

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
CALCUTTA

No. O.A. 916/1997.

Date of Order: 8.2.05

Present: HON'BLE MR. JUSTICE B. PANIGRAHI, VICE-CHAIRMAN
HON'BLE MR. N.D. DAYAL, ADMINISTRATIVE MEMBER

Amulya Sarkar

-versus-

1. Union of India
represented by the General Manager,

Eastern Railway,
17, Netaji Subhas Road,
Calcutta-700001.

2. The Chief Personnel Officer,
Eastern Railway,
17, Netaji Subhas Road,

3. The Divisional Railway Manager,
Eastern Railway,
Dhanbad Division,
Bihar.

4. The Senior Divisional Personnel Officer,
Eastern Railway,
Dhanbad Division,
Bihar.

FOR THE APPLICANT : Mr. A.K. Banerjee, counsel.
Mr. S.S. Mondal, counsel.

FOR THE RESPONDENT : Mr. P.K. Arora, counsel.

ORDER

PER JUSTICE B. PANIGRAHI, VICE-CHAIRMAN:-

This application is directed against non-appointment of the applicant in the railways.

2. The case for the applicant is that he applied for engagement as substitute in the Dhanbad Division of Eastern Railway against shortfall of SC/ST quota. By order dated 20.11.84, the CPO, Eastern Railway directed the applicant to report to the Sr. DPO, Eastern Railway, Dhanbad with all certificates for engagement as substitute. Accordingly the applicant reported to the Sr. DPO, Dhanbad and he was asked to



attend medical examination for such appointment. However, the said medical examination could not be held at Dhanbad. In spite of best efforts the applicant could not get himself medically examined. Thereafter when some senior officer of Eastern Railway visited Malda on 8.5.1984 the applicant and others represented to him about their difficulties for being medically examined. Thereafter the medical examination of the applicant and others was held and by a memo dated 15.12.1984 the applicant was declared medically fit for appointment. The applicant states that thereafter he went to join his post, but he was not allowed to join without assigning any reason. The further case of the applicant is that subsequently he approached the various authorities personally for his engagement as per the appointment order but to no avail. Afterwards, he came to know that some such persons who were similarly engaged as substitute like the applicant also could not join and, therefore, some such persons viz. Shri Umapada Acharya and Ors. Filed a case before this Tribunal being O.A. No. 24/1990 and the Tribunal by an order dated 20.8.93 directed the railway authorities to complete the screening of the applicants and to enlist them in the panel of substitute for engagement as and when vacancy would arise. Those persons were subsequently absorbed in the railways. Similarly one Sri Bikash Chandra Sarkar also filed a case bearing O.A. No. 1031 of 1994 which was decided on 4.6.1996 in favour of the applicant. The applicant claims that he is similarly circumstanced with the applicants of the aforesaid two O.As. He, therefore, made representation before the authorities for consideration of his case as well. However, when he did not get any favourable response he has filed this application praying for a direction to the respondents to engage him as substitute or any other job against SC/ST quota against existing, future, vacancy as per the appointment order already issued to him by way of extension of benefit of the decision of the Tribunal dated 4.6.96 in O.A. No. 1031/1994.

3. The respondents have contested the application and have urged that the application is hopelessly barred by limitation. It is contended that the applicant was allegedly given appointment in 1984, but he has filed this application only in the year



1997 and there is no satisfactory explanation for the delay and hence the application is barred by limitation under section 21 of the AT Act. The respondents have further stated that after medical examination the applicant never reported for duty and absconded himself, possibly he got some other employment and, therefore, was not interested in the job of the substitute. Therefore, the applicant cannot get any relief after all these years.

4. In the rejoinder the applicant disputed this stand of the respondents and has reiterated that he was pursuing his case to various authorities for all these periods and when the Tribunal granted relief to similarly circumstanced persons he has approached this Tribunal by filing this application for similar relief.

5. During the course of hearing the Id. Counsel for the applicant has submitted that the applicant although was given appointment as substitute and was also medically examined and declared fit, but he was not allowed to join his post. Thereafter he moved from pillar to post but to no avail. He further contended that since similarly circumstanced persons have been given relief by this Tribunal there is no reason why the applicant should also not be given same benefit and denial of such benefit would amount to hostile discrimination.

6. Id. Counsel for the respondents has, however, strongly contended that the application is hopelessly barred by limitation. He contended that even assuming that the applicant was denied appointment in the year 1984-85, he kept silent for all these years and has only filed this application long 12-13 years after the cause of action arose. He has, therefore, submitted that this application is time barred as provided under section 21 of the AT Act, and should be dismissed on this ground alone.

7. Both parties have relied on various decisions of this Tribunal in support of their respective contention. The Id. Counsel for the applicant has mainly relied on the decision of the Tribunal in O.A. 24/1990 decided on 20.8.93. In that case the applicants were appointed in Howrah Division of Eastern Railway as substitutes and they were also medically examined, but no offer of appointment was given to them



and they filed the application before this Tribunal in 1990. The respondents also took the point of limitation. They also took the ground that the applicants did not produce the relevant documents. However, the Tribunal did not agree to the contention and directed the respondents to screen them for enlistment as substitute. The applicant has also relied on another decision viz. O.A. 1031/1994 (Bikash Chandra Sarkar and Ors. Vs. UOI & Ors.). In that case, the applicants were also given appointment on 20.11.84 like the present applicant in Dhanbad Division as substitute. They were also medically examined on 4.12.1984, but no appointment order was issued to them. The applicant, therefore, filed the aforesaid O.A. The respondents contended that the posting order could not be issued as the applicants absconded and did not report for duty. The Tribunal, however, did not agree to the above contention holding that all particulars were submitted by the applicant and the respondents could have easily sent information to their address. The respondents also took the point of limitation, but the Tribunal held that since others were also appointed and since there was allegation of discrimination the question of limitation would not arise. Accordingly, the Tribunal directed the respondents to consider the applicant's case therein against next available vacancy in SC quota. There are some other cases also of similar nature wherein necessary orders were issued by this Tribunal.

8. The Id. Counsel for the respondents, on the other hand, placed reliance on the decision of this Tribunal in 1356/96 (Subrata Kumar Gupta Vs. Union of India and Ors.) decided on 13.9.2004 in which in similar circumstances the Tribunal rejected the O.A. On perusal of the said decision we find that there was some dissimilarity as the applicant therein was appointed, but he was subsequently disengaged for unsatisfactory service. In another decision being O.A. 30/1997 (Saifuddin Ahmed Vs. UOI and Ors.) vide order dated 2.5.2000 dismissed the O.A. on the ground of limitation. In that case also, the applicant was appointed in the year 1984 but he could not join and filed the case in 1997 like the present applicant. There the respondents

