

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

(X) 22

ALLAHABAD.

Allahabad this the 26th day of February 1997

Original Application no. 1748 of 1992

Hon'ble Dr. R.K. Saxena, Judicial Member
Hon'ble Mr. S. Dayal, Administrative Member

Anil Kumar Mishra, S/o Sri Uma Shanker Mishra, R/o Village
Nabi, Post Shukulpur, District Allahabad.

... Applicant.

C/ A Sri Satish Dwivedi,

Versus

1. Union of India through the Secretary, Ministry of Railways, Government of India, New Delhi.
2. The Secretary, Ministry of Railway, Government of India, New Delhi.
3. The General Manager (P), Northern Railways, Baroda House, New Delhi.
4. The Railway Board, Rail Bhawan, New Delhi through its Secretary.
5. The Railway Recruitment Board, New Annexe Building, D.R.M.'s Office Compund, Nawab Yusuf Road, Allahabad, through its Chairman.

... Respondents

C/R Sri B. Bhushan, Sri A.K. Gaur.

ORDER

Hon'ble Mr. S. Dayal, Member-A.

This is an application under Section 19 of the Administrative Tribunal Act, 1985.

The applicant has made this application for seeking the following reliefs: -

- (i) A direction to the respondents to relax the upper age limit of the applicant and issue order of his appointment on the post of Diesel Foreman (Mech) A/T
A/T
- (ii) A direction to the respondents to give him all benefits attached to the above post with effect from the date of appointment of other Diesel Foreman (Mech) selected through the same examination, and
- (iii) Award of costs of proceedings to the applicant.

The case of the applicant is that the Railway Recruitment Board, Allahabad, advertised two vacancies of Diesel Foreman (Mech) on 20-1-90. One of the requirements shown in the advertisement was that the age of the applicant should not be more than 30 years on 1-1-90. The applicant's date of birth recorded in his High School Certificate was 1-1-60. As the candidate was born on the night of 1st & 2nd January 1960 at 1230 in the night, he fulfilled all qualifications including that of age and he applied for the post. He cleared the written test and interview and was selected for appointment to the post. All the persons selected in the above examination except the candidate were appointed. The applicant made representation to the Chief Personnel Officer on 24-3-92 and 27-8-92 and contacted him personally on 2-6-92 and 6-8-92. He was informed by General Manager (P) that the Railway Board had not agreed to relaxation of the upper age limit.

The arguments of Shri Satish Dwivedi, learned counsel for the applicant, and of Dr A K Gaur, learned Counsel for the respondents were heard.

The arguments in favour of age relaxation and appointment advanced on behalf of the applicant include the contentions that the applicant had applied for both Diesel Foreman (Mech) and Signal Inspector Grade I (Rs 2000-3200) the latter of which had ten vacancies and the date of completion of 30 years was set at 30-6-89. The date of written test of both was fixed on 29-7-90 and the applicant chose to appear at the former because call letter was issued to him after scrutiny of his papers. It is clear that a mistake has been committed in issuing call letter to him, selecting him and recommending him for appointment. This, however, does not confer any right on

the applicant to necessarily get age relaxation and appointment as a result of this mistake. Such an age relaxation would be discriminatory against other candidates having same date of birth as also against those persons who were born on the same day but did not apply because of the maximum age limit and proper computation of their age.

The other contention of the applicant is that he was well within the age limit because he was born on the night of 1st and 2nd January at 12.30 in 1960. This is not tenable because the applicant clearly mentions his date of birth as 1-1-60 and he completes 30 years on 31-12-89. The fact that he seeks age relaxation as one of the reliefs shows that he himself does not believe in the genuineness of this argument.

The learned counsel for the applicant has cited the judgment of the Division Bench of Central Administrative Tribunal, Hyderabad, in the case of K. Pandiah N. Central Provident Fund Commissioner, New Delhi & another, (1992) 21 ATC 132 in which the applicant who was born on 15-6-65 was considered to be overage by one day on 15-6-90 but his age was ^{directed to be} relaxed because he was selected after written and typewriting test and he had served Survey of India earlier for almost one year. This case clearly is not applicable in the present case as the applicant had no previous service record which could justify considering age relaxation. Another case of Bombay bench of Central Administrative Tribunal cited by the applicant is of Vijaya Venkatesh Pai v Union of India & others, (1988) 8 ATC 719 in which the candidate was above the age limit prescribed by the Staff Selection Commission on the relevant date but was appointed and had served for one year and six months before services were sought to be terminated. This is also not applicable to the case before us.

The learned counsel for the respondents has rightly stated that the applicant does not obtain a vested right to be appointed after age relaxation merely because he has been selected and recommended for appointment and therefore no estoppel operates against denial of appointment if he is found to be lacking any of the essential qualifications. He has cited the judgment of the apex court in Raininder Sharma (Smt) and another v State of Punjab & others, 1995 SCC (L & S) 228.

The application is found to be lacking in merits and is dismissed.

There shall be no order as to costs

J. M.
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- ii. A direction to the respondents to give him all benefits attached to the above post with effect from the date of appointment of other Diesel Foreman (Mech) selected through the same examination, and
- iii. award of costs of proceedings to the applicant.

The case of the applicant is that the Railway Recruitment Board, Allahabad, advertised two vacancies of Diesel Foreman (Mech) on 20.1.90. One of the requirements shown in the advertisement was that the age of the applicant should not be more than 30 years on 1.1.90. The applicant's date of birth recorded in his High School Certificate was 1.1.60. As the candidate was born on the night of 1st and 2nd January 1960, at 1230 in the night, he fulfilled all qualifications including that of age and he applied for the post. He cleared the written test and interview and was selected for appointment to the post. All the persons selected in the above examination except the candidate were appointed. The applicant made representation to the Chief Personnel Officer on 24.03.92 and 27.08.92 and contacted him personally on 02.06.92 and 06.08.92. He was informed by General Manager (P) that the Railway Board had not agreed

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The arguments in favour of age relaxation and appointment advanced on behalf of the applicant include the contention that he had applied for both Diesel Foreman (Mech) and Signal Inspector Grade I (Rs. 2000-3200) the latter of which had ten vacancies and the date of completion of 30 years was set at 30.06.89. The date of written test of both was fixed on 29.07.90 and the applicant chose to appear at the former because call letter was issued to him after scrutiny of his papers. It is clear that a mistake has been committed in issuing call letter to him, selecting him and recommending him for appointment. This, however, does not confer any right on the applicant to necessarily get age relaxation and appointment as a result of this mistake. Such an age relaxation would be discriminatory against other candidates having same date of birth as also against those persons who were born on the same day but did not apply because of the maximum age limit and proper computation of their age.

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There shall be no order as to costs.

Sd/-
A.M.

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J.M.

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