

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH : JODHPUR**

**ORIGINAL APPLICATION NO. 234/2001**

**&**

**M.A. NO. 12/2003**

**Date of Decision : 23.07.2003**

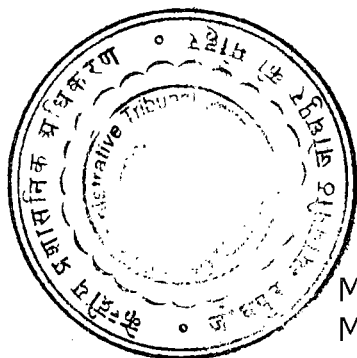
Natwar Lal son of Shri Maga Ram Solanki by caste Solanki (Harizen) resident of Mangal Bhawan, Dhobi Ghat, Chandmari Road, Abu Road.

**... APPLICANT.**

V e r s u s

1. Union of India through the General Manager (P), Western Railway, Headquarters Office, Church Gate, Bombay.
2. The Divisional Railway Manager (Estt.), Western Railway, Ajmer (Rajasthan).

**...RESPONDENS**



Mr. K.L Khatri, counsel for the applicant.  
Mr. Vinit Mathur, counsel for the respondents.

CORAM :

Hon'ble Mr. Justice G. L. Gupta, Vice Chairman.  
Hon'ble Mr. R. K. Upadhyaya, Administrative member.

ORDER

(Per Mr. Justice G. L. Gupta)

A vacancy for filling the post of Safaiwala was notified vide communication dated 18.06.1999 (Annexure A/4). The applicant also submitted his application. He was interviewed on 23.4.99. When he did not receive the appointment order and other person received the appointment order he made representation to the respondents. On 16.3.2000, the applicant was informed

that he was not given appointment because he was not found medically fit.

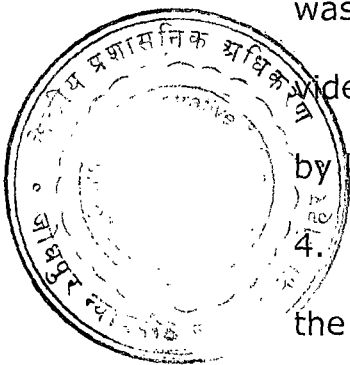
2. The grievance of the applicant is that he did not receive the communication dated 8.9.99 referred to in the letter dated 16.3.2000 (Annexure A/1) and that he is a healthy person and does not suffer from any ailment. The applicant has filed medical report given by a private medical practitioner. It is prayed that the respondents be directed to appoint the applicant on the post of Safaiwala with all consequential benefits.

3. In the counter, the respondents' case is that the applicant was not found medically fit and he was informed about the same vide communication dated 8.9.99 and this application is barred by limitation.

4. In the rejoinder the applicant reiterates the facts stated in the O.A. and says that he does not suffer from pulmonary tuberculosis.

5. We have heard the learned counsel for the parties and perused the documents placed on record.

6. The learned counsel for the applicant pointing out to para 522 of the Indian Railway Medical Manual, Vol.- I (IRMM for short) (3<sup>rd</sup> edition 2000), submits that the applicant had a right of appeal against the medical report declaring him medically unfit. He contends that the communication dt. 8.9.99 was not received by him and he has come to know about the unfit report for the first time when the copy of the reply was given to him. He submits that his client may be permitted to prefer an appeal against the findings of the Railway Doctor as per the provisions



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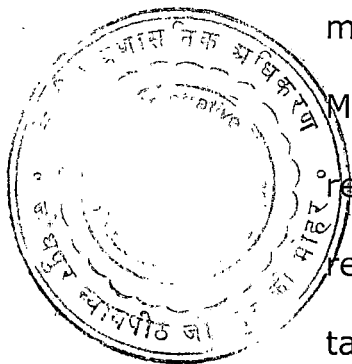
of rule 522 of IRMM and this O.A. may be disposed of by giving directions that the appeal of the applicant may be considered and disposed of without raising objection on limitation.

7. Mr. Mathur, the learned counsel for the respondents on the other hand submits that the O.A. has been filed after the expiry of the period of limitation and therefore it is liable to be dismissed. He further submits that this Court may not be justified in giving direction to the respondents to consider the appeal of the applicant ignoring the objection of limitation.

8. The applicant has filed the O.A. against the order dated 16.3.2000 whereby he was intimated that he was found medically unfit. Along with the O.A. the applicant has also filed M.A. for condonation of delay in which it is stated that he received the order Annexure A/1 and after that he made representation to the respondents and therefore some time was taken in filing the O.A. It is further stated that alongwith the representation the applicant had filed medical report obtained by him from a private doctor.

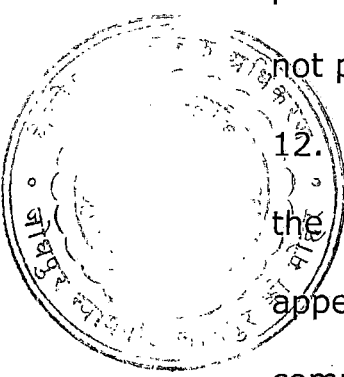
9. For the reasons stated in the affidavit filed in support of the M.A. the delay in filing the O.A. is condoned.

10. As to the communication dated 8.9.99, the applicant's case is that he never received the said communication. The respondents have not explained in the reply as to by which mode the communication was sent to the applicant. No proof showing that the letter dated 8.9.99 was delivered to the applicant has been produced by the respondents. It has therefore to be accepted that the applicant had not received the communication



dated 8.9.99. That being so, the O.A. cannot be dismissed on the ground that it has not been filed within one year from 8.9.99.

11. Para 522 of the IRMM is applicable to the candidates who apply for the posts in the Railways. It provides that there is no right of appeal against the findings of the medical authority, yet it is open to re-examination if some evidence is produced of the possibility of the error of Judgment within one month from the date of communication declaring the individual as unfit. It further provides that the Appellate Authority may entertain the appeal within a reasonable time after the expiry of the said period if it is satisfied that the candidate had sufficient cause for not preferring the appeal in time.




12. It is manifest that there is provision of re-examination of the candidate and appeal can be preferred. However, such appeal can be preferred within one month from the date of communication of declaring the individual as unfit. As already stated the applicant had not received communication before 16.3.2000. The applicant had no occasion to prefer appeal against the medical report Annexure - R-2 dt. 8.9.1999. He has come to know about the medical report for the first time when the reply in this OA has been filed. It is therefore, a fit case in which the applicant should be permitted to prefer an appeal in terms of para 522 of the IRMM.

13. Consequently, it is directed that if the applicant prefers an appeal in terms of para 522 of the IRMM within a period of 20 days from today (23.7.2003), the Appellate Authority may

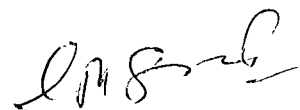


entertain the appeal without raising the objection of limitation and dispose it of in accordance with law.

14. The O.A. stands disposed of accordingly. No order as to costs.



**(R. K. UPADHYAYA)**  
**MEMBER (A)**



**(G. L. GUPTA)**  
**VICE-CHAIRMAN**

SVS

Recd. copy  
Jof  
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Part II and III destroyed  
in my presence on 24.3.09  
under the supervision of  
Section officer ( ) as per  
Order dated 13.12.08

Section officer (Recd)