant submitted his acceptance for the post of Group 'D' vide his application dated 24.06.1994 and as per order of the competent authority the offer letter for the post of Group 'D' was issued in his favour vide office letter dated 27.04.1996. The applicant was found fit in initial medical examination by the Medical Authority and thereafter he was posted as a Peon under S.M./ Mughalsarai vide letter dated 10.05.1996 and 14.05.1996. Accordingly, the applicant has joined the duty for the post of Peon under S.M. Mughalsarai on 14.05.1996 and is still working. They have, thus, submitted that once applicant has joined the post, this O.A. has become infructuous.

7. They have however, explained that the 4th Member of Screening Committee was Shri M. Hussain Jr. DES (IRD) of Mughalsarai. As far as reference to Railway Board's letter dated 30.04.1997 and 14.05.1979 are concerned they have explained that they have been modified by the Board to the extent that suitability will be judged by a committee of 3 Sr. Scale Officers including a Personnel Officer to decide the post and class for which candidate is suitable. They have further explained that there is a standing committee to judge the suitability of the candidate for compassionate appointment and can only be changed after the officer has been spared from the division to the other division. The mere receipt of the transfer orders has no effect unless the

officer is spread from the post. Therefore, the inclusion of Shri P.K. Saha DME (C & W) Mughalsari in the committee is not illegal. They have further stated that the recommendation of the Screening Committee ~~which~~ has been approved by the Competent Authority, the applicant was found suitable for class 'D' post and he was approved for the appointment to class 'D' post and was replied accordingly. They have thus submitted that the appointment on Group 'D' post has been accepted by the applicant and he is working on that post and there is no provision to re-consider his claim for appointment on Group 'C' post. Therefore, the O.A. may be dismissed.

8. I have heard both the counsel and perused the pleadings as well. Perusal of the records show that result was declared on 26.07.1993 wherein out of 17 candidates 9 were found suitable for Gr. 'C' while applicant & 7 others were found suitable for Gr. 'D' appointment. If applicant was aggrieved, he ought to have challenged this result and selection process itself. No such effort was made by the applicant. Even in the present O.A. which was filed in Jan 1997 the result has not been challenged. Cause of action had arisen in favour of applicant in 1993 as per his averments. As per section 19 of the Act period of limitation is one year from the date of cause of action or maximum 18 months in case representation was given which was not answered, therefore, at best applicant should have approached the Tribunal by Dec. 1995 but O.A. was filed in Jan 1997. It is, therefore, clearly barred by limitation. Applicant has not even filed any application for seeking condonation of delay. In this context it would be relevant to quote the judgment of Hon'ble Supreme Court reported in 2000(2) AISLJ S.C. 89 Ramesh Chand Sharma Vs. Udhamp Singh Kamal wherein it has been held that Tribunal cannot entertain



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petition barred by limitation and limitation cannot be waived unless it has been applied for.

9. This case is fully covered by the above judgment, therefore, we cannot entertain this petition nor can waive the limitation as it has not even been prayed for. The O.A. is accordingly dismissed being barred by limitation. No order as to costs.



Member (J)

shukla/-