

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,  
ALLAHABAD

Dated : Allahabad this the 6<sup>th</sup> day of December 1996.

CORAM : Hon'ble Mr. S. Das Gupta, Member-A  
Hon'ble Mr. T. L. Verma, Member-J

Original Application No. 600 of 1994.

Awadhesh Kumar Pandey,  
son of Ram Kewal Pandey, resident  
of M.S.Bungalow Gaya Eastern Railway,  
....Applicant.

(Counsel Sri P.K.Asthana)

Versus

1. Union of India through Secretary, Ministry of Railway New Delhi.
2. General Manager, Eastern Railway, Calcutta.
3. Chief Personnel Officer, Eastern Railway, Calcutta.
4. Divisional Railway Manager, Moghalsarai,
5. ~~Shri~~ Medical Superintendent, Gaya.

....Respondents

(THROUGH COUNSEL SRI D.C.SAXENA)



O R D E R

(By Hon. Mr. T. L. Verma, Member-J)

In this application, under Section 19 of the Administrative Tribunals Act, 1985, the applicant seeks

a direction to the respondents to appoint the applicant as Bungalow Peon with effect from 6.5.1993 with back wages.

2. The case of the applicant as set-up in the O.A. is that he was appointed as Bungalow Peon on 6.5.1993 and that he joined his duties as such on the same day. The respondent No.5, after appointing the applicant, it is stated, forwarded the application of the applicant alongwith his notes to the Divisional Railway Manager, Moghalsarai for approval of the appointment of the applicant as Bungalow Peon. The Divisional Railway Manager, Moghalsarai referred the same to Chief Personnel Officer, Eastern Railway, Calcutta after giving his approval to the applicant's appointment for the needful vide letter dated 5.8.93. The Chief Personnel Officer, however, declined to approve the appointment of the applicant on the ground that he has crossed the maximum age limit prescribed for appointment on the said post. The contention of the applicant is that he was ~~however~~, within age on the date, respondent No.5 appointed him as Bungalow Peon on 6.5.1993. Therefore, 6.5.1993 should be reckoned as the date for determining whether he is within the prescribed age limit for appointment on the said post or not. The applicant preferred an appeal against the order of the Chief Personnel Officer. The appeal preferred by the applicant was forwarded by the Divisional Railway Manager, Moghalsarai by his letter dated 10.1.1994 with the recommendation that the applicant was not over-age on the date of appointment. When no reply to the appeal filed by the applicant was received, reminder

dated 2.2.1994 was sent. The appeal preferred by the applicant, however, has been rejected by order dated 14.12.1993. Hence this application for the reliefs mentioned above.

3. The respondents have contested the claim of the applicant. In the counter-affidavit filed on behalf of the respondents, it has been stated that the General Manager, Eastern Railway, Calcutta is the competent authority to consider proposals for appointment on the post of Bungalow Peon with reference to eligibility criteria laid down under the relevant rules. The appointment of the applicant made by the Medical Superintendent Gaya cannot constitute as appointment to bring the applicant's appointment within the prescribed age limit.

4. We have heard the learned counsel for the parties and perused the record. The maximum age limit prescribed for appointment on the post of Bungalow Khalasi is 28 years as would appear from the impugned order dated 3.3.1994 whereby representation submitted by the applicant was rejected. The fact that maximum age limit prescribed for appointment to Group IV post is 28 years has not been disputed. The contention of the applicant is that the date on which he was appointed by the Medical Superintendent, should be reckoned for determining whether he is within the ~~age~~ prescribed age limit or not ?

5. In view of the above, the only question that falls for our consideration is whether the applicant ~~has~~ become over age for appointment on the post of Bungalow Peon or not.

6. The learned counsel for the applicant has brought to our notice the instructions issued by Eastern Railway, under memo No.E/891/4/C1.IV /Policy Calcutta dated 20.8.1994 in connection with the appointment and discharge of Bungalow Peon. According to procedure to be followed ~~in the~~ <sup>matter of</sup> ~~regarding~~ appointment of the Bungalow Peon, the officers entitled to the facility of Bungalow Peon will be allowed to engage a person of their own choice as per extant procedure ensuring that they are literate. The maximum age limit prescribed for appointment on the said post is 28 years on the date of engagement. From the instructions referred to above, it follows that the person entitled to the benefit of Bungalow Peon has choice of selecting the person provided he is otherwise qualified. In other words, the person so selected should be literate, ~~in~~ one or other regional language and is within the prescribed age limit between 18 to 28 years.

*JK*

7. In the instant case, as is apparent from the note appended on the margin of the application dated 7.5.1993, submitted by the applicant ~~for~~ his appointment as Bungalow Peon, the Medical Superintendent, appointed him with effect from the same date. The application of the applicant

with the note of the Medical Superintendent ~~MK~~ was forwarded to the Divisional Railway Manager Moghalsarai for approval of his appointment (Annexure-4). The letter dated 14.12.1993 from the Chief Personnel Officer to Divisional Railway Manager Eastern Railway, Moghalsarai (Annexure-A) clearly indicates that the proposal for appointment of the applicant on the recommendation of Medical Superintendent was sent to the Chief Personnel Officer under letter No. EO/C1-IV-B Peon NGS/93. The proposal, however, has been turned down.

8. The date of birth of the applicant is 1.7.1965. He attained the age of 28 years on 30.6.1993. The application of the applicant for appointment as Bungalow Peon was forwarded by Dr. S. Kumar, Medical Superintendent, Eastern Railway, Gaya by his letter dated 10.6.1993. The date on which the applicant submitted his application to the authority entitled <sup>to</sup> for the services of the Bungalow Peon, the applicant was below 28 years of age. As we have already noticed above that in terms of the instructions issued by the Railway, the Officer entitled to Bungalow Peon has been given choice of engaging a person of his choice. The Medical Superintendent, who appointed the applicant, in his letter dated 10.6.1993 addressed to the Divisional Railway Manager, Eastern Railway, Moghalsarai, has very clearly mentioned that he has obtained an application from Sri Awadhesh Kumar Pandey, the applicant, for appointment as Bungalow Peon and that he has



made an endorsement on the margin of the application that he has been appointed as such with effect from 6.5.1993.

9. The instructions issued by the Eastern Railway in regard with appointment of Bungalow Peon have virtually given the power of selection and appointment of Bungalow Peon to the person entitled to the same. That being the position, the relevant date for determining the eligibility on the ground of ~~age~~ <sup>in our opinion</sup> age, will be the date ~~on~~ on which the concerned authority obtains the application and makes appointment on the basis thereof. Approval of the superior authority therefore, in our opinion, is only a formality. We agree with the contention of the learned counsel for the applicant that the date on which the applicant submitted his application for appointment as Bungalow Peon should be reckoned for determining the eligibility of the applicant for appointment on the said post.

*SH*

10. We have already seen above that the applicant was within the prescribed age limit on the date the application was made, therefore, the action of the respondents in turning down the proposal for appointment of the applicant as Bungalow Peon is arbitrary and as such the same cannot be sustained. The applicant, who was otherwise eligible for appointment and had ~~been~~ <sup>been</sup> in fact appointed by the concerned authority,

was entitled for such appointment with effect from the date he had been appointed by the Medical Superintendent.

11. For the reasons stated above, we allow this application and quash the order dated 14.12.93 and 3.3.1994 and direct the respondents to regularise the services of the applicant with effect from the date he had been appointed by the Medical Superintendent with all ~~non~~ monetary benefits. There will be no order as to costs.

*J. M. Pandey*  
MEMBER-(J)

*W. C.*  
MEMBER-(A)

(Pandey)

8.5.1997

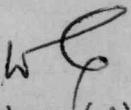
OA No.600/94

Hon'ble Mr. S. Das Gupta AM  
Hon'ble Mr. T. L. Verma JM

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Respondents in O.A.No.600/94 have filed Misc. application no. 1601/97 ~~exayed~~ praying that 4 weeks time be given to them to implement the judgment and order of the Tribunal. The aforesaid O.A. was allowed by the Tribunal by order dated 6.12.1996. Thereafter, already more than 5 months have elapsed. Present M.A. has been filed on 16.4.1997. It has been stated therein that implementation of the order will take some more time as the matter has to be processed through various departments including the General Manager, Eastern Railway. After careful consideration of the submissions made in the M.A., we grant time to the respondents till 31.7.1997 to comply with the Tribunal's order, failing which suo moto contempt proceedings may be initiated. Misc. application stands disposed of accordingly.

  
Member (J)

  
Member (A)

SQI