

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 602 OF 2004

The 31st July, 2007

CORAM:

HON'BLE Ms. SATHI NAIR, VICE CHAIRMAN
HON'BLE Dr. KBS RAJAN, MEMBER JUDICIAL

1. C.S.Sudhir Kumar,
S/o C.N. Sudhan,
Station Master Gr.III,
Southern Railway,
Cochin Harbour Terminus,
Residxing at Railway Quarter No.20,
Idappilly RS, Kochi-26.

.. **Applicant**

(Mr. Sudhir Kumar- Party in person)

-Versus-

1. Union of Indian,
Represented by the General Manager,
Southern Railway, Headquarters Office,
Park Town, PO, Chennai-3.
2. The Senior Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum-14.
3. The Chairman, Railway Recruitment Board,
Guwahati.
4. The Chairman, Railway Recruitment Board,
Kolkata.
5. The Chairman, Railway Recruitment Board,
Bhopal.

.. **Respondents**

(By Advocate : Mr Thomas Mathew Nellimoottil)

The application having been heard on 19th July, 2007 the Tribunal
delivered the following:

ORDER

(By Ms. Sathi Nair, Vice Chairman)

This application is filed by the applicant being aggrieved by the refusal of the 2nd respondent to forward his applications for the post of Law Assistant in response to the Notification issued by the Railway Recruitment Board, Guwahati, Kolkata and Bhopal, i.e. respondent Nos. 3rd, 4th and 5th respectively. The applicant has stated that the instructions of the Railway Board under MC No.330/91 dated 15.7.1991 relied upon by the respondents for denying his right to be considered for appointment has no application in this case.

2. Briefly stated the facts are that the applicant, who is a Law Graduate, while working as Station Master in the Trivandrum Division of Southern Railway, in response to the Employment Notice No.1 of 2004 issued by the Railway Recruitment Board, Guwahati, 3rd Respondent herein, published in Employment News 12-18 June 2004, submitted his application for the post of Law Assistant in the North East Frontier Railway

(Category-I) to the 2nd respondent for forwarding the same.

The applicant submitted another application in response to the

Employment Notice No.JEN.1/2004 to the post of Law Assistant

to the 2nd respondent for onward transmission to the Railway

Recruitment Board, Kolkata. Similarly, he submitted another

application for Law Assistant in response to the notice published

by the Railway Recruitment Board, Bhopal to the 2nd respondent

for onward transmission. The applicant had also enclosed all the

requisite documents and postal orders towards examination fees

etc. The last dates of receipt of the applications by the RRB

Guwahati, RRB,Kolkata and RRB,Bhopal were 12.7.2004,

19.7.2004 and 1.6.2004 respectively. The applicant was under the

belief that the 2nd respondent had forwarded these applications

well in time. However, he was surprised to receive the Annexure-

A/4 communication dated 6.7.2004 issued on behalf of the 2nd

respondent, stating that "As per the instruction relating to the

procedure for forwarding of application issued vide Bd's MC

No.30/91 dt. 15.7.1991, when disciplinary proceeding against an

employee is contemplated his application should not be

forwarded. At present a major penalty and another minor penalty are contemplated against you and as such your request to forward the application for the post of Law Assistant in other Railway Division is not agreed to by the competent authority and are returned herewith." The applicant further averred that the Instruction No. MC No.30/91 dt 15.7.91 (Annexure-A/5) of the Railway Board has no application and it applies only as regards applications submitted by the Railway employees for posts outside the Railways and not inside the Railways and the posts which he had applied for was within the Railways, and the refusal to forward the application by the 2nd Respondent has caused prejudice and irreparable loss to the applicant. He has sought for a direction to the 2nd respondent to receive back the applications submitted by the applicant and forward the same to the 3rd, 4th and 5th respondents and to direct the 3rd, 4th and 5th respondents to consider the applications of the applicant for appointment to the post of Law Assistant.

3. Per contra, the respondents have stated that pursuant to the interim order dated 16.9.2004 of this Tribunal, the

applications have been forwarded to the 3rd, 4th and 5th respondents as per letter dated 5.10.2004 (Annexure-R/1 series).

With regard to the applicability of the instruction dated 15.7.91 (Annexure-5) of the Railway Board, the respondents have stated that the applicant is not entitled to have the applications forwarded as a thorough reading of Annexure-A/5 would reveal that said instructions are to be enforced in respect of the applications for other post and it does not specify that the same are only in respect of the posts outside the Railways.

4. Thereafter, the case was adjourned on several occasions as 3rd, 4th and 5th respondents had not filed their written statements. At last, the 4th respondent, RRB, Kolkata, filed its reply on 6th February 2007 stating that they had considered the advance copy of the application submitted by the applicant and it was rejected since it had not fulfilled the prescribed eligibility criteria of submitting three recent passport size photographs with the application, as the applicant had submitted only two photographs. It has also been stated by the 4th respondent that final panel against the said category has

already been sent on 17.12.2005 to the Railway for appointment. It has also been stated that this Tribunal has no jurisdiction to adjudicate on this matter as it was specifically noted in the Employment Notice No.JEN-1/2004 that "for any legal action arising out of this Employment Notice the jurisdiction shall be Hon'ble Central Administrative Tribunal, Kolkata only"

5. The applicant has filed a rejoinder to the reply of 4th respondent stating that 4th respondent should have reconsidered the matter after receipt of the interim order of this Tribunal as they had received additional two more photographs of the applicant along with the application forwarded by the 2nd respondent. No reply has been filed by 3rd and 5th respondent or any instructions have been received as stated by the learned counsel appearing for them.

6. The applicant had argued his case in person and also submitted written arguments. The 2nd respondent has nothing to say except that he has already forwarded the applications. The applicant had approached this Tribunal in 2004 and it has taken almost 3 years for this case to reach at this stage. The main

relief sought for by the applicant is against the 2nd respondent- the Senior Divisional Personnel Officer, Southern Railway, Trivandrum Division, Trivandrum, who is within the jurisdiction of this Tribunal and the cause of action said to be originated by the rejection order not forwarding the applications submitted by the applicant in response to the Employment notice published in the Employment News to the Railway Recruitment Boards, Guwahati, Kolkata and Bhopal. This relief has already been granted by our interim order dated 16.9.2004 and the 2nd respondent had already complied with the direction so issued by this Tribunal. On merit, however, it is contended that Annexure-5 instructions gives them the liberty to withhold the application when disciplinary proceedings are contemplated against the applicant and that the respondents' action in not forwarding the same was correct. According to para 7.3 of the said Instruction, such applications should not be forwarded at all if the conduct of railway servant is under investigation and the investigation has reached a stage at which a prima facie case can be made out against the Railway servant, but formal charge sheet is yet to be

issued. Para 7.4 of Annexure-A/5 states that where the case against a Railway servant is only at the investigation stage and no *prima facie* case has been established against him, the controlling authority may forward his application. In the instant case, the respondents have not specifically stated anything about the stage of the departmental proceeding or the nature of the case pending or contemplated against the applicant and/or whether any charge sheet is issued against the applicant, therefore, we cannot go into the correctness or otherwise of the actions of the respondents. The respondents have only vaguely stated that "action for a major penalty and a minor penalty has been contemplated" against the applicant. However, the fact remains that we had already directed the 2nd respondent to forward the application and it has been complied with.

7. Next question is whether the applications have been considered by the respondent Boards. Only RRB, Kolkata, respondent No.4, has filed a reply statement raising the question of jurisdiction of this Tribunal, RRBs Guwahati and Bhopal have not filed any reply nor have given any instructions to their

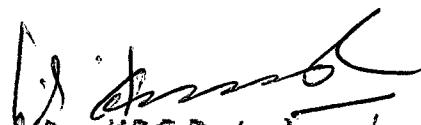
counsel appearing in the case, as stated by the learned counsel. Much time has elapsed after directions had been given to the 3rd, 4th and 5th respondents to consider the application of the applicant. Notices were also issued to them.

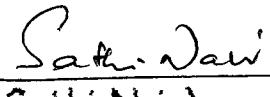
8. These Railway Recruitment Boards were impleaded as party respondents. The results and the selection were also directed to be subject to the outcome of this O.A. It was, therefore, legally binding on the respondents to inform this Tribunal whether they had considered the applications as directed by this Tribunal. Since three years have already elapsed, we do not find it practicable to extend the life of this application any further by waiting for reply from the 3rd and 5th respondents. Needless to say that the Hon'ble Supreme Court has ruled that a candidate applying for a post pursuant to an advertisement, if otherwise qualified, does acquire a vested right of being considered for selection in accordance with the rules. The applicant has rightly referred to a judgment of the Supreme Court in *NT Devinkatti -v- Karnataka Public Service Commission and ors (1990) 3 SCC 157*. As stated, 3rd and 5th respondents had

not forwarded any reply as to whether they had considered the applications submitted by the applicant.

9. Hence, we dispose of this application with a direction to 3rd and 5th respondents to furnish a reply to the applicant within a period of one month from the date of receipt of this order, as to whether they have considered the applications forwarded by the 2nd respondent vide letter No.V/P/95/11/Misc. dated 5.10.2004 (Annexure-R/1 series) and if so, communicate the outcome thereof. We also direct that if such application has not been considered by these respondents, it shall be considered as a special case, and if the application is found to be otherwise in order, the applicant's case shall be considered in terms of para 2.2 of Annexure-A/1 notification and similar provisions in other notifications, within a period of one month from the date of receipt of this order and the result of such consideration shall be communicated to the applicant.

Dated the 31st July, 2007


 (Dr. KBS Rajan)
 MEMBER-JUDICIAL


 (Ms. Sathi Nair)
 VICE CHAIRMAN