

OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH ALLAHABAD**

(THIS THE 9th DAY OF AUGUST, 2010)

PRESENT:

HON'BLE MR. S.N. SHUKLA, MEMBER-A

ORIGINAL APPLICATION NO.489 OF 2007
(U/s, 19 Administrative Tribunal Act.1985)

Istiyak S/o Abdul Sattar,
R/o Mohalla Fatehpur Bazariya, Mahoba.

.....Applicant

By Advocate: Shri L.M. Singh

Versus

1. Union of India, through the General Manager,
North Central Railway, Allahabad.

2. Divisional Rail Manager, North Central Railway,
Allahabad Division, Allahabad.

3. Senior Personnel Officer, Recruitment Division,
North Central Railway, Jhansi.

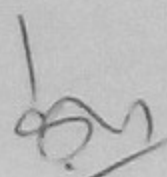
4. Senior Section Engineer, (P.Way)
North Central Railway, Mahoba.

..... Respondents

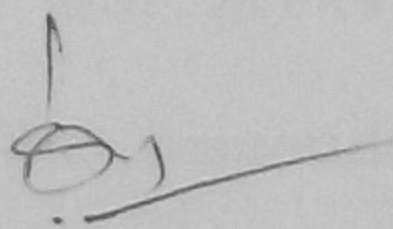
By Advocate: Shri Gautam Chaudhary

ORDER

Heard Shri L.M. Singh, learned counsel for the applicant and Shri Gautam Chaudhary, learned counsel for the respondents. This OA has been filed seeking relief in the nature of mandamus seeking an appointment to the applicant in Group 'D' post from the date when juniors to him got appointed. In the OA, however, there



is no mention of the names of the candidates who are alleged to be the juniors of the applicant who have been appointed before him. A mention can, however, be found in para 16 of the rejoinder affidavit where some names has been mentioned. However, there are no details of dates as to when these candidates were regularized and also there is no evidence to put to test, applicant's averments that these candidates were junior to the applicant. The allegation of the applicant remains unsubstantiated. Reference may now be taken to para 17 of the counter affidavit which states that the applicant was not found eligible on account of over age in terms of Railway Board circular dated 24.1.2001 and 20.09.2001 and, therefore, due to over age of the applicant sanction could not have been obtained for his regularization. It is also averred that Annexure A-5 and Annexure A-6 have not been received by the respondents. A perusal of Annexure A-5 shows that the applicant claims to be belonging to a caste of Momin Ansar which comes under OBC category. On a specific query, however, the learned counsel for the applicant is in no position to produce the record the OBC certificate in response to the applicant though even the applicant was present during the course of the hearing.



2. Shri Gautam Chaudhary learned counsel for the respondents appeared and relied upon the Counter affidavit.

3. Heard the learned counsel for the applicant and perused the material available on record. Since the question of claiming benefit under OBC category has come into existence only after filing of the RA and no evidence as claimed in the RA with regard to OBC category or his juniors having been regularized before him having been placed before the Tribunal, relief No.1 as claimed in this OA cannot be allowed. However, considering that the applicant has filed an affidavit regarding his OBC status and considering that the applicant's contention that he had no information regarding his case not having been considered came to his notice only when he come to know that persons junior to him have been regularized, he filed this OA.

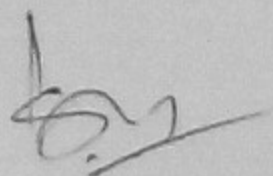
4. The interest of justice would, therefore, mandate that the applicant be allowed to make a representation before the authorities with all the evidence regarding his caste status and if such a representation is made before the authorities within four weeks of receipt of certified copy of this order, the respondent no.3 will pass a

1
201

reasoned and speaking order within a period of three months of receipt of such a representation. If the applicant succeeds in establishing his caste status and the applicant is found within permissible age on the relevant date i.e. 12.09.2001 as per rules and meets other eligibility criteria his case may be considered for regularization.

5. For computing limitation for any purpose wherever applicable the time taken between the date of filing of this OA till the date of this order will be excluded.

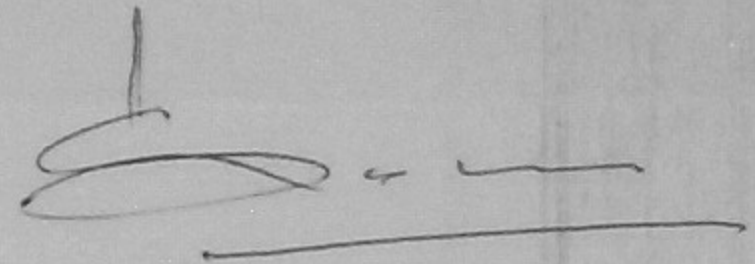
6. As regards the averment in para 11 of the counter affidavit that the regularization process was concluded in the year 2004, in this connection the learned counsel for the applicant relies upon an internal correspondence dated 22.12.2004 (Annexure A-4) where the names of the applicant was forwarded from the office of Senior Section Engineer, Mohaba to Senior Personal Officer Recruitment Cell, Jhansi. In view of the above, the time period till 22.12.2004 will also be excluded for calculating limitation, if any. Starting with 23.12.2004 and ending with the date when the first candidate junior to the applicant was regularized (if such date falls after 22.12.2004) will also be excluded.



7. The findings of the authorities may be communicated to the applicant forthwith.

8. With the above observations OA stands disposed of.

No Costs.

A handwritten signature in black ink, consisting of a stylized, cursive script that appears to be 'S. A.' followed by a horizontal line.

Member-A

/ns/