

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1196/93

Date of Decision: 27-8-99

R. Rai

Applicant.

Shri G.K.Masand with Shri R.D.Deharia

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri S.C.Dhawan

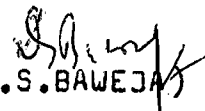
Advocate for
Respondent(s)

CORAM:

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

Hon'ble Shri. A.M.Sivadas, Member (J)

- (1) To be referred to the Reporter or not? ✓
- (2) Whether it needs to be circulated to other Benches of the Tribunal? †


(D.S.BAWEJA)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO. 1196/93

Dated this the 27th day of August 1999

CORAM : Hon'ble Shri D.S.Baweja, Member (A)
Hon'ble Shri A.M.Sivadas, Member (J)

Ramdeen Rai,
R/o. C/o. Shri A.L.Rai,
Lecturer, Behind Pench
Valley College, P.O.Parasia,
Dist. Chhindawara (M.P.).
Pin. 480 441.

... Applicant

By Advocate Shri G.K.Masand
with Shri R.D.Deharia

V/S.

1. Union of India through
the General Manager,
C.Rly., Bombay V.T.
2. The Chief Personnel Officer,
Head Quarters Office, G.M.'s
Building, 1st floor, C.Rly,
Bombay V.T.
3. The Chairman, Railway
Recruitment Board,
Divisional Office Compound,
Bombay Central, Bombay.
4. The Chief Workshop Manager (EW),
Manmad, C.Rly., Dist. Nasik.
Maharashtra.

... Respondents

By Advocate Shri S.C.Dhawan

O R D E R

(Per: Shri D.S.Baweja, Member (A))

This application has been filed by the
applicant seeking relief of directing the respondents
to issue appointment letter to the applicant for the
post of Apprentice Bridge Inspector Gr.III for which
he was selected.

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2. Railway Recruitment Board, Mumbai invited applications from eligible candidates for appointment to the post of Apprentice Bridge Inspector as per Employment Notice No. 1/88. The qualification laid down was Diploma in Civil/Mechanical Engineering. The notified vacancies were 14 which included 11 for general category and 3 reserved for Scheduled Caste, Scheduled Tribe and ex-servicemen^e categories. The applicant appeared in the selection and was finally selected as advised to him by the Railway Recruitment Board as per letter dated 18.10.1989. Thereafter, the applicant waited for appointment order which was to be issued by Chief Personnel Officer, Central Railway. The applicant received a letter dated 24.3.1990 from Chief Workshop Manager(Engg.Workshop) Manmad intimating to him that he can be offered appointment as Trainee Chargeman 'B' in the Workshop and if he is willing, he should send his acceptance. The applicant immediately sent his acceptance of this offer as per his letter dated 6.4.1990. Thereafter, the applicant waited for the appointment letter, but did not get^{any} in spite of repeated enquiries made with the Office of Chief Personnel Officer, Central Railway. The applicant also advised change of his address as per letter dated 18.7.1991 which was acknowledged as per the letter dated 16.8.1991. The applicant, however, as per letter dated 3.12.1992 was advised that it is not possible to offer him appointment to the post of

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Apprentice Bridge Inspector Gr.III. Thereafter, the applicant represented on 5.1.1993 to Minister for Railways but did not get any reply. He also made a representation through Minister of Environment and Forests who made a reference to Member Staff, Railway Board as per his letter dated 8.7.1993. Thereafter, waiting for a period of six months, the applicant has filed the present OA. on 5.11.1993 seeking legal remedy for the above referred relief.


3. The applicant has advanced the following grounds while seeking the relief of directing the respondents to offer appointment to the post for which he was selected :- (a) The applicant has a right for appointment for the post of Apprentice Bridge Inspector or Chargeman Gr.'B' in the grade of Rs.1400-2300 on being selected for the post. (b) Appointment ^{has been} offered to a candidate lower in merit than the applicant and therefore he has been discriminated. (c) The life of the panel could be extended till it is exhausted by the competent authority as was done in the case of the category of Permanent Way Inspector but the same has not been done for malafide reasons. (d) The selection was done common for Central and Western Railways and in case the vacancy was not available ^{on Central Railway,} the candidates on panel could have been appointed against the vacancies of Western Railway. The respondents have not done this



with a deliberate action. (e) The applicant was offered the alternate appointment as Apprentice Chargeman Gr. 'B' in the Engineering Workshop, Manmad, the applicant had accepted the same but the respondents have gone back on this offer.

4. The respondents have opposed the application through the written statement. The respondents admit that the applicant was selected in the recruitment year as per Employment Notice No. 1/88 as Apprentice Bridge Inspector and he was at Sr.No. 11 of the panel. The respondents further state that the panel was notified on 17.12.1989 and as ^{the} currency being one year^{only} it expired in 1990. It is further added that out of the panel of 14, offer of appointment could be given ^{only} to 3 general candidates and one SC candidate. The respondents submit that the SC candidate was below the applicant in the panel but have contended that this appointment has been made against the reserved post and therefore the applicant cannot claim any discrimination in respect of this appointment. The respondents maintain that nobody junior to the applicant from the panel has been appointed. As regards the non-filling up the vacancies as per notification, the respondents explain that on account of completion of construction projects and economy drive, a number of workcharge posts which were in ^{operation in} Railway Electrification and Construction Wing in the Civil Engineering ^{Department} had become

surplus and those Supervisors have been adjusted in the open line against the available vacancies. In view of this, it was not possible for the administration to offer appointment to the candidates placed on the panel for the post of Apprentice Bridge Inspector. In view of this, the respondents rebut the allegation of discrimination alleged by the applicant. As regards the offer of alternate appointment as Chargeman Gr. 'B' by the Chief Workshop Manager (Engineering Workshop) Manmad, the respondents state that he was not competent to issue such an offer of appointment as no change in category is permitted as per the rules laid down by the Railway Board. Therefore, the question of taking action as per the appointment offer by Engineering Workshop did not arise. The applicant was selected for the post of Apprentice Bridge Inspector and he could be appointed only on this post as modes of recruitment for the post of Apprentice Chargeman and Apprentice Bridge Inspector are different. Since there was no vacancy available for the post of Apprentice Bridge Inspector, the question of extending the currency of panel ^{also} did not arise. The respondents plead that in view of the position explained in the written statement, the present application is misconceived and deserves to be dismissed. The respondents have also taken a strong plea of the application being barred by limitation by filing the OA. in 1993 for the cause of action which arose in 1990.



5. The applicant has filed a rejoinder reply to the written statement controverting the averments of the respondents and reiterating his contentions made in the OA. The applicant maintains that the OA. has been filed within the limitation period since it was only through letter dated 3.12.1992 the applicant was advised that he cannot be offered appointment to the post of Apprentice Bridge Inspector.

6. The respondents have filed additional written statement for the rejoinder reply of the applicant reiterating their earlier submissions made in the written statement.

7. We have heard Shri G.K.Masand along with Shri R.D.Deharia, learned counsel for the applicant and Shri S.C.Dhawan, learned counsel for the respondents.

8. From the rival averments, the admitted facts are that the applicant was selected for the post of Apprentice Bridge Inspector against the Employment Notice No. 1/88 and was placed on the panel of selected candidates at Sr.No. 11. The notification was issued to fill up 14 vacancies with break-up of 11 vacancies for general candidates and 3 vacancies reserved for SC, ST and Ex-servicemen categories. Out of this panel of 14, only 3 general

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candidates and one SC candidates have been appointed. The main ground of the applicant is that since he has been placed on the panel, he has a right to be appointed for the post. The respondents, on the other hand, have contested the claim of the applicant stating that a candidate selected for appointment and placed on a panel does not acquire any right to be appointed and it is for the Government to decide whether to fill up all the notified vacancies or not. The respondents in support of this submission have relied upon the judgement of the Hon'ble Supreme Court in the case Shankarsan Dash vs. Union of India, 1991 SCC (L&S) 800. On going through this judgement, we note that the Hon'ble Supreme Court^{has} laid down the law that the candidate included in merit list has no indefeasible right to appointment even if a vacancy exists. It is considered appropriate here to reproduce an extract from Para 7 of the judgement as under :-

"7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bonafide for appropriate

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reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted."

It is further noted that similar view has been expressed by the Hon'ble Supreme Court in the subsequent judgements in the case of Union Territory of Chandigarh vs. Dilbagh Singh & Ors., 1993 SCC(L&S) 144, Babita Prasad & Ors. vs. State of Bihar & Ors. 1993 SCC (L&S) 1076.

9. In view of what is held by the Hon'ble Supreme Court in the above referred judgements, the claim of the applicant that he was entitled for appointment after being placed on the panel as a matter of right is not tenable. It is for the Government to decide whether to fill up all the notified vacancies or not. In case of non-
is challenged
appointment, the judicial review is to be confined to see that State's action in not filling up all or any of the
/vacancies is bonafide and not arbitrary. Therefore, the rival contentions have to be looked at to find out whether the action taken by the respondents in
notified
not filling up all the /vacancies legally sustainable. The respondents have submitted that out of the panel of 14, only 3 general candidates and 1 SC candidate have been appointed. This position is not refuted by the applicant and in fact the applicant himself has stated this in the OA. The applicant appears at Sr.No. 11 of the panel and therefore it is quite clear

that no one from the general category has been appointed below the applicant in the merit order. The SC candidate who has been appointed is at Sr. No. 12 as indicated by the applicant and confirmed by the respondents. The respondents have stated that the Scheduled Caste Candidate has been appointed against the quota of SC category to fill up the reserved backlog of the vacancies. Since the vacancy for SC category had been included in the notified vacancies of 14, we are not able to find any fault with the action of the respondents in offering the appointment to the candidate at Sr.No. 12 belonging to the Scheduled Caste. The applicant cannot have any grievance with regard to appointment of candidate at Sr.No. 12 belonging to the SC category. Thus, it would be seen that the comparative merit of the general candidates has been respected while making appointments to the extent the Government decided to fill up the vacancies and no discrimination has been caused to the applicant.

As regards the non-filling up of the notified vacancies, the respondents have explained that subsequent to issue of Notification in 1988 for the vacancies assessed in 1987, on account of economy drive, a number of work-charge posts in the Railway Electrification and Construction Organisation had become surplus and those surplus supervisors had ^{available} to be adjusted against the vacancies which also include

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the vacancies of Apprentice Bridge Inspectors. Respondents contend that ~~if~~ the serving staff becomes surplus and they

have to be adjusted against the existing vacancies, then and placed those who have been selected in the panel cannot have ^{any} preference over those who are already in service.

The applicant during the arguments has seriously challenged the action of the respondents in filling up the notified vacancies of Apprentice Bridge Inspectors by the surplus staff. This aspect ~~had~~ been deliberated subsequently. We do not find any illegality in the action of the respondents to fill up the available vacancies on preference for the surplus staff. We are of the considered opinion that the respondents have not acted arbitrarily in not filling up the notified vacancies on account of the need for absorption of the surplus staff.

In the light of these observations and the law laid down in the above referred judgements, we do not find any illegality committed by the respondents in not offering the appointment to the applicant for the post for which he was selected. The claim of the applicant that he had a right to be appointed ^{on being selected} has no merit and his claim for appointment deserves to be rejected.

10. The applicant had taken ~~another~~ ground that he was offered alternative appointment as Chargeman 'B' by the Chief Workshop Manager as per his letter dated 24.3.1990 and the same was accepted by the applicant, however, the respondents have gone back on the same and have not appointed the applicant as Chargeman 'B'. The respondents while admitting the issue of this letter by the Chief Workshop Manager, have stated that the Chief Workshop Manager had no authority to make such an offer as no change in category is permitted. The respondents submit that the applicant was selected for the post of Apprentice Bridge Inspector and he could be appointed only for this category and not for any other category. In view of this, no further action ^{could be} taken after the issue of this letter by the Chief Workshop Manager. The respondents during the arguments referred to the letter dated 4.1.1985 ^{of Railway Board} in support of their contention. We note from this letter that alternative appointment ^{only} can be offered ^{for those categories for which common} examination had been held and ^{that too} on the basis of merit in the combined merit list. The respondents have further stated that the examinations for filling up the post of Chargeman and Apprentice Bridge Inspector are held separately. Keeping in view the provisions in the Railway Board order dated 4.1.1985, we find merit in the statement of the respondents and accept the

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offer of appointment as Chargeman 'B' made by the Chief Workshop Manager was in violation of extant rules. The applicant could not be offered the appointment of Chargeman 'B' and therefore the applicant's challenge that the respondents have gone back on this offer is not sustainable. We do not find any illegality in the action of the respondents for not acting on the letter issued by the Chief Workshop Manager. The applicant has ^{also} ~~raised~~ ^{some} other pleas also with regard to extension of life of panel as well as offering of appointment on Western Railway in case the vacancies were not available in Central Railway. We do not find any merit in these submissions. If there was no vacancy available, the question of extension of life of panel did not arise as rightly pointed out by the respondents. If the applicant was allotted Central Railway, the applicant can ^{only} ~~claims~~ for being appointed on Central Railway and cannot make any plea of being considered for appointment on another Railway even if the selection was common for both the Railways.

12. The learned counsel for the applicant during the hearing strongly argued on the statement made by the respondents that the panel could not be operated for the notified vacancies as the staff rendered surplus in the Railway Electrification and Construction Organisation had to be absorbed. The counsel for the applicant stated that the action of the respondents in

adjusting the surplus staff against the vacancies of Apprentice Bridge Inspectors which was rendered surplus from the workcharge cadre is illegal. The counsel for the respondents, on the other hand, vehemently opposed any such plea being taken during the arguments. He submitted that the respondents had disclosed this fact in the written statement and the applicant in the rejoinder reply has not taken any such plea while replying to the submissions of the respondents. The counsel for the applicant, however, controverted this stating that this is a legal issue which could be raised at any time during the arguments and need not be taken in the rejoinder reply.

The respondents in reply to this contention of the applicant further stated that if the applicant was aggrieved by this action of the respondents, he could have amended his OA. with suitable averments which the respondents could have dealt with in the written statement. We have carefully considered the rival contentions and unable to subscribe to the stand of the applicant. We find that in reply to para 9 of the written statement where the respondents have mentioned about the filling up of vacancies by surplus staff, the applicant in rejoinder reply has not touched on this aspect. Further, the issue raised by the applicant is not a legal point alone but it involves the question of the facts and rules which need to be verified. The applicant has not cited any rules that the surplus staff of workcharge establishment could not be appointed against the vacancies in the

regular cadre. The
[applicant argued only in general terms stating
that absorption of surplus staff is illegal.
We are not impressed by the arguments of the
applicant. If the applicant was aggrieved by
the notified vacancies being filled by surplus
staff after disclosure of this fact in the
written statement, he ^{have} could have challenged the same
by amending the OA. by citing the relevant rules
and how far they have been violated. In the light of
the above observations, we do not find any merit in
the contention of the applicant.

14. The learned counsel for the respondents
during the arguments brought to our notice the order
of Allahabad Bench dated 29.7.1998 in OA.ND. 69/93
wherein the same panel for appointment to the post
of Apprentice Bridge Inspector was under challenge
and the relief prayed for being appointed has been
rejected. The counsel for the respondents further
stated that what is held in the order dated 29.7.1998
applies on all ^{four} to the present case. The counsel
for the applicant, however, contested this submission
stating that the order dated 29.7.1998 is erroneous ^{on} merits
as the view taken by the Bench that the notified
vacancies could be filled by the surplus staff of
establishment
workcharge /i.e. Railway Electrification and
Construction organisations is legally not tenable.

This aspect we have already gone into above and we do not find any merit in the submission of the applicant with regard to the illegality committed by the respondents in absorption of the surplus staff. Therefore, we do not find any ^{substance} in the contention of the applicant that the order of the Allahabad Bench is erroneous on merits. We have carefully gone through the order and find that on the facts, the present case is identical to the OA.NO. 69/93 as the same panel was under challenge and the same relief had been claimed. In view of our deliberations above, we are in respectful agreement with what is held in this order and the ratio of this order ^{therefore} applies to the present case.

15. The respondents have taken a plea that the application is barred by limitation stating that the cause of action arose in 1989 when the panel was notified and the present OA. has been filed in 1993. The applicant, on the other hand, has submitted that the applicant has been waiting for appointment and only in 1992 as per letter dated 3.12.1992 he was advised that the offer of appointment cannot be made to him. In view of the applicant, the cause of action arose with the letter dated 3.12.1992 and therefore the application filed on 5.11.1993 is within the limitation period. We are inclined to

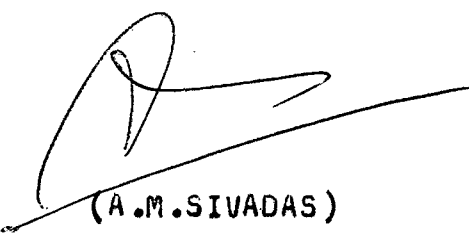
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subscribe to the submission of the applicant.

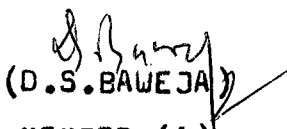
Once the applicant has been placed on the panel, it is taken that he will be waiting for appointment as he may not be aware of the life of panel. Further, he was offered an alternative appointment as per letter dated 24.3.1990 and was expecting that alternative appointment will be given to him.

We are of the view that the cause of action arose when the applicant was finally advised as per letter dated 3.12.1992 that he cannot be offered appointment. Therefore, the application filed in November, 1993 is within the limitation and there is no merit in the plea of limitation raised by the respondents.

16. In the result of the above, we find no merit in the OA. and the same is accordingly dismissed with no order as to costs.



(A.M.SIVADAS)
MEMBER (J)



(D.S.BAWEJA)
MEMBER (A)

mrj.