

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 16th day of January 2004.

Original Application no. 81 of 2002.

Hon'ble Maj Gen K.K. Srivastava, Member (A)
Hon'ble Mr. A.K. Bhatnagar, Member (J)

Vivek Singh, S/o Sri Anant Singh,
R/o Mohalla Diwanpura, Post Office Rath,
HAMIRPUR.

... Applicant

By Adv : Sri S.K. Om

V E R S U S

1. Union of India through its General Manager,
Central Railway,
MUMBAI CST.
2. Railway Recruitment Board, through its Secretary,
B 15 Machna Colony, near Bus Stop no. 6,
BHOPAL (MP).
3. Joint Director Establishment (Welfar),
Railway Board,
NEW DELHI.
4. Chief Personnel Officer, Central Railway,
MUMBAI CST.

... Respondents

By Adv : Sri K.P. Singh

O R D E R

Maj Gen K.K. Srivastava, AM.

In this OA, filed under Section 19 of the A.T. Act, 1985, the applicant has prayed for quashing the order dated 7.1.2002 (Ann A12) passed by respondent no. 4 (Chief Personnel Officer, Central Railway, Mumbai CST) and order dated 11.1.2002 (Ann A13) passed by Dy. Director Estt. (Welfare), Railway Board, New Delhi. The applicant has also prayed for direction to make appointment of the applicant to the

...2/-

2.

post of Ticket Collector (in short TC) since the date of Mohd. Rihan Khan and Anil Tiwari have been appointed on the post of TC.

2. The case, in short, of the applicant is that the applicant passed his High School Examination in first division with 64% marks in the year 1997. Railway Recruitment Board (in short RRB), Bhopal issued a notification dated inviting applications for two years Job Linked Course on Railway Commercial. The applicant applied for the same and was selected in pursuance to the written examination dated 16.2.1997. Thereafter, the Chief Personnel Officer (in short CPO), Central Railway, Mumbai, directed Principal G.E. Secondary's Seth D.G.T. High School to admit the applicant for the aforementioned course. The applicant successfully completed the course and he was issued pass certificate. After passing the said examination, applicant made a representation for his appointment, but nothing was done. The applicant submitted that since it was a job oriented course, he is entitled for appointment on any suitable post, but the respondents failed to take any action. The applicant has stated that he acted on an assurance given by the respondents for two years Job Linked Course, therefore, the respondents are liable to give appointment to him and it is covered by the principle of estoppel.

3. Sri S.K. Om, learned counsel for the applicant submitted that number of students have preferred representation to appear in improvement examination and they have been permitted to appear in the improvement examination alongwith main examination of the next year.

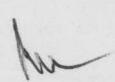
...3/-

3.

The applicant was also permitted to appear in the improvement examination and has secured 54% marks, but he has not been given appointment. Learned counsel for the applicant cited examples of Mohd. Rihan Khan and Sri Anil Tiwari, who appeared in the selection and they have been appointed, whereas the applicant has been denied appointment and thus the respondents have adopted pick and choose policy which is arbitrary and illegal.

4. Since, the respondents were not passing any order, the applicant filed OA no. 1117 of 2001 and this Tribunal directed the respondents to decide the applicant's representation. Pursuant to the direction, the respondents passed order dated 7.1.2002 mentioning therein that the applicant is not entitled for recruitment in pursuance of the Railway Board's circular dated 27.10.1995, which permits to qualify the course only on two attempts. Learned counsel for the applicant alleged that the respondents have permitted other candidates who are similarly placed and obtained 45% marks in improvement of the second examination. In para 4.22. of the OA the applicant has made a categorical statement that one Mohd. Rihan Khan who was also student of same academic year as that of applicant has appeared in CBSE in the year 1999 and the certificate was issued on 29.5.1999. Thereafter, he was permitted to appear in the improvement examination of 2000 academic year in which he obtained 39% marks in Railway Commercial Working. Thereafter, he was again permitted to appear in the improvement examination for the year 2001 in which he obtained 54% marks in Railway Commercial Working and pursuant thereto he was given appointment lateron. Similar submission has been made with regard to Sri Anil Tiwari. Learned counsel for the applicant again submitted that the action of the respondents has been violative of Article 14, 16 & 21 of the Constitution of India.

...4/-



4.

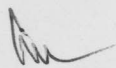
5. Learned counsel for the applicant further submitted that the coordinator of the Seth DGT High School issued a certificate dated 3.10.2001 stating therein that the applicant had qualified the examination and he is eligible for appointment.

6. The respondents have contested the claim of the applicant and have filed counter affidavit. Sri K.P. Singh, learned counsel for the respondents submitted that the Railway Board vide its circular dated 20.5.1994 has described that for vocational course, ^{aggregate} qualifying marks as well as as well as Railway Commercial Working is 55%, but vide circular dated 20.12.1995 the Railway Board has relaxed the qualifying criteria for OBC to 45% and the applicant being OBC candidate was eligible for this relaxation provided, he improved the position in the main examination conducted in next academic year. In support of his argument, the learned counsel for the respondents has relied upon the instructions of the Railway Board dated 27.10.1995, wherein the following has been stipulated:-

"the student who has failed or had been placed in compartment or who did not obtain the requisite marks in the 1st attempt may be offered appointment only if he obtains the required % of marks after clearing the compartment or improving the position in the main examination conducted in next academic year and **NOT LATER**".

7. Learned counsel for the respondents further submitted that the applicant appeared in the final examination in the year 1999 and secured 33% in aggregate and 26% marks in Railway Commercial Working and failed. Thereafter, he appeared in the year 2000 in which he secured 45.2% marks in aggregate and 44% marks in Railway Commercial Working. Then he appeared in improvement examination and only then he secured the requisite marks. Thus the applicant is entitled for any appointment

....5/-



5.


in view of the Railway Board's circular dated 27.10.1995.

8. Learned counsel for the respondents with regard to Mohd Rihan Khan and Sri Anil Tiwari submitted that they did not disclose the fact that they had appeared earlier, but failed and immediately on coming to know this fact the respondents have taken steps to terminate their services. Therefore, the applicant cannot claim any parity with these two persons. In support of his contention the learned counsel has relied upon the judgment dated 24.1.2002 of Principal Bench of this Tribunal in OA no. 1681 of 2000 in case of Abdul Rehman Khan in which Principal Bench has held that the applicant is not entitled for any appointment.

9. We have heard learned counsel for the parties at length, carefully considered their arguments and closely perused records as well as the pleadings.

10. Learned counsel for the applicant submitted that the applicant appeared in the examination held in the year 1998, but could not secure requisite marks. The applicant appeared for the subsequent year 2000 and finally he obtained the permission to appear in the improvement examination wherein he secured the requisite percentage of marks. The applicant's counsel also submitted that since the improvement was the part of the main examination held in the academic year 2000, therefore, he should be considered in the same academic year and it cannot be considered in the pervue of the word 'LATER' stipulated in the Railway Board's circular dated 27.10.1995. Since in the improvement examination the applicant has secured the requisite marks he is entitled for appointment. We are not inclined to accept this submission of learned counsel

...6/-



6.

for the applicant. The ratio laid down by the Principal Bench in case of A.R. Khan (supra) squarely covers the facts of the present case.

11. Learned counsel for the applicant has placed reliance on the latest circular of the Railway Board no. E(W)95EDI-8 dated 12.9.2003 whereby the Railway Board has further relaxed the chances to secure the requisite marks of 55% for general candidates and 45% marks for OBC/SC/ST ~~for~~ ^{from} 2 attempts to 4 attempts and now 4 attempts have been allowed. The contention of learned counsel for the applicant has been resisted by learned counsel for the respondents who submitted that circular dated 12.9.2003 does not have retrospective effect and, therefore, it would not cover the selections held in the year 2000. However, for convenience sake we would like to quote the Railway Board's circular dated 12.9.2003 addressed to all General Managers, which reads as under :-

"In supersession of Board's letter no. E(W) 89 ED1-13 dt. 20.5.94 and para 2.3 of Board's letter of even no. dt. 27.10.95 it has been decided that candidates who secured the prescribed percentage of marks (55% for general candidates, and 45% marks for SC/ST/OBC in Railway Commercial working as well as in the aggregate) either in the main examination or its compartmental examination, or subsequent main examination or its compartmental examination allowed under CBSE Rules (i.e. 4 chances in all), may be offered appointment on the Railways under VCRC scheme.

All the cases pending with the Railways may be reviewed and action taken accordingly."



...7/-

7.

12. On careful perusal of the above circular, we find that the Railway Board has given liberty to the authorities concerned to review the pending cases and take necessary action accordingly. It says "All the cases pending with the Railways may be reviewed and action taken accordingly."

13. In the light of the above, we are of the view that the interest of justice shall be better served, if matter is remanded back to respondent no. 4 to review the decision in the light of the Railway Board's circular dated 12.9.2003.

14. In the facts and circumstances, the OA is finally disposed of by remitting the case back to respondent no. 4 with direction to review the impugned order dated 7.1.2002 (Ann A12) in the light of the Railway Board's circular dated 12.9.2003. Respondent no. 4 is directed to pass suitable ^{reasoned} order within a period of three months from the date of communication of this order.

15. There shall be no order as to costs.


Member-J


Member-A

/pc/