

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

ALLAHABAD

Allahabad this the 18th day of August 1997.

ORIGINAL APPLICATION NO. 545 OF 1992.

CORAM : Hon'ble Dr. R.K. Saxena, J.M.

Hon'ble Mr. D.S. Bawej, A.M.

- i) Vinod Chandra Sharma, S/o Shri Sheo Dutt Sharma, aged about 29 years, R/o Mohalla Sumer Sagar, Gorakhpur.
- ii) Rama Kant Singh, S/o Yogendra Singh, R/o Village Laukaha, Post Office Sahjanwa Babu, District-Maharajganj.

..... Applicants.

(By Advocate Shri Shesh Kumar)

Versus

- i) Railway Board through the Chairman, Railway Board, Ex-Officio Secretary, New Delhi.
- ii) Union of India representing the administration of North Eastern Railway through the General Manager, North Eastern Railway, Gorakhpur.
- iii) The Railway Recruitment Board, North Eastern Railway, Gorakhpur, through its Chairman.
- iv) The Chairman, Railway Recruitment Board, North Eastern Railway, Gorakhpur.

..... Respondents.

(By Advocate Shri Lal Ji Sinha)

O R D E R (Reserved)

Hon'ble Mr. D.S. Baweja, A.M.

1. This application has been filed with a prayer (a) to be appointed in any alternative category such as Clerk grade I, Senior Clerk, Gaurd, Enquiry Cum Reservation Clerk on being declared failed in psychological test for the post/Assistant Station Master (b) Respondents be directed to implement the order of the Hon'ble Railway Minister, passed on 10.4.1991 in Railway Board's case No. E(R^{ep}) II/91/APZ/RRB/27 dated 10.4.1991.

2. The application was originally filed by Shri Vinod Chandra Sharma. Subsequently, applicant no. 2 be Shri Rama Kank was allowed to ~~be~~ impleaded on the ~~be~~ plea that he is similarly placed and cause of action ~~has~~ is the same. However, he ~~was~~ not prayed for the relief (b) detailed above which is claimed by applicant no. 1 only.

3. An Employment Notice No. 1/84-85 Category no. 14 for the post of Assistant Station Master in the scale Rs 330-560 was issued by Railway Recruitment Board, North Eastern Railway, Gorakhpur on 19.8.1984. Both the applicants applied for the same and appeared in the written test held on 29.9.1985. Both qualified in the written test and were called for interview test. The interview test for applicant no. 1 was held on 4.4.1986 and on 20.3.1986 for applicant no. 2. After the interview test, psychological test was

held and both the applicants failed in the same. This test was compulsory and, therefore, they could not be placed on the panel.

4. The case of the applicants is that, as per rules a common examination should have been held for the post of Assistant Station Master and Clerk Grade-I. The candidates who failed in the psychological test should have been given chance for appointment to the post of Clerk Grade-I in terms of Railway Board's letter dated 25.1.1982. By illegal action of the respondents in holdings recruitment for the post of Assistant Station Master separately, the applicants have been denied of the opportunity of being considered for alternative category based on the merit. The applicants have also stated that they represented the matter to the concerned authorities to give them alternative category appointment but the same was not agreed to. The applicants also got their cases represented to Railway Minister through the Hon'ble Members of parliament. In case of applicant no. 1 it is contended that Hon'ble Railway Minister also ordered for appointment of the applicant in any other alternative category of clerk grade-I, Senior Clerk, Guard or Enquiry Cum Reservation Clerk. Inspite of this, the appointment has not been given. Being aggrieved, the present application has been filed by applicant no. 1 on 13.4.1992. The applicant no. 2 has been allowed to be impleaded as applicant as per direction dated 18.1.1994 as stated in para 2 above.

5. The respondents have opposed the application through filing Counter reply. The respondents have averred that a requisition was placed with Railway Recruitment Board, Gorakhpur, for filling up of 250 vacancies of Assistant Station Masters. A notification no. 1/84-85 dated 19.8.1984 was issued for recruitment. The applicants appeared in the written test and qualified for interview test. However, both the applicants

failed in the psychological test conducted after the interview test. The respondents contend that since the recruitment was done for the post of Assistant Station Master only, the contention of the applicants for appointment as Clerk grade-I on failing in psychological test is not tenable. Further the respondents state that Hon'ble Railway Minister in reply dated 22.12.1987 to Hon'ble Member of Parliament who represented the case of the applicants, it has been advised that Railway Recruitment Boards have been holding exclusive examination for the post of Assistant Station Master. In view of this, the respondents assert that no illegality has been committed and the applicant is not entitled for the appointment in the alternative category. In view of this respondents pray that the application has no merit and deserves to be dismissed.

6. The applicant no. 1 first filed rejoinder reply. Subsequently two supplementary rejoinder replies have been filed stating that certain documents necessary for ^{ing} clarify the controversy were not available to the applicant and the same were filed through the supplementary rejoinders. The applicant has strongly contested the averments of the respondents and reiterated the grounds raised in the original application. The applicant no. 2 has not filed any rejoinder reply. The only averments made are in the impleadment application.

7. We have heard Shri Shesh Kumar and Shri Lal Ji Pinha, the learned counsel for the applicants and the respondents respectively. Material brought on record has been carefully gone into.

8. It is admitted fact that the applicants appeared in the selection for the post of Assistant Station Master against the Employment Notice no.1/84-85 dated 19.8.1984 and after qualifying in the written test and appearing in the interview test failed in the psychological test. From the rival contentions, the short question which needs to be answered is whether the applicants are entitled for appointment based on merit in the alternative category of Clerk grade-I after having failed in the psychological test.

9. For considering merit in the claims for appointment in the alternative category, we refer to the Employment Notice dated 19.8.1984 (A-2). We find in para 12, it is specified that the candidates who fail in the psychological test or in medical examination will not be considered for appointment in the alternative category. The applicants have appeared in the written examination based on this Employment Notice. However, on failure in the psychological test, the applicants are claiming for consideration of the applicants ~~for~~ appointment in other categories in terms of Railway Board's letter dated 25.1.1982. It is their contention that as per Railway Board's letter dated 25.1.1982 combined recruitment for the category of Assistant Station Master and other categories viz. Clerk grade-I, Senior Clerk, Guards

and Enquiry Cum Reservation Clerk should have been done. Considering the facts and circumstances of the case, we are of the view that the claim of the applicants is not tenable. We have gone through the Railway Board's letter dated 25.1.1982. We note that the letter does not specifically state that those who fail in the psychological test for the post of Assistant Station Master as per the preference are to be considered for the other categories. However in case the recruitment is done jointly for all categories by a common written test, then it could be inferred that a candidate who has given first preference for the post of Assistant Station Master and fails in the psychological or medical test but has a merit as per which he is eligible for the second preference for the other categories, then he is entitled for consideration for the second preference on merit. This is fair and logical. However if the recruitment for the two categories is done separately, then such a consideration does not arise. How the merit of the two examinations conducted separately could be compared and names interpolated in the panel of Grade-I formed separately ? The applicants have pleaded that the recruitment for the post of Clerk Grade-I was done separately for North Eastern Railway by Railway Recruitment Board Muzaffarpur which should have been done combined including the vacancies of Assistant Station Master. This would mean, if the plea of the applicants is accepted then their names based on the marks obtained in the selection for the post of Assistant Station Master would be included in the panel of Clerk grade-I. When the persons who have not appeared in the examination for the recruitment to the post of grade-I, any interpolation of their names in the panel based on the

result of another recruitment would be arbitrary, discriminatory and unfair. Keeping these facts in view, we are of the opinion that there is no merit in the claim made by the applicants.

10. The applicants and particularly applicant no. 1 in the original application as well as in the rejoinder ^{is} replies/ at pains to hammer his point that separate recruitment for the post of Assistant Station Master by Railway Recruitment Board Gorakhpur was in violation of the instructions contained in Railway Board's letter dated 25.1.1982. This plea of the applicants does not carry ^{any} ~~any~~/weight. The applicants have appeared in the written examination and participated in the selection as per the notification. They did not raise any issue with regard to violation of the provisions of letter dated 25.1.1982. Only after failure in the psychological test, the applicants have turned around and now raised this issue. After taking a calculated chance and appearing in the selection such a plea cannot/taken if the result is not palatable to them. Apart from this, on the perusal of the documents on record, we find that Railway Board's vide letter dated 14.4.1982 had modified their earlier instructions dated 25.1.1982. According to letter dated 14.4.1982, the recruitment for the post of Assistant Station Master is to be done separately after being exclusively advertised. This is gathered from the replies given by the Hon'ble Railway Minister dated 11.3.1988 and 26.4.1990 to Hon'ble Members of parliament

who represented the case of the applicant no. 1. The respondents have taken also this plea in para 20 of the Counter reply referring to the reply dated 22.12.1987 of Hon'ble Railway Minister. The applicant in reply to para 20 in the rejoinder reply has stated that copy of this letter was not received by North Eastern Railway as is apparent from the letter dated 10.6.1988 (A-13) of Chief personnel Officer to Railway Board. This argument is not convincing. The applicant has stated that requisition for recruitment to the post of Assistant Station Master was diverted to Railway Recruitment Board, Gorakhpur, by Railway Recruitment Board, Muzaffarpur. The applicant has not averred that the letter dated 14.4.1982 was not in the knowledge of Railway Recruitment Board, Muzaffarpur. It is perhaps in view of the revised instructions of Railway Board that the requisition was transferred to Gorakhpur. The recruitment for the post of Assistant Station Master was notified on 19.3.1984 i.e., much after the revised instructions issued on 14.4.1982. In this view of the matter also the recruitment done separately for the post of Assistant Station Master was as per the extant rules. On this consideration, also the claim of the applicants does not survive.

11. The applicant no. 1 has also taken a plea that one Shri A.K. Tripathi who was selected for the post of Assistant Station Master had been appointed as Clerk Grade-I by changing his category. The respondents have reacted to this submission stating that this case was that of change of category as per the extant rules and not of alternative category appointment. We have gone through the material brought on record by the applicant and note that Shri A.K. Tripathi had passed the psychological test and, therefore, was selected.

We are, therefore, of the view that the case of Shri A.K. Tripathi was on different footing and is of no help to applicant's case.

12. One of the relief prayed for is that direction be issued to respondents to implement the order of Hon'ble Railway Minister dated 10.4.1991 on the Railway Board's file. We have already recorded our findings above that there is no merit in the claim of the applicants. It is noted that the order dated 10.4.1991 is stated to have been passed on the file. The applicant has not averred that these orders have been conveyed to him. The respondents have denied this contention stating that since the appointment in the alternative category was not allowable, the question of implementation any such order did not arise. In any way no cognizance of such noting / order on the file and not conveyed to the applicant can be taken and the merits of the same gone into for granting relief. Under such a situation, we are unable to persuade ourselves to find any merit in this relief.

13. The respondents have also raised the issue of application being barred by limitation considering the inclined facts of the case, we are inclined to subscribe to the new view of the respondents. The applicant no. 1 appeared in the viva-voce test on 4.4.1986 and while the applicant no. 2 on 20.3.1986. Therefore, the cause of action arose in 1986. The applicant no. 1 has filed the original application on 13.4.1992 while applicant no. 2 has been impleaded as applicant subsequently on 18.1.1994. However, the applicants have averred that

the original application is within the limitation. In view of the facts detailed earlier with regard to cause of action, during hearing we enquired the learned counsel for the applicants that how he claims the original application has been filed within limitation. The counsel for the applicant argued that the applicant no. 1 has been representing the matter to Railway Board both directly as well as through Hon'ble Members of Parliament. He also contended that when the order dated 10.4.1991 passed by the Hon'ble Railway Minister was not implemented, the applicant no. 1 filed this application being aggrieved of the non action by the respondents. However, no explanation for delay has been offered in respect of applicant no. 2. We are, however, not convinced of the reasons advanced. We find that in respect of applicant no. 1, Hon'ble Railway Minister had replied to the representation made through Hon'ble Member of Parliament vide letters dated 22.12.1987 followed by letters dated 11.3.1988 and 10.3.1989 brought on record by the applicant. The applicant no. 1 has not stated when he represented directly. Even taking that the request of the applicant no. 1 was not agreed to vide letter dated 22.12.1987, then also the application ~~with~~ with this date of cause of action has been filed late. The repeated representations made by the applicant no. 1 seeking positive response inspite of several replies given to his representation rejecting his claim would not extend the limitation period. The applicant no. 2 has not averred anything about the delay in filing the impleadment application. Applicant no. 2 has also brought a copy of the representation on record which is undated. The references made by Hon'ble Members of parliament

to represent his case have been made only in 1990 i.e., four years after the selection was finalised. When the counsel for the applicants was controverted with these facts, he fairly conceded that the application has been filed late. However, the counsel for the applicants pleaded for liberal view for condoning the delay in view of the merits in the claim of the applicants. We are not prepared to accept this pleading. When the facts glaringly bring out the delay in agitating the matter for seeking legal remedy, we, therefore, hold that the application is barred by limitation and thus not maintainable on this account. However, inspite of this, we have heard the matter and gone into the merits of the case also.

14. In the result of the above, we find that the application is not only not maintainable being barred by limitation but is also devoid of merit. Accordingly the application is dismissed. No order as to costs.

Sd/

MEMBER (A)

Sd/

MEMBER (J)

*Carried
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am/

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OA 545/32
V. C. Sharma
vs
UoG and others

OR

Writ Petition No 38754/37
filed by Vinod Chandre Sharma
and others vs U O S and others
against the judgment of
545/32 V. C. Sharma vs U O S
and others. Notice from High
Court Aded received to this
Tribunal is submitted for
perusal and orders.

500/-

Shukla
23-11-98

V.C.

24/11

DG(T) Since CAT is a formal party.
No action. Keep on file.

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24/11/98