

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.94 of 1995

DATE OF JUDGEMENT: May, 1998

BETWEEN:

D.HEMANTHA KUMAR

.. APPLICANT

AND

1. Union of India represented by
The General Manager,
Calcutta-43,
2. The Sports Officer, S.E.Railway,
Calcutta-43,
3. The Sr.Divisional Accts. Officer,
S.E.Railway, Khurda Road,
Orissa,
(Ex-sports Officer, Visakhapatnam),
4. The Sr.D.M.E. & Sports Officer,
S.E.Railway,
Visakhapatnam,
5. The Divisional Railway Manager,
S.E.Railway,
Visakhapatnam.

.. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr.Y.SUBRAHMANYAM

COUNSEL FOR THE RESPONDENTS: Mr.CV Malla Reddy, Addl.CGSC

CORAM:

HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

HON'BLE SHRI B.S.JAI PARAMESHWAR, MEMBER (JUDL.)

JUDGEMENT

ORDER (PER HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.))

Heard Mr.Y.Subramanyam, learned counsel for the
applicant and Mr.C.V.Malla Reddy, learned standing counsel
for the respondents.

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2. The applicant in this OA is stated to be a Lawn Tennis Player and he had represented inter-college and inter-university tournaments ~~*****~~ and had been awarded merit certificates. The applicant has enclosed the certificates obtained by him and also other credentials from pages 13 to 23 to the reply to substantiate his above claim. The applicant submitted an application on his behalf on 23.7.89 for an appointment against sports quota. This application was not in response to any notification issued by the Railway-authorities calling for applications for appointment against the sports quota from the eligible candidates. A notification was stated to have been issued on 6.10.89 by R-5 for appointment against the sports quota Division for three games, namely, football, cricket and volley ball (Annexure I to the reply). It is stated that the applicant had not applied in response to that notification. The applicant kept on pursuing his case for appointment as he is proficient in Lawn Tennis. When he applied for appointment on 23.7.89, he was 23 years old. On 2.8.89, the Sports Officer, Garden Reach, S.E.Railway, Calcutta i.e, R-2 herein sent a letter to the Sports Officer, S.E.Railway, Visakhapatnam (R-4 herein) for giving the applicant a chance to appear for trial in the Tennis for appointment against the sports quota and if he satisfies the requirement, he may be considered for appointment against the sports quota in the Division. However, the Sports Officer, SE Railway Sports Association, Visakhapatnam vide letter No.SFRSA/NAT/8.Q Appt/93 dated 5.11.93 (Page 9 to the OA) had informed R-2 that since

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there is lot of demand for major games, the Division is not in a position to spare quota for Lawn Tennis for that year i.e, 1993 and hence the case was returned back to Calcutta for considering his case for trial selection observing the prescribed formalities and procedures. R-2 on the basis of that letter, subjected the applicant to a test for consideration for Group-D post and replied R-4 vide letter No.SERSA/Tennis/93/ dated 6.12.93 (Page 10 to the OA) that the case of the applicant may be considered for Group-D category in the Division as the applicant belongs to Waltair Division subject to the Railway Board's approval. It is further stated in that letter that "the applicant was tested through trial at Calcutta on 06.12.93 and was found satisfactory and upto mark (emphasis added)". The applicant was not appointed against the sports quota in Waltair Division. In the year 1993 he ^{was} ~~had~~ ~~*****~~ over aged i.e, beyond 23 years. Hence he was not appointed.

3. The applicant submits that there were posts earmarked for Lawn Tennis in the year 1994-95 also and even in that quota he was not selected and appointed. The General Manager has got full powers to relax the age in the case of outstanding sports persons in terms of Railway Board's letter No.E(NG)II/01/RR-3/7 dated 7.5.91 (Page 24 to the OA). The respondents failed to obtain necessary relaxation of upper age limit and appoint him.

4. This OA is filed to consider ~~the~~ ³ the age of the applicant at the time when the application was submitted for appointment against the sports quota i.e, 20.7.89 and the applicant being an outstanding sportsman may be

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considered for appointment against 1994-95 sports quota which is having four vacancies for filling up before 31.3.95.

5. An interim order has been passed in this OA on 29.3.95. As per this interim order, "any appointment that is going to be made under the ~~s~~^sports quota will be subject to the result of this OA".

6. A reply has been filed in this OA. The main contention of the respondents in the reply is that the applicant had not applied in response to the notification issued on 6.10.89 for appointment against the sports quota. Even if he ^{had} applied, he would not have been considered as the required field for the year 1989 was for Cricket and Football teams and four players i.e, two each in Cricket and Football with outstanding credentials were selected against that notification. The applicant had submitted his application much earlier on 23.7.89 ie, before the notification was issued and hence it cannot be treated that he had applied in response to any notification issued by the Railways for appointment against the sports quota. Further it is stated that there was no post earmarked for Lawn Tennis during the year 1989-90 and hence he was not considered for appointment against the category of Lawn Tennis for that year. Though R-5 recommended the case of the applicant for consideration for appointment against the Division quota in the year 1994, that year quota was earmarked for Football, Volleyball, Ball Badminton and Boxing games as per the requirements and recruited the sports persons against those posts. Thus no post was

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earmarked for Lawn Tennis during the year 1993-94 also. That position had resulted in non acceptance of recommendation of the Head Office. The applicant's application was returned to Head Office, Calcutta for the division did not require a Lawn Tennis player. The respondents deny the allegation of the applicant that one post was earmarked for Lawn Tennis player in the quota of 1993-94.

7. The respondents submit that the age as on the date of application dated 23.7.89 is not relevant. Age at the time of issue of the notification or at the time of appointment is only relevant. The applicant cannot be considered against the notification in 1993-94 and 1994-95, as he was beyond the age limit. Further, the General Manager has got powers to relax the age upto 26 years only in exceptional circumstances. But as per the trial conducted by the Headquarters, the applicant was stated to be only upto mark and satisfactory but not outstanding. Hence the exceptional circumstances are not available to the applicant for obtaining relaxation of age from the General Manager. Thus the respondents justify in not appointing the applicant against the sports quota.

8. The applicant has filed additional affidavit enclosing the recruitment rules for appointment against the sports quota as well as the judgment of Gujarat High Court reported in 1994(2) SLJ 115 (Popatbhai Ramjibhai Moghariya and Ors. v. District Judge, Surendranagar and Ors.) to

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substantiate that age cannot be related to the date of appointment.

9. A rejoinder has also been filed in this
less on the same basis as the OA.

10. The applicant submitted his application for appointment against the sports quota in the discipline of Lawn Tennis on 23.7.89. His application at that time was not ~~against~~ ^{in response to} any notification issued by the Railways for
The applicant did not apply in response to the notification issued by the Railways on 6.10.89. Having not applied for that post against the notification, the applicant submits that he should also be considered in the year 1989 itself as he was within the age limit at that time. The rejection of his case on the ground that he was beyond the age of 23 even appointment against for sports quota earmarked in the years 1993-94 and 1994-95 is not valid and his age at the time of submission of the application was only to be taken note of and not at the time of appointment. For the above submisison, he relies on the judgment of Gujarat High Court reported in 1994(2) SLJ 115 cited supra.

11. It is not understood why the applicant had not applied in the year 1989 itself when the notification dated 6.10.89, annexed to the reply, was issued. Probably he must be under the impression that his earlier application dated 23.7.89 will be considered. In order to substantiate that position, he should have at least formally applied in

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response to the notification dated 6.10.89 for consideration of his case on the basis of his earlier application dated 23.7.89. But nowhere it is stated either in the OA or in the rejoinder that he did so. Aspirants for that matter for appointment can insist on his right ^{for consideration of their cases} only if they had responded to any particular notification. Any request later made by the candidate earlier or later without response to the notification cannot have any legal binding on the respondents or the appointing authority. Obviously, the applicant had not applied in response to the notification dated 6.10.89. Hence how far he can ask for relaxation of age when he had not responded to the notification dated 6.10.89, is the point for consideration. The applicant submits relying on the judgment of the Gujarat High Court referred to above that the aspirants for a post should be considered eligible if he fulfills the age condition on the date of the notification and as he was within 23 years when he submitted the application on 23.7.89 his case cannot be rejected even if he is overaged at the time of his appointment.

12. We have perused the judgment quoted above. In that case, the petitioners therein responded to the notification but they could not be appointed due to some reason or the other and when they were to be considered for appointment, they were overaged and hence their case was rejected. Under those circumstances, the Gujarat High Court had held that the petitioners therein should be considered for appointment if selected on the basis of the fulfilment of their age required at the time of issue of

the notification. But in this case the applicant had not responded to the notification. He was overaged in the year 1993-94. Hence the case cited by him may not be helpful to him as facts of that case are different from the facts of this case. The applicant has not made any attempt to prove that he had applied in response to the notification dated 6.10.89. Hence when the case of the applicant was rejected on the basis of the overage, the same cannot be termed as unlawful or irregular.

13. The applicant submitted his application for appointment against sports quota on 23.7.89. He was not selected when the names of selected players who applied in response to the notification dated 6.10.89, were notified. The applicant should have represented at that time itself for not considering his case against the notification when he had submitted application on 23.7.89. If no response ^{was} ~~is~~ received in that connection or he was not satisfied with the response given to his representation, he should have approached this Tribunal well in time immediately after ~~that~~. But the applicant submits that he was making correspondence and hence he did not take recourse by approaching the judicial forum for redressal of his grievance. When his case was not considered for recruitment in the year 1993-94 and 1994-95, then only he has filed this OA on 23.1.95. Thus the applicant waited from 1989 to 1995 i.e., about six years in approaching this Tribunal. Hence it will be difficult for us to give any relief to the applicant for considering his case in response to his application dated 23.7.89. The applicant failed to take appropriate action in time. Thus there ^{are} ~~were~~

lot of delays and laches on the part of the applicant and also the application is belated one. Hence the application is liable to be rejected due to bar of limitation, delay and laches.

14. The applicant submits that the General Manager has got powers to relax the age limit upto the age of 26 years in view of the Railway Board's letter dated 7.5.91 (Page 24 to the OA). We have perused this letter. The applicant further submits that no attempt was made to put up his case to the General Manager for obtaining relaxation of age for the recruitment year 1993-94 and 1994-95 and the respondents unnecessarily written to the Railway Board for their approval. This in his opinion is meant to deny him an opportunity for appointment against the sports quota.

15. The letter of Railway Board dated 7.4.91 is very clear. It provides for relaxation of upper age limit of 26 years in exceptional cases by the General Manager. Para 2 & 3 of that letter is relevant in this connection. This para is reproduced below:-

"2. The question of fixation of upper age limit for recruitment of sportsperson was discussed during the General Council Meeting of Railway Sports Control Board held on 17.1.91 and it was decided that the Railways shall henceforth recruit sportsperson upto the age of 23 years normally. In exceptional cases, General Managers may consider relaxing the upper age limit to 26 years, only.

3. Ministry of Railways have considered the recommendations of Sports Control

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Board. It has accordingly been decided that henceforth the Railway administrations shall normally recruit sports persons against sports quota with the upper age limit to 23 years. In exceptional circumstances, the upper age limit may be relaxed upto 26 years with the specific approval of the General Manager."

15. From the above letter, it is very clear that the General Manager can give ~~*****~~ recommendation for ~~*****~~ appointment against the sports quota in a very narrow margin i.e, reason ~~***~~ for consideration is that the applicant to be considered should possess outstanding sportsmanship and in that case only the case can be considered. The applicant was put to trial on 6.12.93 for assessing his suitability for appointment in the discipline of ^{Lawn} Tennis. R-2 in his letter dated 6.12.93 (Page 10 to the OA) had categorically stated that the applicant's performance was found to be satisfactory and upto mark. It has been stated that on the basis of the trial held on 6.12.93, the applicant was termed as outstanding player with exceptional qualities in the discipline of Lawn Tennis. Hence, even if the case of the applicant is put up to the General Manager for relaxation of the age limit for appointment during the years 1993-94 and 1994-95, there may not be ^{any} possibility for the General Manager to relax the age of the applicant to 26 as his performance was found to be satisfactory and upto mark but not outstanding. Hence possibility of consideration for relaxation of the age is also very remote and hence the applicant's contention that had his case been put up to the General Manager, he would have given the age relaxation, is not found acceptable on the basis of the record.

16. The respondents in their reply categorically stated that the notification issued on 6.10.89 in the year 1989 is only for selection of candidates in the field of Cricket and Football and they have selected four players against that notification i.e, two each in cricket and

submitted that no post was earmarked for Lawn Tennis during 1989-90. It is also stated that no post was earmarked for Lawn Tennis even for the year 1993-94 and thereafter for 1994-95 also. The headquarters also had not considered his case as he belongs ^{ed} to Waltair Division and there were number of demands on headquarters organisation for appointment against major games and hence his case ^{Could} cannot be considered even against sports quota in the headquarters.

17. From the above it is evident that the division had not earmarked any quota for Lawn Tennis players in the years under discussion. The respondents also could not consider his case as there was demand for major games. Aspirant for sports quota cannot demand as a matter of right for consideration if there are ^{no posts} ~~earmarked~~ ^{particular discipline in sports} for Lawn Tennis Players. Sports quota is decided on the basis of the necessity of appointment of sports persons in some disciplines. Such consideration may be based on the basis of making a team, availability of extraordinary sports persons in the field and similar other considerations. Nobody can demand as a matter of right to appoint against sports quota if appointment against that discipline is not warranted for justifiable reasons. The respondents have clearly stated that they required sports

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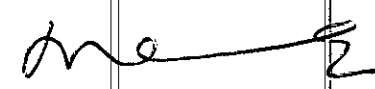
persons only in Cricket and Football to form a team and also there were demands from major games for recruitment. In no year in Waltair Division the posts were earmarked for Lawn Tennis players. Hence the applicant cannot, as a matter of right, demand from the division to divert one of discipline and appoint the applicant who is a Lawn Tennis player. Even to consider him by diversion, he should be an extraordinary sportsman in Lawn Tennis field but the letter dated 6.12.93 does not indicate so. Hence the decision of not considering him for appointment against Lawn Tennis set-aside to give a direction to appoint the applicant.

18. In view of what is stated above, we find that there is no merit in this OA. Hence the OA is liable only to be dismissed and accordingly it is dismissed. No order as to costs.


(B.S. JAI PARAMESHWAR)
MEMBER (JUDL.)

6.5.98

vsn


(R. RANGARAJAN)
MEMBER (ADMN.)

M. 1/5591
Dnc

Copy to:

1. The General Manager, South Eastern Railway, Calcutta.
2. The Sports Officer, South Eastern Railway, Calcutta.
3. The Senior Divisional Accts. Officer, South Eastern Railway, Khurda Road, Orissa.
4. The Sr.D.M.E. & Sports Officer, South Eastern Railway, Visakhapatnam.
5. The Divisional Railway Manager, South Eastern Railway, Visakhapatnam.
6. One copy to Mr. Y. Subramanyam, Advocate, CAT, Hyderabad.
7. One copy to Mr. C.V. Malla Reddy, Addl. CGSC, CAT, Hyderabad.
8. One copy to D.R(A), CAT, Hyderabad.
9. One duplicate copy.

YLKR

4/6/98

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II COURT

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH, HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN : M(A)

AND

THE HON'BLE SHRI B.S. JAI PARAMESHWAR :
M (J)

DATED: 6/5/88

ORDER/JUDGMENT

M.A/R.A/C.P.NO.

in

O.A.NO. 94/95

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

NO ORDER AS TO COSTS

YLKR

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
हैदराबाद ब्याच
HYDERABAD BENCH

127 MAY 1998

Despatch 18/5/98

RECEIVED

विभाग/INPPAL SECTION