

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 4th day of Nov 2009

Original Application No. 1617 of 2005

Hon'ble Mr. A.K. Gaur, Member (J)
Hon'ble Mr. S.N. Shukla, Member (A)

Rahul Singh, S/o Sri Ram Naresh Singh, R/o 94-F, 12th
Avenue, D.S.A. Ground, Railway Colony, Allahabad.

. . . Applicant

By Adv : Sri S.K. Om

V E R S U S

1. The Union of India through the General Manager, North Central Railway, Allahabad.
2. The General Manager, North Central Railway, Allahabad.
3. The General Manager, Northern Railway, Baroda House, New Delhi.
4. (Railway Recruitment Board Nawab Yusuf Road, Allahabad through its Chairman.
5. (The Dy. Director Establishment (Welfare) Railway Board, Ministry of Railways, Rail Bhawan, New Delhi.

. . . Respondents

By Adv: Sri Anil Dwivedi

O R D E R

By Hon'ble Mr. S.N. Shukla, Member-A

The Ministry of Railways and Railway Board had declared a scheme under which a two years vocational Course (job linked Course) i.e. Senior School Certificate Examination to be conducted by the Central Board of Secondary Education was envisaged. It was stipulated that the candidates who pass the said course by securing at least 55% marks in aggregate as well as in the specified subject of "Railway Commercial" were to be

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offered appointment as Commercial Clerk/Ticket Collector in the Department of Railways. It seems that the applicant did not succeed in achieving the required prescribed percentage though passed the said examination. Simultaneously it also seems that a few other candidates who had also secured a percentage lesser than the prescribed cutoffs were appointed for the job, whereas the applicant was not.

2. The contents of the OA, counter affidavit, rejoinder, written submission and oral arguments of the rival sides have been gone through and considered in detail.

3. Through this OA dated 21.12.2005 the applicant has sought to place the following points before this Tribunal: -

- a. The Railway Board vide its circular dated 28.7.1992 introduced a scheme of two year vocational course in Railway Commercial (Job Linked Course) i.e. Senior School Certificate Examination conducted by the CBSE. According to the circular the candidates who secured at least 55% marks in aggregate as well as specifically in the subject of 'Railway Commercial' were to be considered for being offered an appointment of Commercial Clerks/Ticket Collectors.

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- b. That the applicant claims to have passed the said study course in the year 2000 and, thereafter, also appeared to improve upon his score in 'Economics and Railway Commercial' in the year 2001 and claims to have improved his marks. Thereafter, the applicant submitted his representation for appointment to the post in question vide applications dated 12.11.2001, 15.10.2002, 7.7.2003, 10.3.2004, 20.1.2005 and 4.7.2005. He also claims to have contacted the authorities repeatedly in connection with his applications and all that he received was oral assurances.
- c. Believing that the assurances given by the respondents will be fulfilled, the applicant claims that he did not approach this Tribunal earlier and, therefore, the delay. That apart the applicant also claims to be an unemployed person. No resources and lack of knowledge of legal provisions prevented him from approaching this Tribunal earlier. Accordingly, he seeks condonation of delay in making this application.
- d. In the counter reply, through the additional standing counsel for the respondents, it is averred that the law is well settled in as much as repeated representation cannot extend the period of limitation. Since the applicant filed his first representation on 12.11.2001, the

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latest he could have approach the Tribunal would have been on 12.11.2002. As such the submission made on behalf of the applicant in the Misc. Application filed alongwith the affidavit seeking condonation of delay in filing of the OA is misconceived and deserves to be dismissed.

4. We have given our anxious consideration to the merits of the case and in this regard we refer to the relevant material in the pleadings. The applicant's claim is that he being general category candidate had passed the required examination namely two years Vocational Course with 47.5% marks in aggregate. He also discovered that the following candidates, some of those had completed the same Vocational Course subsequent to the applicant and had not secured prescribed percentage of marks, have been appointed as Commercial Clerks/Ticket Collectors. The candidates are: -

- a. Sri Sarfaraj Khan (General Category candidate) 51.4% marks, posted as Ticket Collector.
- b. Rameshwar Prasad, (OBC candidate), 38% marks, posted at Varanasi as Ticket Collector.
- c. Dharendra Singh (OBC candidate) 42.8% marks, posted at Allahabad as Ticket Collector.
- d. Km. Shimanshi Sonkar (SC candidate) 40% marks, posted at Delhi Division as Ticket Collector.
- e. Nahida Khan (OBC Candidate), 42% marks, posted at Delhi Division as Ticket Collector.

5. He also claimed that there are several other candidates in addition to the five listed above who have

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secured marks which are less than the prescribed limit but have been conferred with the benefit of appointment. According to him following the Principal Bench decision of Tribunal in the case of Km. Nahida Vs. Union of India and others and in the case of Bhiresk Kumar Vs. Union of India, and others in D. No. 3348/02, the CAT had taken a view that the candidates were entitled to appointment under the aforesaid scheme. We have gone through the aforesaid two decisions cited by the applicant. We find that these two decisions are on altogether different subject and have no similarity with the case of the applicant except that they are related to the appointment of Commercial Clerks/Ticket Collectors. For instance in the case of Km. Nahida (supra) the issue before the Tribunal was regarding eligibility for appointment of a candidate who secured qualifying marks after appearing in Compartmental Examination. The second matter of Bhiresk Kumar was regarding a candidate who appeared in the examination as a general category candidate since the caste certificate was not available at the time of sitting for the examination. However, subsequently, he was able to obtain the caste certificate. The issue before the Tribunal was as to whether the applicant in that case was entitled to OBC reservation on the facts of that case. In our considered view both the above said cases are distinguishable on fact.

6. In his written submissions dated 23.1.2009 the applicant's counsel once again has pointed out to the five candidate listed in forgoing paragraphs as well as

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in other cases not so listed by him. It is contended by him that all the candidates including the applicant are similarly situated and there is no difference between them and the applicant. The only difference being that the respondents have relaxed the rules in terms of para 114 of IREM only because in the advertisements and even in the subsequent proceedings the respondents did not declare the requisite cut off for marks. The applicant expresses his apprehension of malpractice on the part of the respondents. Several other issues have also been raised such as the Rules of CBSE which is the regulatory body of SSC Examination and according to these rules the criteria of passing the examination is only 33% and not 55% as fixed by the respondents. In any event the applicant was never informed about the requirement of 55% marks in aggregate as well as in the Railway Commercial and, therefore, the respondents are barred by principles of estoppel.

7. There are some more arguments which is in the nature of allegations of inconsistency on the part of the respondents in their reply such as, a vigilance action having been initiated with regard to the discrepancies in the appointment, and, also that the scheme itself was discontinued subsequently i.e. after 12.4.2005 and so on. All in all the applicant seeks to make out a case that there have been several appointments of the candidates who have secured less than the prescribed marks and, therefore, a similar benefits should be extended to the applicant also.

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8. In the written submission of the respondents it has been brought out that the applicant had failed to obtain prescribed percentage of marks in as much as he secured only 59% in Railway Commercial Working and 43% marks in aggregate. The respondents have also at length have explained the scheme of subject and marks etc required in this regard. For our purpose it is not relevant to go into the details. It may however be relevant to quote that out of the five names listed by the applicant Km. Shiv Mansi Sonkar (SC candidate) secured the prescribed percentage of marks in the relevant subject i.e. 49% in Railway Commercial Working and 45.6% in the aggregate. As regards the other four candidates it was submitted that they secured less than the prescribed 55% (45% in the case of SC/ST/OBC) in Railway Commercial working as well as in the aggregate by a mistake committed in counting the marks obtained in the subject offered as options out of the elective subjects without ensuring aggregate marks in the relevant subjects. It is admitted though that the appointments have been given by mistake but a vigilance action has already been concluded and the case has been sent for CVC's advice.

9. It is further contended that an appointment given by mistake cannot be permitted to be perpetuated and in support of this plea the Hon'ble CAT Principal Bench in OA No. 1298/06 (Pradeep Kumar Yadav Vs. Union of India and others) has been cited by the respondents. Further a writ filed against the said order has been dismissed by the Hon'ble Delhi High Court vide order dated 5.12.2007

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and the order passed by Principal Bench of the Tribunal has been affirmed.

10. We have given our thoughtful consideration to the decision of the Principal Bench and also to the Hon'ble High Court of Delhi. The facts in that case are somewhat different but the principle laid down is relevant. In that case the applicant one Sri Pradeep Kumar Yadav was appointed on the basis of similar examination though latter on it was discovered that he had secured lesser marks and was not entitled to his appointment which was subsequently cancelled. While challenging his removal from service a contention was raised before the Principal Bench of the Tribunal that another candidate by name of Rameshwar Prasad had secured lesser marks than the petitioner and yet he was given an appointment. The Hon'ble High Court of Delhi while dismissing the application reproduced the facts of that case from the order of the Hon'ble CAT Principal Bench as under:

"9. As per the above, students who secured at least 55% marks (54% marks in case of SC/ST/OBC) in Railway Commercial Working as well as in the aggregate of the subjects at numbers (i), (ii), (iv) and (vi) were to be offered the post of Commercial Clerks or Ticket Collectors. On counting the marks on the basis of the aforesaid scheme, it was noted that applicant secured 41.2% marks and as such was ineligible."

11. Thereafter the Hon'ble High Court of Delhi held as under : -

"The only contention raised by the petitioner is that one other person named Rameshwar Prasad secured lesser marks than the petitioner and in any case he also obtained less than 45% marks but was given the appointment. In paragraph 6 of the judgment the learned Tribunal has noted that on coming to know of the said illegality even the appointment of Shri Rameshwar Prasad was cancelled and a vigilance case was also initiated to examine the same.

We find from the record that vide letter dated 12.4.2005 his appointment has been cancelled. Even otherwise if one wrong is committed by the respondents that would not give a ground to the petitioner to perpetuate the said wrong.

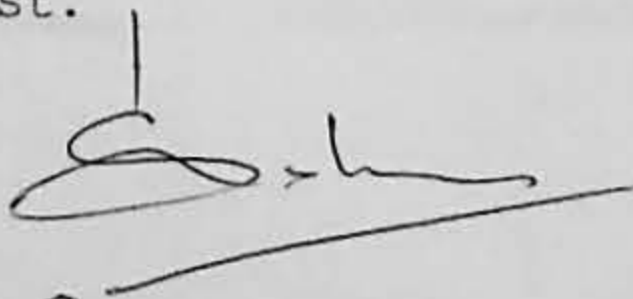
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We find no substance in the arguments of learned counsel for the petitioner. There is no merit in the petition."

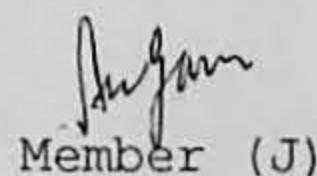
12. In view of the aforesaid decision of Hon'ble High Court, it is settled that if one wrong is committed by the respondents that would not give a ground to the petitioner to perpetuate the said wrong. We also find that even otherwise the petition is not maintainable being inordinately delayed. In as much as there is nothing on record to show that the alleged representations dated 12.11.2001 onwards were duly filed and acknowledged by the authorities to whom they are meant to have been addressed. Similarly there is nothing on record to suggest that any of these representations have been responded to by the concerned authorities. It is settled principle of law that series of representations will not confer the benefit of limitation and this view gets support from the following decisions of Hon'ble Supreme Court: -

- i. 2007 (2) Scale 325 : *Shiv Dass Vs. Union of India and others.*
- ii. AIR 1996 SC 2882 : *State of J & K Vs. A.K. Gupta.*
- iii. AIR 1976 SC 2617 : *State of Orrisa Vs. Pyarimohan Samantaraya and others*

13. In view of the above, we do not find any convincing reasons to condone the delay. we hold that the OA is devoid of merit and the same is accordingly dismissed both on the grounds of limitation and merits. No order to the cost.



Member (A)



Member (J)