

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH,  
ALLAHABAD**

**Original Application No. 743 of 2005**

Allahabad this the, 20th day of Feb., 2014

**Hon'ble Mr. Justice S.S. Tiwari, Sr. J.M./HOD  
Hon'ble Ms. B. Bhamathi, Member (A)**

Ashok Kumar son of Sri Dharam Raj, Resident of Near Santoshi Mata  
Mandir Tilak Colony Subhash Nagar, District Bareilly.

**Applicant**

**By Advocate: Sri D.K. Singh**

**Versus**

1. Union of India through General Manager, N.E. Railway Gorakhpur.
2. General Manager, N.E. Railway, Gorakhpur.
3. Chief Personnel Officer, N.E. Railway, Gorakhpur.
4. Chief Workshop Manager, N.E. Railway, Izzat Nagar, Bareilly.
5. Assistant Personnel Officer, N.E. Railway, Izzat Nagar Workshop, Bareilly.

**Respondents**

**By Advocates: Sri K.P. Singh  
Sri Anil Dwivedi**

**Reserved on 27<sup>th</sup> January, 2014**

**ORDER**

**By Hon'ble Mr. Justice S.S. Tiwari, Sr. J.M./HOD**

The applicant has prayed for the following relief(s): -

"(i) Issue a writ or mandamus commanding the opposite parties to allow the applicant to join his services in pursuance of appointment letter dated 14.5.2004 forthwith.

(ii) *Issue writ or mandamus directing the opposite parties to treat the applicant in service with effect from 12.2.2001 and to give all other benefit, which the applicant is entitled since 12.2.2001.*

(iii) *Any other order or direction as this Hon'ble Court may deem fit and proper in the circumstances of the case."*

2. The facts of the O.A., in brief, are as follows: -

That the applicant appeared in the written test for Apprenticeship in pursuance of notification dated 15.02.1990 published by the respondents. He qualified for it and was selected on the ground of being physically challenged. Later on, he qualified his trade test in the field of Painter- batch No. 61. After completing the course of Apprenticeship, he made representation before the respondents to absorb him on the available post but, his request was not considered rather vacancies of Group 'D' post were being filled up directly by the candidates from the open market. The applicant filed O.A. No. 1101 of 1997 along with 13 other applicants before this Tribunal and an Order dated 24.10.1997 was passed by the Tribunal to the effect to appoint the applicants against Group 'D' post according to circular of the Railway Board. Later on, as the Order was not complied with by the respondents, the applicant moved Contempt Petition No. 49 of 1999, in which respondents after putting appearance made a

m

statement that they are giving appointment to the applicants, as such, the Contempt Petition was disposed of on 06.02.2001. In pursuance of that assurance, an appointment letter was issued to the applicant for class IV post in the pay scale of Rs.2550-3200/-. The applicant completed all the formalities required by the respondents in that regard but he was refused the appointment on the ground of over age through letter dated 15.03.2001. The applicant again moved a representation on 22.03.2001 to the respondents that the age bar is not applicable in his case but his prayer was rejected by the respondents. The applicant being a physically challenged person is allowed 10 years age relaxation in appointment, as such, considering the age of 33 years for general candidates, he could get the appointment till the age of 43 years. He again moved a representation to the respondents to permit him to join but when his case was not considered, he filed O.A. No. 1437/2002. During the pendency of above O.A., the respondents again issued fresh circular to give appointment to all the Apprentices against number of vacancies existing in the railway. Fresh appointment letter dated 14.05.2004 was issued in favour of the applicant. He again completed all the required formalities but he has not been allowed to join his duty. He again moved a representation on 15.06.2004 to the respondents for



allowing him to join the duty but his request has not been considered. Accordingly, he filed the present O.A. mainly on the ground that once appointment letter has been issued to the applicant in compliance of direction of the Tribunal, it cannot be cancelled subsequently and being a physically challenged person the applicant is entitled for reservation and relaxation of age for 10 years as per the circular of the Railway Board and the right provided under the P.D. Act, 2005. His claim was accepted and subsequently appointment letter was issued to him by the Railway Board but, again he has not been permitted to join the duty.

3. The respondents filed the Counter-Reply denying the allegations made by the applicant contending that the allegations of applicant are based on conjectures and surmises. As per rules, the trainees are free to appear against any suitable vacancy in direct recruitment. He has no right to claim for appointment in the railways after completing the course of apprenticeship. The applicant being over age could not be appointed in the railways. The O.A. has got no substance and it deserves to be dismissed.

4. The respondents have also filed the Reply against the M.A. Apart from it, written submissions have also been filed by the parties' counsel.

u

5. In addition to pleadings, parties have also placed reliance on documentary evidence. The applicant has placed reliance on documents which is annexure A-1 to annexure A-10 on record. The applicant has further placed reliance on two documents, which have been filed along with the M.A. as annexure-1 and annexure-2.

6. We have heard the learned counsel for the parties and perused the documents on record.

7. A very short controversy has to be decided in this case. It is not disputed between the parties that twice appointment letters have been issued in favour of the applicant firstly on 09/12-02-2001 and secondly on 14.05.2004 with specific direction to the applicant to complete all the formalities and terms and conditions for appointment. The annexures filed by applicant further go to show that he has completed all the formalities required by the respondents. It is also an undisputed fact that on both the occasions his appointment letters were cancelled mainly on the ground that he is over age. It has been specifically averred by the applicant in para-4 (ix) of the O.A. that he is a physically challenged person and the maximum age for appointment in general category is '33' years and there is a relaxation of 10 years of age to the

m

physically challenged persons. It is further contended by the applicant that he was not over age, as such, if relaxation in age available to a physically challenged person, was to be given to him. It is worth to mention here that the averments of the applicant, specifically made in para-4(ix) have not been denied by the respondents in the Counter Reply. A simple reply to this averment has been given in para-10 of the Counter Reply that the contents of para-4 (ix) of the O.A. call for no comments. Thus, the averments of applicant that 10 years relaxation is applicable in case of a physically challenged person which was available to the applicant and has not been given by the respondents, remain un responded to by the respondents. Further our attention has been drawn towards the letter sent by the Mukhya Karkhana Prabandhak/Karmik/Izzat Nagar to Varistha Karmik Adhikari/Mukhyalaya/Purvottar Railway, Gorakhpur, which is a letter in response to a notice sent by the applicant to the department in which it is mentioned that out of 14 applicants, 13 have been given appointments at different places. In this letter, it has been mentioned that the date of birth of applicant- Ashok Kumar is 12.05.1962, he was selected in physically challenged quota for apprenticeship course, therefore, he is entitled to get relaxation of three years of age for training and 10 years of

*M*

age relaxation for appointment under the physically challenged quota and, at present his age is 42 years and 07 months whereas appointment under these conditions can be given up to the age of 43 years. This letter also shows that the authority concerned Mukhya Karkhana Prabandhak/Karmik/Izzat Nagar has sought permission for giving appointment to the applicant in the above circumstances. There is nothing on record from the side of respondents to show as to why three years relaxation in age for completing apprenticeship course cannot be given to the applicant. The refusal to give him appointment is based only on the ground that he has completed 38 years of age hence he cannot be permitted to join.

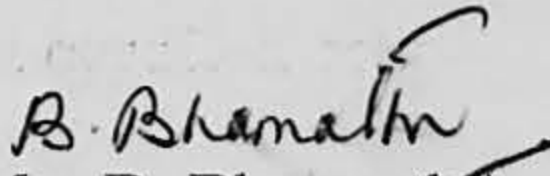
8. As already discussed above, the fact of applicant being physically challenged and the fact of applicant having completed training course of apprentice has never been denied by the respondents rather from the letter of one of the official of respondents itself shows that under rules, the applicant is allowed 13 years relaxation being apprentice and physically challenged over the maximum age prescribed for services to a candidate of general category. It is apparent from the record that the applicant has been contesting this matter since 1997 and trying hard to get a job in the respondents' department but the respondents on

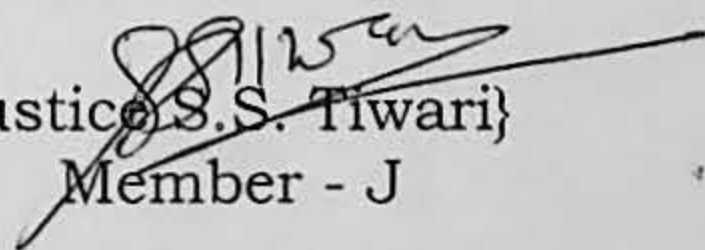
h

one ground or the other have been denying his joining on some technical objection even after issuing appointment letters to him.

9. In view of the above facts and circumstances, we are of the view that the refusal by the respondents for joining of the applicant is not justified. Accordingly, we direct the respondents to permit the applicant to join the services of the respondents on Group 'D' post, as permissible under the rules of the department by issuing a fresh appointment letter to him positively within a period of two months from the date of a certified copy of this Order is produced before them. It is made clear that if any vacant post is not available at present with the respondents, a supernumerary post be created to absorb the applicant.

10. With the above directions, O.A. is allowed. No order as to costs.

  
(Ms. B. Bhamathi)  
Member - A

  
{Justice S.S. Tiwari}  
Member - J

/M.M/