

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.**

ORIGINAL APPLICATION NO.288 OF 2004.

Allahabad this the 15th day of Jan 2006.

**Hon'ble Mr. K.B.S. Rajan, J.M
Hon'ble Mr. A.K. Singh, A.M.**

D.K. Tiwari, S/o Sri Awadhesh Kumar Tiwari, Aged About 46 years, presently serving as an Executive Engineer (Construction), North Central Railway, Agra Cantt., Agra.

.....Applicant.

(By Advocate: Sri A.K.Dave)

Versus.

1. Union of India through the Defence Secretary, Ministry of Railways, Railway Board, New Delhi.
2. General Manager, North Central Railway, Allahabad.
3. Chief Engineer, North Central Railway, Allahabad.
4. General Manager, Railway Mumbai CST.

.....Respondents.

(By Advocate : Sri A.K. Gaur)

O R D E R

BY K.B.S. RAJAN, MEMBER-J

Judicial interference is limited to testing whether the administrative action has been fair and free from the taint of unreasonableness and has substantially complied with the norms of procedure set for it by rules of public administration.

-Apex Court in Fertilizer Corp. Kamgar Union v. Union of India, (1981) 1 SCC 568

2. The case of the applicants has to be tested on the touchstone of the above dictum of the Apex Court.

3. By this O.A., the applicant has sought the following relief(s): -

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- (i) To issue a writ, order or direction in the nature of certiorari for quashing the order dated 20.1.2004 duly communicated vide letter dated 5.2.2004 (Annexure A-1 to the petition) whereby the request for permanent absorption on new Railway zone i.e. North Central Railway has been rejected by the Board due to late submission of the option.
- (ii) To issue a writ, order or direction in the nature of mandamus directing the respondent no.1 Secretary, Ministry of Railways, Railway Board to consider the option of the applicant for North Central Railway against the vacancy and interpolate the name of the applicant in the list of officers Group 'B' Services of Civil Engineering Department under North Central Railway duly circulated vide letter dated 24.9.2003 (Annexure A-VIII to the petition).
- (iii) To issue a writ order or direction in the nature of certiorari for quashing the impugned order dated 17.3.2004 (Annexure A-IX to the compilation no. I).

4. The facts giving rise to the present O.A. are as under: -

- (a) The applicant is an Assistant Executive Engineer (Construction) which is a Group 'B' Service and his lien was maintained with Jhansi Division, which, in fact, was in the Central Railway having its Headquarters at Mumbai.
- (b) The Railway Board had issued a notification dated 22.8.2002 calling for an option from Group 'B' officers for permanent absorption for serving on the one Railway zones and it has specifically been contemplated in the said notification that the same should be widely published to all the Railways.
- (c) The aforesaid notification issued by the Railway Board was not circulated by the

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Controlling Authority i.e. Chief Administrative Officer (Construction), Central Railway, Mumbai to the concerned unit and as such the applicant was deprived of his valuable right to exercise his option within the stipulated period as prescribed by the Railway Board.

(d) Immediately on coming to know through other sources, the applicant along-with similarly situated Group 'B' officers had submitted options through proper channel on 18.11.2002 with an advance copy to the Railway Board for necessary action, which, however, was forwarded by the Controlling Officer to the Chief Engineer (Construction), North Mumbai CST.

(e) The option was duly forwarded by the General Manager vide letter dated 1.1.2003. The Controlling authority had further written a letter dated 25.3.2003 to the forwarding authority with a clear stipulation that the notification dated 22.8.2002 was not received in his office and as such necessary document sent through letter dated 18.11.2002 be sent for due process as the individuals have requested to remain under North Central Railway.

(f) A reminder dated 25.3.2003 was sent through the Controlling Authority to the Chief Engineer (Construction), North, Mumbai CST.

(g) Without considering the request made by the applicant, a list dated 24.9.2003 was circulated by the Railway Board of the officers who had exercised their options



for permanent absorption in Group 'B' cadre of Civil Engineering Department of that Railway, but the name of the applicant was missing in the list.

(h) The total number of sanctioned post for permanent absorption and work in the Senior Scale and Junior Scale Group 'B' is 88 in number, on the other hand, only 36 persons Group 'B' officers have been considered by the Railway Board and as such certain posts are still lying vacant under the effective control of the General Manager, North Central Railway, Allahabad.

(i) Since no action has been taken by the Railway Board, the applicant was constrained to approach this Tribunal by filing an Original Application being O.A. no. 71 of 2004.

(j) The aforesaid O.A. was disposed on 29.1.2004 by directing the respondent no.1 i.e. Secretary, Railway Board to take the final decision in the matter within a period of two months.

(k) The applicant was surprised to receive the order dated 20.1.2004 rejecting the claim of the applicant on the ground of late submission of his option from without considering the documents already on record which clearly goes to show that the notification calling for an option were not duly circulated by the authorities in time and the applicant cannot be held liable for the act and omissions on the part of the respondents Railway administration.

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5. The respondents have contested the claim of the applicant by filing Counter Reply. The version of the respondents is as under: -

(a) The Railway Board's letter dated 22.8.2002, calling for options from Group 'B' for permanent absorption in the new Railway zone was circulated vide Central Railway's letter dated 26.8.2002. Last date for receiving the options was 23.9.2002.

(b) A perusal of the letter dated 26.8.2002 would show that it was circulated to all the Principal Heads of Departments/Heads of Departments, Divisional Railway Managers, Chief Workshop Managers, and other officers holding independent charge. Thus, the contention of the applicant that Railway Board's letter dated 22.8.2002 was not given wide publicity by the Central Railway is correct at all.

(c) The applicant has further contended that he had come to know of the same through 'Other sources'. In this connection, it is stated Sri R.L. Shukla, a Group 'B' officer of Civil Engineering Department, working as AXEN. (C)/Faridabad had submitted his option within the stipulated time and the same was forwarded by Central Railway to Railway Board. Sri R.L. Shukla's controlling officer was Dy. CEO/Agra who was also the controlling officer of the applicant herein. In addition to this, a large number of non-gazetted employees of the Division had also exercised their option for absorption in the new Railway zone.



(d) Therefore, it is difficult to accept the applicant's contention that he was not aware of the aforesaid events, when another officer, Sri R.L. Shukla working under the same controlling officer, as well as several non-gazetted were aware of it and even exercised their option in time.

(e) The respondents have shown considerable sympathy to the applicant by offering to consider his request for absorption in North Central Railway on his acceptance of bottom seniority. His request for protection of seniority on North Central Railway is not feasible as this will lead to protest by those Group 'B' officers who had submitted their options in time and whose seniority has been protected. Accepting the request of the applicant will lead to further litigation from the other Group 'B' officers of bottom seniority. In fact certain other persons similarly situated as the applicant had already accepted the bottom seniority.

6. Arguments were heard and the documents perused. The applicant has relied upon the judgment dated 24.11.2003 in O.A. no. 1/1998, which relates to exercise of option in the wake of the recommendations of the 4th Pay Commission, wherein it has been held that the applicant had the knowledge about exercise of option on a particular date and thereafter he could exercise such option and the same was allowed by the Tribunal.

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7. The applicant heavily relied upon the command of the Railway Board vide para 8 of order dated 22-08-2002, directing circulation of the said letter for information of Group 'B' officers, including those who may be on deputation, secondment, training etc., the confirmation as to the non receipt of the said letter in the office of the Dy. CE(C) AGC (letter dated 18-11-2002) and contend that on account of the lapse on the part of the administration, the applicants' golden chance of switching over to the N.C.R. has been crippled which has to be off-set by considering their option form furnished on 18-11-2002 as if the same had been received before the last date for submission i.e. on 23-09-2002.

8. The applicants have also contended that not only in their office but even in the other Construction Wings (e.g. Jhansi) Railway Board's letter calling for option was not received. In response to the same the reply of the respondents is that Central Railway vide its letter dated 26th August 2002 had addressed the letter to all the offices under its control. It has also been averred by the respondents that one Shri R.L. shukla , working at Faridabad, coming under the very same Controlling Officer at Agra had forwarded his option on time and similarly a number of non gazetted officers had filed their option on time.

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9. The applicant initially moved OA No. 71/2004 which was disposed of by the Tribunal on 29th January, 2004 itself, directing the respondents to consider the representation filed by the applicant since January, 2003.

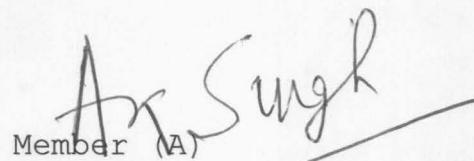
10. Though the respondents had contended that the circular was sent to all the units, the Dy. CE(C), AGC had categorically stated in his letter dated 18-11-2002 that the same was not received. Thus the contention of the applicant as to the non receipt of the circular dated 22-08-2002 is based on proper foundation and as such it has to be taken that the circular was NOT received by the office of CE (C), AGC. Hence the applicant cannot be blamed for his non filing of the option within the period specified in the circular. He could file it only when he had the knowledge of the circular and by the time he filed the option, the last date for receipt of such option was already over. The contention that others under the same controlling authority could file cannot be a ground to dismiss the contention of the applicant in this regard.

11. There is no allegation of any malafide against the respondents and it appears that this is a clear case of inadvertent omission in circulating (or ensuring receipt of such circulars by various units) the letter dated 22-08-2002. Under these circumstances, we have to go as per the dictum of the Apex Court cited in para 1 of this order, for,

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Railway/Board of the option preferred by the applicant falls within the period from the date of initiation and date of finalization of the selection process, the applicant's case should be considered as if the option had been received by the Railways within the time calendared and the same should be processed in accordance with law. In case the finalization was already over even prior to the date of receipt by the Zonal office or the Railway Board of the option, the applicant has no case.

15. **The OA is therefore, disposed of** with the direction that the Railway Board shall carry out the exercise as mentioned in the preceding paragraph and decide the case of the applicant on the above terms. In case the applicant is to be considered, his placement in the NCR shall be without any dent in his seniority. The drill shall be completed within a period of four months and the applicant be informed of the outcome thereof. No cost.


Arvind Singh

Member (A)


Member (J)

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