

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.440/2002

WEDNESDAY, THIS THE 6th DAY OF OCTOBER, 2004

CORAM:

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR H.P. DAS, ADMINISTRATIVE MEMBER

Pradeepkumar K. Kariparambil S/o T. Narayanan
Thekkadavam House
Elambachi, Kanur District.

Applicant

By Advocate M/s. M. Sasindran & MB Prajith

Vs.

1. The Assistant Secretary
Railway Recruitment Board
Mumbai.
2. The Chief Personnel Officer
Central Railway
CST, Mumbai
3. The Railway Recruitment Board
rep. by its Chairman
Divisional Office Compound
Bombay Central, Western Railway
Bombay-400 008
4. Union of India
represented by Under Secretary
Department of Railway Administration
New Delhi. Respondents

By Advocate Mr. P. Haridas

The application having been heard on 6.8.2004, the Tribunal on
6.10.2004 delivered the following:

O R D E R

HON'BLE MR H.P. DAS, ADMINISTRATIVE MEMBER.

The applicant, Pradeep Kumar K Kariparambil, who successfully negotiated the selection process for the post of Assistant Chemist was declared provisionally selected for the post by the Railway Recruitment Board, Mumbai, and was recommended (30.8.1999) for appointment to the post in Central Railway. When the appointment orders did not materialise and

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even after taking up the matter at the highest level in the Railway Administration, there was no satisfactory reply, the applicant approached this Tribunal in O.A.173 of 2002 seeking a direction to the respondents to consider his representation. This Tribunal in its order dated 9.4.2002 directed the Chief Personnel Officer, Central Railway to consider his representation and give him an appropriate reply within a period of six weeks from the date of receipt of copy of the order. The Chief Personnel Officer after considering the representation replied to the applicant on 13.5.2002 refusing to accede to the claim of the applicant for appointment to the post on the ground that the post had in the meantime been upgraded and reclassified as a promotional post and not open for direct recruitment. It is against this (Annexure-A7) that the applicant has again approached this Tribunal in the present O.A.

2. Facts of the case, according to the applicant are that (i) the Chief Personnel Officer, Central Railway had placed an indent in Railway Recruitment Board(RRB), Mumbai for six posts of Assistant Chemists in the scale Rs.1320-2040 on 5.1.1998 (ii) the applicant had applied for the post being qualified and fully eligible in response to the notification issued inviting applications, (iii) RRB had conducted a written test on 2.5.1999 and on successfully clearing the written test the applicant had been interviewed on 24.8.1999, (iv) thereupon the first respondent, on 30.8.1999 had intimated the applicant that he has been provisionally selected and recommended for appointment to the post in Central Railway.

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3. The respondents however, held that the indent was only for two posts. The RRB had recommended Sl.No.2 and Sl.No.7 (the applicant) from a merit panel. When the RRB was going through the selection process, the Railway Board revised the Recruitment Rules and reclassified the posts in the cadre of Lab Assistants, Assistant Chemists and Chemists, thereby upscaling the post of Assistant Chemists, taking it out of reckoning for direct recruitment and making it available as a promotional post. This revision and reclassification order was issued by the Railway Board on 17.8.1998. On 23.10.1998 the Railway Recruitment Board were, however, advised by the Railway Board to go ahead with selection based on existing pre-revised rules. The Railway Board changed their decision again and advised the RRBs on 29.1.1999 not to go ahead with the process and posts in Lab were sought to be readvertised in view of modification of rules. The RRB, Mumbai evidently paid no heed and went ahead with the written test for the post of Assistant Chemists on 2.5.1999, and the interview on 24.8.1999, culminating in their recommendation dated 30.8.1999 for appointing two candidates (including the applicant). By that time, the revised grades had already come into force and the indent for Assistant Chemists placed earlier on 6.1.1998 had been revised to Lab Assistant in the scale Rs.3200-4900 and fresh indents had been placed on RRB on 29.6.1999. Therefore the Central Railways were in no position to entertain the recommendations. Even then, the second respondent had approached the Railway Board, to permit the appointment of the two candidates (including the applicant) whose names had been recommended by the RRB, as a special

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case, on the ground of shortage of staff. The Railway Board had not agreed to the proposal as the candidates were sought to be appointed to a post in a higher scale than for which they were selected.

4. We have heard the counsel for the parties and have gone through the averments and the evidences very carefully. The respondents have contended that the Railway Board's decision not to go ahead with the recruitment process in hand was communicated by Annexure-R2 dated 29.1.1999. But on a close reading of the text, we found that the communication related only to the posts of Pharmacist and Laboratory Superintendent. We do not see how this communication of the Board could be cited in support of the contention that the Board had advised the RRB to suspend the process for readvertising the post of Assistant Chemist. So, we have no basis to conclude that the RRB was not on the right track in going ahead with the recruitment process for the post of Assistant Chemist. The respondents have contended that the offer of appointment was subject to availability of vacancy. But this statement runs counter to their own admission that there was a shortage of incumbents for the post and hence the two selected candidates were recommended for appointment as a special case. We have noted that the post of Assistant Chemist already indented has now been identified as promotional post for Lab Assistant Grade-I. Lab Assistant Grade-II has been identified as the entry grade in the scale Rs.3200-4900, and a fresh indent in replacement of the indent for Assistant Chemists has been placed on RRB on 29.6.1999. We understand the inability of the Railway Board in appointing the applicant to the scale Rs.4500-7000, when he was selected

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for a lower scale. The pre-revised scale of Rs.1320-2040 has now been replaced by Rs.4500-7000 and a new intermediate grade of Lab Assistant Grade-I has been inserted between Lab Assistant-II and lab Technician/Assistant Chemist. Thus the post of Lab Assistant-II being the only opening grade available, the applicant could only have been offered the post of a Lab Assistant Grade-II. Expiry of the panel would not stand as a bar as the Railway Board and their Recruitment Board are both responsible for their internal communication gaps and that should not deprive a perfectly suitable candidate his employment. As we have said already we do not consider Annexure-R2 a credible message for interpreting that recruitment should be suspended in respect of the post of Assistant Chemist. That being the case, we see no legitimate basis upon which the recruitment could have been either suspended or cancelled.

5. The respondents have relied on the following judgments in support of their claim that the applicant is not entitled to any reliefs:

- i) Jaisingh Dalal & others Vs State of Haryana & others. (1993) 23 ATC 788
- ii) Shankarsan Dash Vs Union of India AIR 1991 SC 1612
- iii) Jayamohan Vs State of Kerala 1977(2) SC SLJ 131 .

6. We have gone through the judgments, but we do not find a basis for comparison. Here is a case where a candidate is recommended for appointment to a post which has in the meantime been upgraded and barred from direct recruitment. But at no time during the selection process has the candidate or Recruitment Board been alerted to the fact that the post was no longer available. It has been judicially held that

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Government have got powers to stop one from being appointed, or not to appoint a person even though he is in a merit list. We also recognise the principle that no one has absolute right to appointment. But in the circumstances of the present case, we are not inclined to grant the Railways the unfettered latitude to mess up the lives of unsuspecting bright young men who by dint of their merit made the grade, but were thrown out by the system because of mistimed decisions and inadequate instructions. Of course we do recognise that the post of Assistant Chemist for which they were selected is no longer available to them. But with their qualification the applicant and his more meritorious senior in the panel, who were recommended for the post of Assistant Chemist, can even now be considered for appointment to the post of Lab Assistant Grade-II, if they are willing and available.

7. In conspectus, while refusing to set aside A-7 order, we direct the second and fourth respondents to honour the selection made by the Railway Recruitment Board by offering the post of Lab Assistant Grade-II to the two candidates (including the applicant) who were recommended for the post of Assistant Chemist within a period of one month from this day, provided they satisfy the parameters for direct recruitment to that post in all respects, and if the offer is accepted then to appoint the applicant and the other to the post within a period of one month from the date of acceptance of such offer.

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8. We allow the application only to the extent of this modified relief, leaving the parties to bear their own costs.

Dated 6.10.2004.

16.10.
H.P.DAS
ADMINISTRATIVE MEMBER

trs


A.V. HARIDASAN
VICE CHAIRMAN