

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No.O.A.860 of 1996

Present : Hon'ble Mr. Justice A.K.Chatterjee, Vice-Chairman.
Hon'ble Mr.M.S.Mukherjee, Administrative Member.

MS.SIMA MONDAL

Vs.

::: Petitioner

1. Union of India through the Chairman,
Railway Recruitment Board, Calcutta-1.
2. The Chairman, Railway Recruitment
Board, M.M.Building, 4th Floor,
16, Strand Road, Calcutta-700 001.
3. The General Manager, Eastern
Railway, 17, Netaji Subhas Road,
Calcutta-700 001.
4. The General Manager, South Eastern
Railway, Garden Reach, Calcutta-43.
5. The General Manager, Chittaranjan
Locomotive Works, P.O.Chittaranjan,
District : Burdwan.

... Respondents

For the petitioner : Mr.P.C.Das, counsel.

For the respondents : Mr.M.M.Mullick, counsel.
(for Railway Recruitment Board).

Mrs.B.Ray, counsel.
(for S.E.Railway).

Heard on : 13.8.1997

Order on : 16.9.1997

O R D E R

M.S.Mukherjee, A.M.

This is a petition under section 19 of the Administrative Tribunal Act in which the petitioner is aggrieved that she has not been finally selected for appointment and appointed to a post of Office Clerk despite her successfully appearing in the selection process initiated by the then Railway Service Commission redesignated as Railway Recruitment Board through their

employment notice dated 20.12.1984 and for this the petitioner has been denied the benefits of the Tribunal's judgments like O.A.845 of 1988 (Dilip Kumar & Ors. vs. UOI) decided on 19.1.1994, O.A.904 of 1992 (Sanjay Shekhar vs. UOI & Ors.) decided on 21.4.1995 and O.A.290 of 1995 (Jagannath Pandey & Another vs. UOI & Ors.) decided on 21.3.1996, all copies annexed as annexure 'H', 'H/1' and 'H/2' to the petition.

2. Briefly, the facts of the case are that the then Railway Service Commission issued an employment notice on 20.12.1984 for the post of non-technical popular categories including ministerial categories and in terms of the said notification, a written examination was held on 26.5.1985 and on the basis of the written examination the petitioner alongwith others received notice for interview and she appeared in the same on 23.9.1985. The petitioner's contention is that she did very well in the written test as well as in the interview, yet no list of successful candidates had been published by the respondents. On the other hand, according to the petitioner, the respondents without publishing the result of the interview, issued appointment letters to certain selected favoured candidates and being aggrieved a number of candidates moved ^{initially} ~~officially~~ the High Court and then the Tribunal ventilating their grievance for such malpractices. Eventually, this Tribunal decided the cases, T.A.548-550 of 1987 and O.A.327 of 1989 (Dipankar Bhattacharjee & Ors. vs. UOI & Ors.) in favour of the petitioners and the court gave the following directions, namely :

"Those who have appeared in the interview need not appear again and their cases for appointment will be considered as per the original marks obtained by them."

The respondents thereafter moved the Hon'ble Supreme Court through an SLP against the said judgment but the SLP was dismissed. Subsequently, a number of other cases had also been filed by other similarly circumstanced candidates claiming the benefit of the previous judgments and this

Tribunal has decided the cases in favour of the petitioners. Some such cases are O.A.845 of 1988, O.A.904 of 1992 and O.A.290 of 1995. The petitioner has asked for similar benefits claiming to be similarly circumstanced.

3. The respondents have contested the case by filing a written reply.

4. Their contention is that in terms of the employment notice dated 20.12.1984, a written test was held on 26.5.1985. The panel was prepared and published on 12.12.1986 and 16.12.1986 respectively. According to the respondents, the petitioner was not selected for the said post. The respondents object that the petitioner is similarly circumstanced to the petitioners of the earlier O.A.s and since he has come up with this petition so many years after 1986 and 1987, it is time barred. Moreover, the respondents contend that the vacancies have already all been filled up. Therefore, the respondents have urged for rejection of the case.

5. We have heard the ld.counsel for the parties and have gone through the documents produced.

6. Mrs.B.Ray, ld.counsel appearing for the S.E.Railway submitted that her client, S.E.Railway, has no role in the matter at the present stage unless the Railway Recruitment Board first recommends the petitioner for appointment.

7. The respondents first objection to the petition is on the ground of limitation. According to the respondents, the said selections had been made long back. The employment notice was issued on 20.12.1984 and the panel prepared in December, 1986, but the petitioner has approached the Tribunal about 10 years thereafter. The respondents do not admit to have received any representation from the petitioner on 25.3.1987 and even assuming such representation had been made on 25.3.1987, the cause of action on the basis of such representation would have lasted for only six months thereafter. Therefore, they contend that the case is barred by limitation.

8. We are afraid we cannot agree with the respondents on this score. The petitioner in the instant case had prayed

for the benefits of the judgment of the similarly circumstanced cases already mentioned there. In the case of seeking benefits of the previous judgments, we should not reject the case simply on the ground of limitation, ^{if} ~~when~~ ^{it upon} similar matter had been adjudicated by the court and the respondents had failed to get the said decision reversed by the Hon'ble Supreme Court through SLP, it was incumbent upon the respondents to ensure that all such similarly circumstanced candidates would get similar benefits and the unemployed candidates are not driven to expensive and time consuming litigation to get their reliefs. So this objection of the respondents is overruled.

9. The next objection of the respondents is that the petitioner is not similarly circumstanced. But there is no averment on the part of the respondents as to on what basis they contend that the petitioner is not similarly circumstanced. On the other hand, there are specific averments in the petition to prima facie establish that the facts of this case are on all fours of the case decided by the Tribunal. This objection of the respondents is, therefore, rejected.

10. The respondents next objection is that the posts for which the employment notice was issued in 1984 had already been filled up and at this stage the petitioner's case cannot be considered accordingly. In support of this contention, Mr. M. M. Mullick, the ld. counsel for the respondents have tried to rely on the judgment of the Hon'ble Supreme Court in the case of Ashok Kumar & Ors. vs. The Chairman, Banking Service Recruitment Board & Ors., reported in 1991 SC SLJ 90.

11. We are afraid that the facts of Ashok Kumar case are rather different. In that case employment requisition was given for certain number of vacancies, but the select list was prepared far in excess of the notified vacancies. In the context of this, the Apex Court held that the recruitment of the candidates in excess of the notified vacancies is bad and that the procedure adopted in appointing the persons kept in waiting list by the respective Boards, though the vacancies had arisen subsequently without being notified for recruitment is unconstitutional.

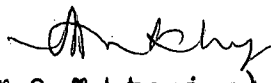
In the instant case, the facts are quite different. According to the employment notice, the written test and interview are to be held on specified dates and on the basis of the success in the written test, candidates were to be called for interview, but the employment notice categorically provided that final selection will be based on the total marks obtained in both the written test and interview. In the instant case, the petitioner had apparently succeeded in the written test and, therefore, there was formal call for the interview. But subsequently, the then Railway Service Commission, subsequently redesignated as Railway Recruitment Board, adjusted the evaluation of the candidates on the basis of certain complaints received and on the basis of certain enquiry allegedly conducted by the Eastern Railway authorities, Vigilance Cell, and on the basis of such adjusted marks certain appointments were given. Such actions have been held as arbitrary by the previous orders of the Tribunal in such similarly circumstanced cases. Therefore, it is not the case of the selection authority publishing a panel in excess of the notified vacancies as in the matter of Ashok Kumar case, when the issue is whether due to arbitrary action of the Railway Service Commission/R.R.B., the case of the petitioner has been wrongly prejudiced.

12. The Hon'ble Supreme Court's ruling in Ashok Kumar Case is therefore, of no assistance to the respondents. So we dispose of the petition with the following order :-

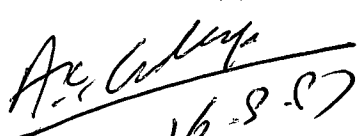
Within six months from the date of communication of the order, the respondents, particularly respondent no.2, shall ascertain whether the marks obtained by the petitioner in the written test were revalued and reduced and if so, to review her result on the basis of marks initially obtained by her before revaluation/reduction and if after such review and on considering the marks obtained by her in the written test and interview in the aggregate she appears in the

merit list above the candidate who has been appointed with the lowest marks, the petitioner shall be recommended for appointment in future vacancy and will be considered for such appointment, if otherwise found suitable. We, however, add that the petitioner shall not be disqualified solely on the ground that she has in the meantime become age-barred.

13. No order is made as to costs.


(M.S. Mukherjee)
Administrative Member

16/9/1997


(A.K. Chatterjee)
Vice-Chairman

16-8-97