

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.572/92

Date of order: 26.9.'95

Pradeep Kumar Singhla : Applicant

Vs.

Union of India & Ors. : Respondents

Mr.D.P.Garg : Counsel for applicant

Mr.M.Bhandari : Counsel for respondents

CORAM:

Hon'ble Mr.O.P.Sharma, Member(Adm.)

Hon'ble Mr.Ratan Prakash, Member(Judl)

PER HON'BLE MR.O.P.SHARMA, MEMBER(ADM.).

In this application under Sec.19 of the Administrative Tribunals Act, 1985, Shri Pradeep Kumar Singhla has prayed that order dated 20.2.1989 (Annx.A1) may be set aside and the respondents may be directed to appoint the applicant on the post of Clerk Grade-I as per category No.1 of Employment Notice No.1/85 on the post of Sr.Clerk in Medical Category C.2. He has also prayed that any other alternative relief as may be deemed just and expedient in the facts and circumstances of the case may also be granted to the applicant.

2. The facts of the case as stated by the applicant are that respondent No.2, Railway Recruitment Board, Bombay, invited applications for the post of CG 1/ASM/Guards vide employment notice No.1/85. The applicant being qualified and eligible, applied for the posts in category No.1 of CG 1/ASM/ Guard. The applicant cleared the written test, the interview as well as the Psychological test. Psychological test is administered only to those who are to be appointed to the post of ASM. The Divisional Railway Manager, Sholapur, vide his letter dated 22.8.1987 (Annx.A2) offered to the applicant the post of ASM grade Rs.1200-2040, which was subject to passing medical examination in Category A/2. The applicant appeared

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for medical examination before the DMO, W.Railway, Jaipur, in May 1988 but since the applicant wears glasses he could not qualify in A/2 category without glasses. Thereafter, the applicant vide his letter dated 11.5.1988 (Annex.A3) applied for an alternative job to the DRM, Sholapur. The applicant's request for alternative post was sent by Head-quarters Office, Central Railway, Bombay to the Railway Recruitment Board, Bombay. Thereafter, the applicant sent a letter dated 18.8.'88 to the Chairman, Railway Recruitment Board (Annex.A4), praying that since combined examination was held for three categories of CG-1, ASM and Guards and the applicant had failed in the medical examination for Category A/2, he may be given an alternative appointment as Clerk Grade-I in lower medical category of C/2 as envisaged in Railway Board's letter dated 7.11.1985 (Annex.A5). The Chairman, Railway Recruitment Board, however, vide his letter dated 20.2.1989 (Annex.A1) unjustifiably turned down the request of the applicant by a nonspeaking order.

3. The applicant's grievance is that order Annex.A1 is a stereotyped order and is violative of the principles of natural justice. Since there was a combined examination for three categories of posts referred to above, the denial of alternative employment to the applicant is violative of Railway Board's letter dated 7.11.'85 (Annex.A5) and various provisions of the Constitution. The applicant's date of birth is 9.5.1963 and the applicant has completed 25 years of his age. He has, therefore, since become eligible for government employment.

4. No reply has been filed by the respondents. The learned counsel for the respondents raised a preliminary objection as to the maintainability of this application before this Bench of the Tribunal on the ground of jurisdiction. The learned

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counsel for the respondents stated that the cause of action arose to the applicant by virtue of letter Anxx.A1 dated 20.2.1989 by which the applicant was informed that since he did not come within the eligibility list of candidates for the post of CG-1, his request for considering the applicant for the said post cannot be acceded to. He stated that the recruitment of the applicant had been made by the Railway Recruitment Board, Bombay and this letter had been written by the Railway Recruitment Board, Bombay to the applicant whose address in this letter was of Bombay. He, therefore, stated that this Bench of the Tribunal has no jurisdiction over this O.A.

5. The learned counsel for the applicant argued that the applicant was a resident of Ajmer and the initial offer of appointment Anxx.A2 dated 22.8.1987 offering him the post of ASM was addressed to him at Ajmer. In pursuance of the said offer, he had appeared for medical examination before the DMO, W.Railway, Jaipur. It was, because of his being declared as medically unfit in Category A/2 that he had applied for the alternative post of CG-I. Therefore, according to him, part of the cause of action had arisen within the jurisdiction of this Bench of the Tribunal and the letter Anxx.A1 with which the applicant was aggrieved was merely an off shoot of the cause of action which had arisen within the jurisdiction of this Bench of the Tribunal.

6. After hearing the learned counsel for both the parties, we are of the view that this Bench of the Tribunal has jurisdiction to decide the matter. The initial offer of appointment to the applicant vide Anxx.A2 was made to him at Ajmer and in pursuance of that offer, he had appeared for medical examination before the DMO, W.Rly, Jaipur. Thus a part of cause of action arose to the applicant within the

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jurisdiction of this Bench of the Tribunal. Letter Anx. Al dated 20.2.89 by which the applicant is aggrieved is merely an off-shoot of cause of action which arose within the jurisdiction of this Bench of the Tribunal and it is not a cause of action which independently arose without any prior background. Also, this O.A. has been pending before this Bench of the Tribunal since 1989 and even on the principles of equity it cannot be held at this stage that this Bench of the Tribunal has no jurisdiction to decide the matter. Accordingly we reject the preliminary objection as to maintainability of the O.A. on the ground of jurisdiction and proceed to decide the O.A. on merits.

7. We had called for the list/panel of candidates selected for the post of ASM, CG-I and Guards relating to the impugned selection for the purpose of deciding this O.A. The learned counsel for the respondents stated that the records of Railways Recruitment Board are preserved only for 5 years. The direction of the Tribunal to produce the records was issued on 25.4.95. Since the selection pertains to the year 1986, therefore, at this late stage these records could not be made available.

8. As regards the merit of the case, the learned counsel for the applicant stated that there was a combined selection for three different posts and if the applicant had not been found suitable for one of these posts, he had to be offered another post out of these three categories because he had qualified in the selection. The learned counsel for the respondents drew attention to Anx. Al dated 20.2.89, wherein it was stated that the applicant did not fall within the list of eligible candidates for the post of CG-I and therefore, this post could not be offered to him. He stated that for each category of posts, persons have to be appointed according to their merit for that particular category and since the

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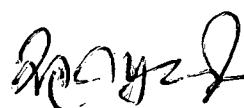
applicant did not fall within the list of eligible candidates for the post of CG-I, a reply had been sent to the applicant informing him accordingly. Therefore, the applicant had no case for being appointed on the post of CG-I.

9. We have heard the learned counsel for the parties and have gone through the material on record. In spite of our direction to produce the records relating to selection, these have not been produced. We cannot however overlook the fact that the direction were issued on 25.4.95 to produce the record relating to the selections which were made in 1986. Therefore, nonproduction of the records by itself cannot be a factor which can be held against the respondents. The learned counsel for the applicant was unable to point out any averment in the application to the effect that the applicant had specifically opted for post of CG-I, which could be offered to him if he had not been found medically fit for the post of ASM. In our view, the reply given by the respondents to the applicant vide Anxx.A1, fairly clearly states the position why the applicant could not be offered the post of CG-I. In these circumstances, we cannot come to the rescue of the applicant on his having failed to secure the post of ASM on medical ground. We cannot therefore, issue a direction to the respondents to offer him appointment on the post of CG-I.

10. While we cannot issue a direction to the respondents to appoint the applicant to the post of CG-I, we however take note of the fact that the applicant had qualified in the combined examination and after having been given the offer vide Anxx.A2 dated 22.8.87, he became overage for any government service. We are of the view that the respondents should take into consideration the humanitarian aspect of the matter and consider whether on the basis of the fact that the applicant had qualified in the common selection test, they can

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offer him an appropriate post keeping in view his qualifications now, without his being assigned any seniority on the basis of his claim that he should have been appointed to the post of CG-I on the basis of the original selection. It is expected that the respondents shall consider the matter sympathetically and also send a suitable communication to the applicant in this regard within a period of 4 months from the date of the receipt of a copy of this order. With these observations, the Q.A. is disposed of with no order as to costs.



(Patan Prakash)

Member(J).



(O.P. Sharma)

Member(A).