

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1057/92

Date of Decision: 24.6.1999

Shri. Uttam Joti Bagal

Applicant.

Shri S.R. Atre.

Advocate for
Applicant.

Versus

Union of India and others.

Respondent(s)

Shri S.C. Dhawan.

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice R.G. Vaidyanatha, Vice Chairman

Hon'ble Shri. D.S. Baweja, Member (A)

(1) To be referred to the Reporter or not? *no*

(2) Whether it needs to be circulated to
other Benches of the Tribunal? *no*

R.G. Vaidyanatha
(R.G. Vaidyanatha)
Vice Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH 'GULESTAN' BUILDING NO:6
PRESCOT ROAD, MUMBAI:1

Original Application No. 1057/92

Thursday the 24th day of June 1999.

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri D.S. Baweja, Member (A)

Uttam Joti Bagal
Residing at
Post Bhoare,
Taluka Madha Dist.
Solapur.

... Applicant.

By Advocate Shri S.R. Atre.

V/s.

1. Union of India through
The General Manager,
Central Railway.
Bombay VT.
2. The Divisional Railway Manager,
Central Railway
Solapur.

... Respondents.

By Advocate Shri S.C. Dhawan.

ORDER (ORAL)

(Per Shri Justice R.G.Vaidyanatha, Vice Chairman)

This is an application filed by the applicant under Section 19 of the Administrative Tribunals Act 1985. The respondents have filed reply. We have heard the learned counsel for both sides. We have also perused the original record produced by the learned counsel for the respondents before us.

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2. Few facts which are necessary for the disposal of the application are as follows:

3. The applicant at the relevant time, was working as Skilled Boiler Maker in Kurduwadi Loco Shed. It appears that in 1983 applications were called by notification dated 7.1.1983 for the post of Diesel Mechanic. The applicant's grievance is that in the notification the minimum qualification of 8th standard was fixed. The applicant's contention is that as per rule there is no minimum standard fixed for the said post and since he had only passed 4th standard he could not apply for the said post. In view of the minimum qualification mentioned in the notification, the applicant was deprived of applying and for going for training. But subsequently the applicant came to know that there was no such minimum qualification. Therefore he had filed the previous O.A. 543/89 on the ground that he was deprived for applying to the post in view of the minimum qualification mentioned in the notification dated 7.1.1983 signed by one Shri Deshpande. After hearing both sides, this Tribunal disposed of the O.A. by order dated 8.10.1991, directing the administration to consider the plea raised by the applicant about mentioning of the qualification in the notification and to do some enquiry and take a decision. With these observations the O.A. came to be dismissed.

On the basis of the direction given by the Tribunal, the department made some enquiry and it is found that no such notification by Deshpande had been issued by mentioning minimum qualification of 8th standard and reply to that effect has been given to the applicant by letter dated 3.3.1992. Being agrieved by this reply the applicant has approached this Tribunal by filing the present O.A.

4. Now the applicant is challenging the correctness and legality of this reply dated 3.3.1992. It is alleged that no proper enquiry has been held. That there are violation of Principles of Natural Justice in conducting the enquiry. That the applicant was deprived of applying for training due to mentioning that minimum qualification of 8th standard. That many juniors to the applicant have been selected for training. That, in the enquiry, applicant alone was examined and similar employees were not called for examination. It is therefore stated that enquiry is vitiated and mentioning of 8th standard as minimum qualification is contrary to rules. Therefore the applicant wants a declaration that the enquiry conducted by the administration is illegal and liable to be quashed and for further declaration that the applicant is entitled to be promoted to the post of Diesel Mechanic Grade II and for consequential benefits.

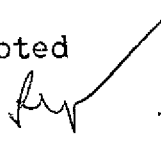
5. The respondents in their reply have stated that pursuant to the direction given in the previous O.A. an enquiry was held and it was found that no such notification had been issued mentioning 8th standard as minimum qualification. The respondents denied the contention of the applicant that he was deprived of appearing for training and they have subsequently denied putting up of the notification dated 19.1.1987 relied on by the applicant. It is stated that the notification was issued to all local sheds where there was no such condition of 8th standard as minimum qualification and that the enquiry has been done properly and the applicant is not entitled to any other reliefs.

6. After hearing both sides and perusal of the record we are satisfied that proper enquiry has been held by the administration. It is not a case of ^{formal} formal enquiry or regular enquiry. Since the applicant had assumed that notification had published prescribing the minimum qualification as 8th standard, the administration looked into the matter to find out the truth of the allegation made by the applicant. From the papers produced by the learned counsel for respondents we find that the administration wrote a letter to Shri Deshpande who is alleged to be the author of the impugned notification on which the applicant has placed reliance. Shri Deshpande has given written statement that he has not put up any notification in Kurduwadi Shed in which the applicant

was working. We may also notice that Shri Deshpande had retired from service and therefore there is no reason for him for making any false statement. If the applicant had any other material then it is for the applicant to produce any other evidence to show that such a notification was issued.

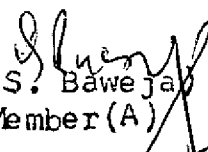
7. On the other hand the learned counsel for the respondents have brought to our notice the office copy of the notification dated 7.1.1983 and it is signed by Divisional Railway Manager. This notification is addressed to all local sheds. It is on the basis of this notification the applications were called for from volunteers. In this notification there is no such condition of minimum 8th standard qualification. There is no reason for the Railway administration to prepare such a false notification dated 7.1.1983. It is not a case of the applicant that in order to deprive him anybody has acted in a malafide manner.

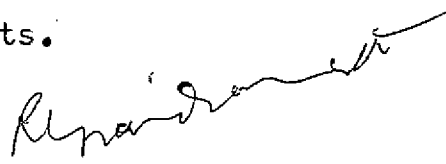
In fact the applicant himself has brought on record that one Shri Kamble from different Loco shed was selected who had passed only 7th standard.

After perusal of the materials on record we find that there was no such notification prescribing minimum 8th standard qualification and hence the applicant's contention that he was deprived of an opportunity to apply for training cannot be accepted. In fact the applicant has been subsequently promoted in 1985 when he applied for the said post. 

8. We may also notice that the applicant has filed an M.P. for amendment. It is seen that though amendment application was allowed by order dated 27.7.1998, no amendment has been carried out in the O.A. That is why the respondents were not called upon to file reply to the amended O.A. When the O.A. itself was not amended as per the order, we cannot go into that question of additional reply from the administration. However this is a new relief and does not flow from the original prayer of the O.A. Even otherwise the prayer must be deemed to be incorporated in the O.A. when the application for amendment was filed in 1988. Such a relief cannot be granted after a lapse of 14 years and therefore the application is not only barred by limitation but also suffers from delay and laches. Hence we cannot grant any relief and cannot consider the application on merits regarding the new prayer.

9. In the result the O.A. fails and is dismissed. No order as to costs.


(D.S. Baweja)
Member (A)


(R.G. Vaidyanatha)
Vice Chairman

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