

15

**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR.**

Original Application. No. 307/2006

Date of order: 10th September, 2008

Hon'ble Mr. D.Sankaran Kutty, Judicial Member.

Hon'ble Mr. Tarsem Lal, Administrative Member.

Inder Sain Mahawar, s/o Gurudayal Ji Mahawar aged about 35 years, R/o House No. 72/377, Near New Apostolic Church Gandhinagar, Abu Road, Distt: Sirohi (Rajasthan) Presently working on the post of Assistant Loco Pilot C/o Chief Crew Controller, Loco North Western Railway, Abu Road, Ajmer Division (Rajasthan).

: Applicant.

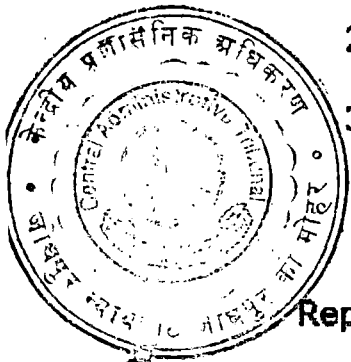
Rep. By Mr. S.K. Malik : Counsel for the applicant.

Versus

1. Union of India, through the General Manager, North Western Railway, Jaipur, Rajasthan.
2. Divisional Railway Manager, North Western Railway, Ajmer Division, Ajmer, Rajasthan.
3. Divisional Personnel Officer, North Western Railway, Ajmer Division, Ajmer, Rajasthan.

: Respondents.

Rep. By Mr. Salil Trivedi : Counsel for the respondents.



ORDER.

Per Mr. Tarsem Lal, Administrative Member.

Inder Sain Mahaver has filed O.A. No. 307/2006, under sec. 19 of the Administrative Tribunals Act, 1985, and has prayed for the following reliefs:

8 (a) By an appropriate writ, order, or directions, respondents may be directed to fill up FIVE vacant reserved posts of ST category candidates as per post based roster.

(b) By an appropriate order, writ or directions respondents may be directed to consider the case of the applicant for promotion to the post of Goods Driver against ST reserve point and If found suitable he may be

2

promoted from the date persons placed in panel dated 24.08.2005 (Annex. A/9) are promoted along with all consequential benefits including arrears of pay and allowances with interest @ 12% p.a.

2. The facts as relevant to the case are that the applicant was initially appointed as Artisan Khalasi w.e.f. 30.10.1983 in the pay scale of Rs. 750-940. Thereafter, he was selected for the post of Diesel Assistant (now redesignated as 'Assistant Loco Pilot') with effect from 18.06.2001.

3. The respondents vide their order dated 20.03.2003 (Annex. A/1) issued a revised seniority list of Goods Drivers in the pay scale of Rs. 5000-8000. Thereafter respondents issued revised the number of vacancies to be filled and eligibility list of Passenger Drivers vide their letter dated 24.07.2003.(A/2) The total vacancies to be filled were 54 out of which 7 were reserved for SC candidates and 4 were reserved for ST candidates.



4. The respondents vide their order dated 04.08.2003 (annex. A/3) notified 145 posts of Goods Drivers and invited applications for filling up the said posts from eligible Shunters, Diesel assistants. Out of 145 posts of Goods Drivers 17 posts were reserved for SCs and one post for ST category, and the remaining 127 posts were earmarked for general candidates.

5. The respondents have conducted the selection for promotion to the post of Passenger Drivers and after selection prepared a panel on 14.10.2003 (Annex. A/4). The respondents have promoted the

eligible adhoc passenger drivers, ⁻³⁻ senior Goods Driver and Goods Driver to the posts of Passenger Drivers vide their letter dated 17.10.2003(annex. A/5).

6. After filling up of 4 posts of ST category on the post of Passenger Drivers from Goods Drivers, four posts of Goods Drivers belonging to ST became available and those 4 posts would have to be filled as per post based roster in view of law laid down by the Hon'ble Supreme Court in the case of **R.K. Sabharwal vs. State of Punjab & ors.** [1995 SCC (L&S) 548]

7. The respondents vide their letter dated 23.12.2003 (Annex. A/6) declared the results of written examination conducted for the post of Goods Drivers, wherein the name of the applicant appeared at Sl. No. 161. The applicant along with some other affected persons submitted representation on 24.03.2004 stating that the number of reserved vacancies meant for STs have been reduced in the letter dated 04.08.2003 (A/3) and requested the respondents to re-check and rectify the same. When no action was taken by the respondents on the representation dated 24.03.2004, the applicant along with others submitted a reminder on 07.08.2004(Annex. A/8) and requested the respondents to do justice to SC & ST candidates.

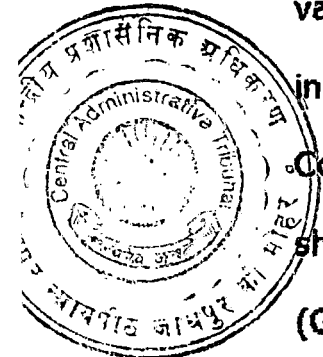
8. The respondents without paying any heed to the request of the applicant and others issued a panel of 106 candidates for the post of Loco Pilot (Goods), vide their letter dated 24.08.2005 (Annex. A/9)



-4-

keeping 35 posts for Gandhidham section as per the directions of Hon'ble High Court of Gujarat. In the said panel of 106 posts instead of keeping 5 posts reserved for STs only one post has been kept as reserved for ST category.

9. The respondents vide their letter dated 05.09.2005 (Annex. A/10) promoted persons on the posts of Loco Pilot (Goods). The applicant has pleaded that since out of 145 posts (Annex. A/3), a panel of 106 posts (Annex. A/9) was prepared and 35 posts were earmarked for Gandhidham Section, as per the orders of Hon'ble High Court of Gujarat, and therefore still four posts of Goods Driver remain vacant and the applicant was having legitimate expectation, keeping in view the reservation policy and the law laid down by the Apex Court in the case **R.K. Sabharwal (supra)**. The respondents should have issued panel of 4 ST candidates for post of Loco Pilot (Goods) but nothing was done. Representations dated 16.01.2006 (Annex. A/11) and 15.06.2006 (Annex. A/12) were made by the applicant along with other aggrieved persons reiterating request to respondents to re-check and rectify and do justice. Finally the respondents vide their letter dated 04.09.2006 (Annex. A/13) declared the results of the written test for the post of Goods Drivers wherein only 33 candidates have qualified in the written test and nothing has been done with regard to the unfilled ST vacancies arose in the grade of Goods drivers consequent to promotion as Passenger Drivers.



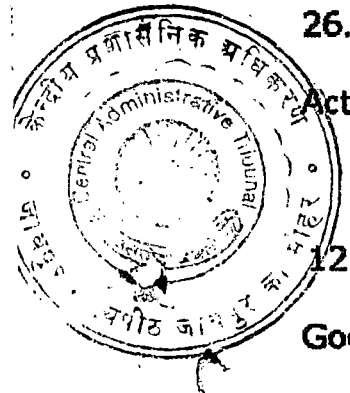
①

10. Taking into account 106 empanelled candidates for the post of Goods Drivers and further 33 candidates for Gandhidham section still 6 posts remain vacant, against which 4 unfilled vacancies of ST candidates can be adjusted. But no action has been taken by the respondents in this regard. Aggrieved by the above action of the respondents the applicant has filed the present O.A seeking the reliefs mentioned in para 1 above.

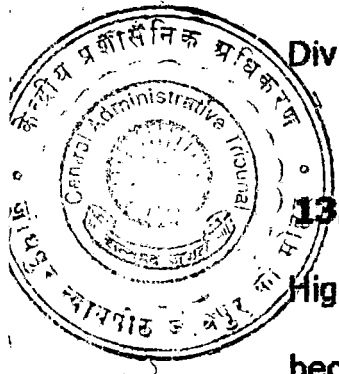
11. The respondents are contesting the O.A by filing a detailed reply, inter alia pleading that the cause of action had accrued to the applicant on 04.08.2003 (Annex. A/3) when notification was issued for Goods Drivers for filling up 145 posts (127 for general, 17 for SC and 1 for ST). The applicant at the relevant point of time kept quiet and now raised objection and therefore the present O.A filed on 26.12.2006 is beyond the period of limitation prescribed under the

Act.

12. The respondents have pleaded that selection for the post of Goods Driver was initiated vide order dated 04.08.2003 (Annex. A/3) for filling up 145 posts (127 for general, 17 for SC and 1 for ST). The result of the written examination was declared by the respondents vide order dated 23.12.2003.(Annex. A/6). The respondents have further pleaded that one Umesh Kumar Bhatnagar and 32 other Diesel Assistants of Gandhidham Section filed O.A. No.406/2003 before the Ahmedabad Bench of this Tribunal and an ad interim order was obtained against the selection procedure of Goods Driver on



01.01.2004 and it was ordered by the Tribunal that the selection in pursuance of notification dated 04.08.2003 (Annex. A/3) shall not be proceeded with till further orders. Subsequently, the above interim order was vacated by the Ahmedabad Bench of this Tribunal on 24.06.2004. Aggrieved by the said order dated 24.06.2004, the applicants before the Ahmedabad Bench, preferred Special Civil Application no. 9433/2004 before the Hon'ble High Court of Gujarat, in which the Hon'ble Gujarat High Court, passed an order on 03.08.2004, that the promotion to the posts of Goods Driver shall not be finalized and announced till further orders. Thereafter the Hon'ble High Court of Gujarat, passed an order on 24.12.2004, directing the respondents to hold supplementary examination for the posts of Diesel Assistants of Gandhidham Section who have opted for Ajmer Division for promotion to the post of Goods Driver.

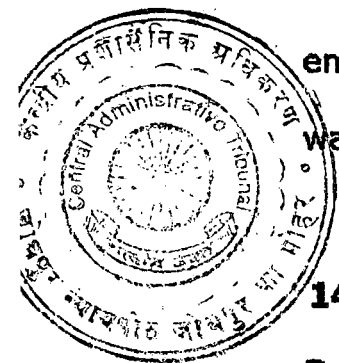


13. Finally vide order dated 10.08.2005, (Annex. R.5), the Hon'ble High Court of Gujarat disposed of the SCA No. 9433/2004 as having become infructuous. After the disposal of SCA No. 9433/2004, the respondents vide order dated 24.08.2005 (Annex. A/9) have provisionally declared the panel of 106 employees [99 General, 6 SC and 1 ST], for the post of Goods Driver in the pay scale of Rs. 5000-8000, keeping 35 vacancies for the Gandhidham Section. In the said panel 4 ST candidates at Sl. No. 8,38,39 and 42 were empanelled against General category and another ST person at Sl. No. 100 was empanelled against ST Point. Thus the provisional panel was declared after two years from the date of issue of notification dated

04.08.2003 (Annex. A/3) due to pendency of O.A No.406/2003, before the Ahmedabad Bench of this Tribunal and SCA No. 9433/2004 before the Hon'ble High court of Gujarat. Further, as per the order dated 10.08.2005 of the Hon'ble High Court of Gujarat, 35 employees of Gandhidham section were called for selection and a supplementary examination was conducted for them and thereafter final panel dated 08.03.2007 for 141 employees (127 General, 13 SC and 1 ST) was declared. Hence 4 posts of Goods Driver have been kept vacant for SC employees.. Further in the final panel dated 08.03.2007 (Annex. R/6) 7 ST employees were empanelled out of which 6 ST employees at Sl. Nos. 11,47,48,51,116 & 117 were empanelled against general category and one person at Sl. No. 139 was empanelled against ST point.

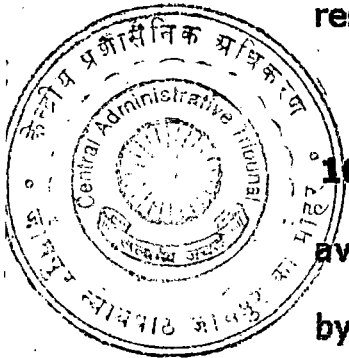
14. The respondents have further stated that the panel of Passenger Driver was issued on 14.10.2003, whereas the notification was the post of Goods Driver was issued on 04.08.2003. Therefore the question of inclusion of 4 ST employees in notification dated 04.08.2003 could not be taken into account. The respondents have also pleaded that ST employees who qualified the written test and placed at Sl. No. 101,128, 142,148,149, 150 and 157 were not found in the panel of Goods Driver. All these ST employees who qualified the written test are admittedly senior to the applicant as the name of the applicant is found at Sl. No. 161 in the results issued on 23.12.2003. Therefore the applicant cannot claim

D



for promotion of Goods Driver ignoring the above 7 senior ST employees.

15. The respondents have stated that the applicant at no point of time had raised any grievance against posts reserved for ST issued in the notification dated 04.08.2003. It is only after the provisional panel was issued vide notification dated 24.08.2005, when the applicant did not find his name in the provisional panel, an ill founded representation was made without any basis. The respondents have specifically stated that 4 ST employees vacancies were not available at the time of issuing notification dated 04.08.2003. The respondents have therefore prayed that the O.A may be dismissed.



16. The applicant has filed rejoinder generally refuting the averments made in the reply. An additional affidavit has been filed by the respondents. In the rejoinder filed by the applicant, the applicant has stated that he moved a representation on 22.07.2007 (A/14) demanding certified copies of Roster Register of Goods Drivers as well as the result of Written test and Viva Voce test held in pursuance of notification dated 04.08.2003. The same was replied by the respondents vide their letter dated 20.08.2007 (A/15) stating that in selection procedure, the result of viva voce test is not given and with regard to Roster Register, it was stated that the same is not available now and as and when the same becomes available a copy of the same would be made available. The applicant has filed an appeal on 23.08.2007 (A/16) and reminder on 08.10.2007 (A/17),

but of no avail. It is further stated in the rejoinder that as soon as the final panel was issued vide order dated 08.03.2007, the applicant has raised objection at the relevant point of time.

17. Learned counsel for the parties have been heard. They have reiterated their respective pleadings. They have made us to wade through various documents placed on record. The learned counsel for the respondents pleaded that the O.A is time barred since the notification for filling up 145 posts was issued vide order dated 04.08.2003,(A/3) wherein only one vacancy was shown against ST category. If the applicant had any objection he should have come before this Tribunal at that point of time. He has also not challenged the notification dated 04.08.2003 for promotion to the post of Goods Driver. In this regard the learned counsel for the respondents relied on the following judgements.:

Ramesh Chand Sharma vs. Udham Singh Kamal and others [1999 AIR SCW 3911]; **P.K. Ramachandran vs. State of Kerala and another** [(1997) 7 SCC 556]; **Union of India and another vs. N. Chandrasekaran and others** [AIR 1998 SC 795].

On merits, the learned counsel for the applicant strenuously pleaded his case taking most of the pleas already taken in arguments.

18. The learned counsel for the applicant has stated that when the notification for filling up of Passenger Driver was issued it was not known that 4 ST employees would be promoted against General category from Goods Drivers. The learned counsel further stated that he has no objection against notification dated 04.08.2003 (A/3) for recruitment to the post of Goods Driver and therefore he has not challenged the same.

②



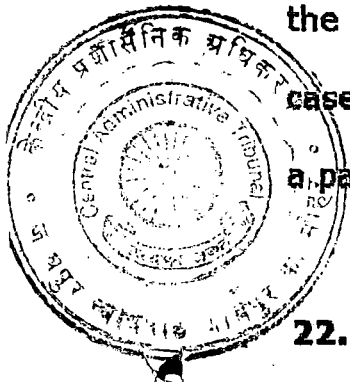
19. However, the final panel was prepared by the respondents vide their letter dated 08.03.2007 (Annex. R/6), and prior to that the applicant has been making repeated representations for rectification of number of vacancies relating to number of vacancies for ST category employees which have taken place while making recruitment to the post of Passenger Driver. The applicant has pointed out that he was demanding the roster register showing the category wise break up of vacancies. He also demanded that he may be supplied the results of Viva Voce test. The above documents were requested by the applicant vide his letters dated 22.07.2007, 23.08.2007. The respondents informed the applicant that roster register is not readily available and as and when the same is available it would be given to him. The respondents have also intimated that results of viva voce test is not issued.



20. The learned counsel for the applicant further pleaded that one Rakesh Kumar Dable, a ST candidate, whose name was not included in the provisional panel, similar to the applicant but his name was included in the final panel issued vide order dated 08.03.2007 (R/6). He, therefore, pleaded that the actual cause of action had accrued to him when final panel was issued vide R/6 and Rakesh Kumar Dable was included in the final panel. In this regard he relied on the following cases: Divisional Manager, Plantation Division, Andaman & Nicobar Islands vs. Munnu Barrick and others [2005 SCC (L&S) 200]; Shanti Lal Solanki vs. UOI [2003 2 ATJ 91].

In view of this the learned counsel prayed that the O.A may be allowed.

21. We have carefully examined the case and perused the documents placed on record. It is seen that notification dated 04.08.2003 (A/3) was issued for promotion of Goods Driver, which could not be finalized due ^{to} pendency of cases before the Ahmedabad Bench of this Tribunal and the Hon'ble High Court of Gujarat. Another notification dated 24.07.2003 (A/2) was issued for promotion to the post of Passenger Driver from the Goods Driver, in which four vacancies were earmarked for ST candidates. In the final panel, 4 ST candidates for Passenger Drivers were promoted against general candidates. Consequently, four posts are required to be filled from the same category. As per the judgement of the Apex Court in the case of **R.K. Sabharwal** (supra) vacancies created by promotion by a particular category are required to be filled by the same category.



22. As regards delay in filing O.A, following has been held in a judgement of the Apex Court in ~~the~~ case of **Collector, Land Acquisition, Anantnag and another vs. Mst. Katiji and others** [AIR 1987 SC 1353], particularly on Para 3, which reads as under:

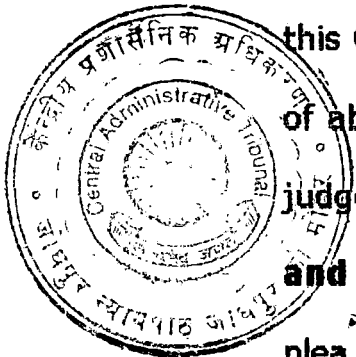
1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
3. "Every day's must be explained" does not mean that a pedantic approach should be made. Why every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.
4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

ⓧ

-12-

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or an account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.
6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

23. It is further noticed that the applicant has not been provided the roster register and the viva voce test result. However, one candidate Mr. Rakesh Kumar Dable whose name was not included in the provisional panel has been included in the final panel. The applicant has also been making representations from time to time for re-calculation of vacancies for ST category Goods Drivers. We are of the view that cause of action accrued to the applicant when the provisional panel of Goods Driver was declared as on 24.08.2005 and this OA has been filed on 26.12.2006. Thus there is a marginal delay of about 4 months, which is condoned in view of Hon'ble Apex Court judgement in the case of **Collector, Land Acquisition, Anantnag and another vs. Mst. Katiji and others** (supra). However, the plea of the learned counsel that in this case the applicant has a recurring cause of action is not sustainable.



24. As regards the merit of the case, the number of 4 vacancies for ST category was not available at the time of when notification for Goods driver was issued. It is for the respondents to ensure whether or not fresh notification is required to be issued for filling up the 4 posts of ST category in Goods Driver. It is also not clear at this stage whether the applicant will be eligible for appointment on the basis of his seniority. The applicant has also

2


-13-

been asking for certain documents as explained which have not been supplied to him. We are, therefore, of the considered view that the interest of justice would be met, if the respondents are directed to reconsider the case of the applicant with reference to the number of vacancies available in the ST category, seniority of the applicant and other requirements as per Rule and law.

25. In view of the above discussion, the respondents are directed to reconsider the case of the applicant with reference to the number of vacancies available for ST category, seniority of the applicant and with reference to the information relating to roster point register and result of viva voce test etc. The respondents would communicate the result of their reconsideration of the case to the applicant. In case, they are not able to offer appointment to the applicant as Goods Driver, a detailed speaking order may be issued. This exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

26. O.A is disposed of in the above terms.

27. No order as to costs


[Tarsem Lal]
Administrative Member.

Jsv.


[D. Sankaran Kutty]
Judicial Member.

4/8/1

Rec
S. K. Malik
Adv
16/9/18

Part II and III destroyed
in my presence on 15/1/18
under the supervision of
section officer () as per
order dated 19/8/2014
Section officer (Record)