

RESERVED

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD

DATED : ALLD. ON THIS 7th DAY OF SEPTEMBER, 1998

CORAM : HON'BLE SHRI S. DAYAL, MEMBER (A)
HON'BLE SHRI S K AGRAWAL, MEMBER (J)

ORIGINAL APPLICATION NO. 921 OF 1992

Shri Krishna Chaurasiya aged about 34 years S/o
Shri B D Chaurasiya , R/o 1371, Gondu compound,
Civil Lines, Jhansi.

..... Applicant.

C/A : Shri R K Nigam, Advocate.

Versus

1. Union of India through General Manager,
Central Railway, Bombay VT.

2. Chairman, Railway Recruitment Board, Bombay Central.

..... Respondents

C/ R : Shri A V Srivastava, Advocate

ORDER

(By Hon'ble Shri S K Agrawal, Member (J))

In this application filed under section 19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer that direction be given to the respondents to issue an appointment order in his favour within the stipulated period and to give him consequential benefits of the appointment.

1. In brief, the facts of the case, as stated by the applicant, are that the applicant had applied to various non technical popular categories post against category no.16 employment notice no.2/77-78. He was called for written test held at Jhansi on 20.08.1978 and he also attended the interview

held at Jhansi in the month of April, 1979. It is submitted that thereafter a list was displayed at the Notice Board of respondent no.2 at Bombay in which the applicant's name was in merit. Thereafter, the applicant approached to the respondent no.2 for appointment and he was told that he will get the appointment order in future. It is submitted that because of ill advice, the writ petition was filed in the Hon'ble High Court of Judicature at Allahabad. It is further submitted that the applicant filed a representation dated 6.5.91 to the respondent no.2. Thereafter, the counsel of the applicant advised that after promulgation of the Central Administrative Tribunals Act, 1985, the Hon'ble High Court is not a proper forum. Thereafter, he filed this petition/application in the Tribunal. It is submitted that Hon'ble High Court has passed similar relief in other cases, as mentioned in the application and requested this Tribunal to give direction to the respondents to issue appointment order in favour of the applicant with consequential benefits.

2. A counter was filed on behalf of the respondents. In the counter, it is stated that the selection in pursuance to employment notice no.2/77-78 has already been finalised during 1979-80 and all successful candidates have also been recommended to the Railways for offering appointment to them. Hence, this application which has been filed after 12 years, is totally time barred and not maintainable. It is also stated that records pertaining to this selection have been destroyed in terms of Railway Board's letter dated 28.5.85 in which time limit is fixed for disposal of old records.

3. Heard the learned lawyer for the applicant and learned lawyer for the respondents and perused the whole records.

4. Learned lawyer for the applicant has submitted that the applicant was selected for category no.16 with reference to employment notice no.2/77-78 and number of persons have been given appointment. The applicant was not given the appointment so far on account of ulterior motive of the respondents. On the other hand, the learned lawyer for the respondents strongly objected to these arguments and submitted that the selection was finalised in the year 1979-80 and all successful candidates have been recommended to Railways for appointment. He has also submitted that the applicant has filed this application after 12 years which is hopelessly barred by limitation.

5. We have given thoughtful consideration to the rival contentions of both the parties and perused the whole records.

6. On the pleadings of the applicant, it appears that applicant has failed to establish the fact of his selection. There is no basis of stating the selection of the applicant. No evidence has been produced by the applicant in this regard. What was the serial number of the applicant in the panel, when result was declared, what was his position and when he received the information from the respondents regarding his selection has not been made clear.

7. Learned lawyer for the applicant further submitted that respondent in the counter did not deny the facts of the selection of the applicant very specifically. Therefore, in the absence of specific denial, statement of the applicant should be deemed to have been proved. We are not inclined to accept this proposition as in the counter it has been made very specific that the records concerning the examination were destroyed in view of the Railway Board's letter dated 28.5.85. Therefore, in the absence of the records, in the counter, specific denial was not there and in the absence of this, it cannot be presumed that the statement of the applicant was deemed to have been proved.

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8. The applicant also failed to establish the fact of discrimination against him. By definite evidence, he should have proved that he was discriminated but he could not establish the fact of discrimination and arbitrariness on the part of the respondents.

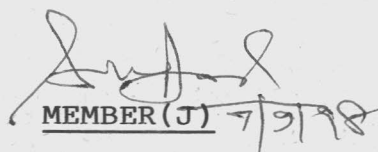
9. This Original Application appears to be hopelessly barred by limitation as this O.A. has been filed before this Tribunal in the year 1992 for seeking an order of appointment in relation to the recruitment in category 16 in pursuance of employment notice no.2/77-78. The explanation submitted by the applicant is not a reasonable ground to condone the delay in filing this Original Application, as per provisions given under section 21 of the Administrative Tribunals Act. Therefore, we are of the considered opinion that this Original Application is hopelessly barred by limitation.

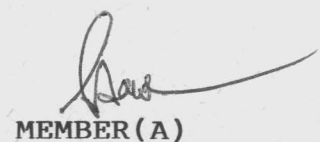
10. It is settled principle of law that merely by having a name in the selection list/panel, the person concerned does not get a right of appointment. In State of Bihar & Ors. V/s Secretariat Asstt. Successful Examinees Union 1986 & Ors. (1994) 1 SCC 126, Hon'ble Supreme Court held that a person having been selected, does not, on account of being empanelled alone, acquire any indefeasible right to appointment. Empanelment is, at the best, a condition of eligibility for purposes of appointment and by itself does not amount to selection or creating right to be appointed unless relevant rules stated to the contrary.

11. On the basis of this proposition also, the applicant is not entitled to seek relief sought for.

12. Therefore, we are of the considered opinion that the applicant has failed to make out a case in his favour.

13. Therefore, this Original Application is dismissed with no order as to costs.


MEMBER (J) 7/9/98


MEMBER (A)