

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No. 672 of 1996

Present : Hon'ble Mr. Justice S.N. Mallick, Vice-Chairman
Hon'ble Mr. S. Dasgupta, Administrative Member

Satyendra Nath Mondal, s/o Late Krishna
Mohan Mondal, having his Serial No. 351 in
the panel of Assistant Driver(Elec/Diesel)
released by the Chairman, Railway Recruit-
ment Board on 7.6.88, residing at 72/12A,
Becharam Chatterjee Road, Behala, Cal-700034

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Applicant

-vs-

1. Union of India, service through the
General Manager, Eastern Railway, Cal.1;
2. The Railway Recruitment Board, service
through the Chairman, Railway Recruitment
Board, Calcutta, 16, Strand Road, M.M.
Building, Calcutta-1 ;
3. The Secretary, Railway Recruitment
Board, 16, Strand Road, M.M. Building,
Calcutta-1 ;
4. Chief Personnel Officer, Eastern Rail-
way, 17, Netaji Subhas Road, Calcutta-1.

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Respondents

For applicant : Mr. A.K. Basu, counsel

For respondents: Mr. M.M. Mullick, counsel

Heard on : 4.6.1998

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Order on : 19-6-1998

O R D E R

S.N. Mallick, VC

In this application, the petitioner has prayed for a
direction upon the respondents to appoint him as an Assistant
Driver(Elec/Diesel) on the basis of his seniority position in the
merit list of Assistant Driver(Elec/Diesel) published on 7.6.88 in
accordance with the direction given by an earlier Bench of this
Tribunal in O.A. No. 914 of 1990 as per judgment dated 30.7.1991.

2. The case of the petitioner is as follows :

The Railway Recruitment Board issued an Employment Notice being No. RRB/Cal/EN/1/87 dt. 29.3.87 published in All India Appointment Gazette for 487 posts of Assistant Driver (Elec/Diesel) under Category No. 8, in response to which a written test was held in the month of July, 1987 and the applicant was declared successful in the said test. He was called for psychological test in March, 1988. Annexure 'A' is the Admit Card issued to the petitioner dt. 25.6.87 in respect of the said written test and the letter dt. 18.2.88, which is a part of Annexure 'A' shows that the petitioner was directed to appear at the psychological test to be held on 15.3.88. On 2.6.88, the C.P.O., Eastern Railway had asked the Chairman, Railway Recruitment Board to send a panel for recruitment of 475 posts of Assistant Drivers to meet urgent demands. These posts were in addition to the earlier 487 vacancies covered by the Employment Notice dt. 29.3.87. In pursuance to the CPO, Eastern Railway's letter, the Recruitment Board on 7.6.88 released second panel of 473 candidates where the applicant was included. Annexure A/1 is the letter dt. 7.6.88 issued by the Chairman, Railway Recruitment Board.

It is the specific case of the petitioner that his name in the second panel appears at Srl. No. 351 and that the respondent No. 4 started to give appointment to the persons in panel of the second list on a pick and choose policy in a most arbitrary way for which 32 persons so empanelled had to move this Tribunal by filing an application being O.A. 914 of 1990. The said application was disposed of by an earlier Bench of this Tribunal on 30.7.91 with the following direction :-

" We also direct the respondents to exhaust the panel dated 7.6.88 and to fill up the existing vacancies by giving appointment to the panel candidates in order of merit position in the panel. The respondents are also directed to give employment to the

applicants, whose names are appearing in the panel in the post of Assistant Drivers (Elec/Diesel) upon compliance with the formalities required, if there be any prior to giving appointment. All these exercises to be completed within 6 months from the date of communication of this order. "

A copy of the entire judgment is to be found at Annexure A/2.

But the Chief Public Relations Officer, Eastern Railway, Calcutta instead of giving individual call letters to the empanelled candidates in accordance with the directive given by the Chairman, Railway Recruitment Board, issued notification in some leading Daily Newspapers. The petitioner missed the said Newspaper notification published on 8.9.91 and as such could not appear before the competent authority for such appointment. He preferred an appeal on 3.11.95 as per Annexure A/4, which is still pending. In terms of Para-4 of Annexure A/1, as referred to above, it was incumbent upon the respondents to send the offer of appointment by post to all the candidates concerned including the petitioner. But the respondents did not care to comply with such direction given by the Chairman of the Railway Recruitment Board as contained in his letter dt.7.6.88. The petitioner has further referred to a circular issued by the C.P.O., Eastern Railway dated 14.10.92 as per Annexure A/5, which provides that for the purpose of calling empanelled candidates for appointment, three call letters would be sent to them as per terms contained therein. The petitioner further states that ignoring his seniority position in the selection list dt.7.6.88 regarding second panel, his juniors have been given appointments superseding the seniors. Annexure A/6 tends to support this contention, which is dated 9.12.91. There is another appointment order dt.10.1.91, which is a part of Annexure-A/6, which supports the contention of the petitioner that his juniors have been given appointments. It is the case of the petitioner that he is similarly circumstanced with other applicants in O.A.914/90 and the persons included in the lists dt.9.12.91 and 10.1.91. It

is his case that by ignoring his right to an appointment, the respondents have violated the provisions of Articles 14 and 16 of the Constitution of India and have acted in a gross discriminatory manner. The petitioner has also referred to a judgment of this Tribunal dt.9.8.91 passed in O.A. No.721 of 1990 at the instance of some other applicants similarly circumstanced. Referring to its earlier judgment dt.30.7.91 in O.A. No.914/90, this Tribunal directed the respondents to give appointments to those applicants on the basis of their merit position in the panel in terms of the observations made in para-20 of the aforesaid judgment. The petitioner has also annexed a copy of the judgment dt.28.4.94 passed by another Bench of this Tribunal in O.A. 368 of 1994 at the instance of one Santosh Kr. Sinha, who is also similarly circumstanced on the basis of the judgment passed by the earlier Bench as referred to above. The petitioner in O.A. No.368 of 1994 was given similar relief.

3. The respondents have filed a short reply denying the allegations made by the petitioner and also challenging the maintainability of the application. It is also contended that the application is barred by limitation.

4. We have gone through the original application with its annexures and the reply filed by the respondents. The reply is absolutely vague and inconsistent and concentrates more on irrelevant facts than on the matter at issue. It is urged therein that under the first order of the Tribunal dt.30.7.91 disposing of the O.A. 914/90, directions were to be complied with within a period of six months. The time being short, individual call letters could not be issued and as such paper notification had to be given. The petitioner having not responded to the said notification, his candidature could not be entertained. It is the case of the respondents that the notification was published on 8.9.91 and the applicant

allegedly filed an appeal on 3.11.95 after a lapse of more than four years. It is, however, not denied by the respondents that the said appeal is still pending. It has been urged in the reply that the applicant's case could have been considered at the relevant time had he responded to the notice given in the Newspaper.

5. From the above averments on record coupled with the annexures to the Original Application, the undisputed fact remains that the petitioner was empanelled as an Assistant Driver (Elec/Diesel) as per Railway Recruitment Board's letter dt.7.6.88. It is uncontroverted that his position in the said list was 351. It also appears that in the order of the Tribunal dated 30.7.91 (Annexure A/2), there was no direction given upon the respondents to issue notice in the Newspapers instead of writing to the applicants individually. In the letter dt.7.6.88, the General Manager, Eastern Railway, Calcutta was directed to send offer of appointment to the empanelled candidates both at their present and permanent addresses as given by them in the application. There is nothing to show that this has been complied with by the respondents. Furthermore, as per Annexure A/5 dt.14.10.92 issued from the office of the C.P.O. addressed to different authorities, three call letters were to be given to the empanelled candidates for such a appointment. This has also not been complied with. The plea taken by the respondents that as the time was too short to comply with the order of the Tribunal dt.30.7.91 individual call letters could not be issued, instead of which a paper notification was made, does not seem to be convincing. They could have prayed for an extension of time for compliance with the order dt.30.7.91 before the Tribunal. Annexure A/6 dated 9.12.91 and 10.1.92 clearly indicate that juniors to the petitioners have been given

appointments. It also appears that similarly circumstanced persons have got relief from this Tribunal by the orders dated 9.8.91 and 28.4.94 passed in O.A. 721 of 1990 and O.A. No.368 of 1994 respectively. In case of such hostile discrimination in respect of the petitioner, we do not find any reason to hold that the application is time-barred or is not maintainable. The wrong is a continuing one and the petitioner is diligently ^{pursuing} pursuing his case with the respondent authorities. There is no reason to deny the petitioner similar relief granted to other empanelled candidates similarly circumstanced as per orders of this Tribunal dated 30.7.91, 9.8.91 and 28.4.94 as referred to above.

6. In view of the above, the application must succeed and we dispose of the same at the stage of admission with the following directions :-

In terms and in tune with the directions given by the earlier Benches of this Tribunal in O.A. Nos.914 of 1990, 721 of 1990 and 368 of 1994 as per orders dated 30.7.91, 9.8.91 and 28.4.94 respectively, we direct the respondents to give a call letter to the applicant as per extant instructions within a period of one month from the date of communication of this order giving him an opportunity to prove his other credentials as per procedure. The applicant shall be given appointment by the respondents if he is found otherwise fit in the vacancy still existing on the basis of the second panel as per letter dated 7.6.88 of the Chairman, Railway Recruitment Board. In case there is no vacancy at present, his case should be considered by the respondents for the next vacancy as soon as it arises. The age bar, if any, in the matter of appointment of the petitioner shall be condoned by the respondent authorities and he shall be given appointment with the seniority to be counted from the date he joins the post.

7. No order is made as to costs.


(S. Dasgupta)
Member(A)


(S.M. Mallick)
Vice-Chairman