

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

May kindly see
Rep'd
23/11/03

O.A. No. 122/2002
T.A. No.

199

HVC
JL
23/11

DATE OF DECISION _____

Brijendra Singh Chittosia _____ Petitioner

Shri Nand Kishore _____ Advocate for the Petitioner (s)

Versus

Union of India & Anr. _____ Respondent

Mr. S. S. Hasan _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. Justice G.L.Gupta, Vice Chairman

The Hon'ble Mr. A.P.NAGRATH, ADM. MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(A.P.NAGRATH)
MEMBER (A)

(G.L.GUPTA)
VICE CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 24/11/2003

OA 122/2002

Brijendra Singh Chittosia s/o Shri Yadram Chittosia r/o Behind Vishwakarma Mandir, Kaushal Nagar, Agra Railway Line, Jagir, Bandikui.

... Applicant

Versus

1. Union of India through General Manager, W/Rly, Churchgate, Mumbai.
2. Divisional Rly Manager, W/Rly, Kota.

... Respondents

CORAM:

HON'BLE MR.JUSTICE G.L.GUPTA, VICE CHAIRMAN

HON'BLE MR.A.P.NAGRATH, ADM. MEMBER

For the Applicant ... Mr.Nand Kishore

For the Respondents ... Mr.S.S.Hasan

O R D E R

PER MR.A.P.NAGRATH

After having been duly selected for the post of Assistant Driver (Diesel/Electric) the applicant was allotted to Kota Division of Western Railway. Respondent No.2 offered him appointment vide letter dated 23.3.98 (Ann.A/2). He was medically examined and declared fit by the Divisional Medical Officer, Kota, vide Certificate No.327556 dated 7.8.98. After completing all these formalities, the applicant was not permitted to join. He was informed vide letter dated 11.1.2002 (Ann.A/1) that in Police verification about his character antecedents it was found that he was kept in Jail as he had been charged with offence under Sections 498-A & 304-B of IPC. Further it was mentioned that now appointment cannot be given to him as currency of the panel dated 20.11.97, under which he had been selected, had expired on 20.11.98. By filing this application, the applicant has claimed the following relief :

"that the respondents may be directed to consider the case of the applicant for offering him appointment for the post of Assistant Driver Diesel/Electric A.C."

The further facts, which are not in dispute, are that the applicant was acquitted of the offence under IPC by the appropriate court by order dated 18.7.2000. He submitted a representation to the department on 14.9.2000 intimating this fact of his acquittal and requested them to appoint him as Assistant Driver since he had already passed the required medical examination.

2. We have heard the learned counsel for the parties. The only ground on which the appointment is being denied to the applicant is that at the relevant time it was reported by the District Magistrate, Alwar, vide communication dated 10.9.98 (Ann.R/1) that because of the case against the applicant u/s 498A & 304B of IPC, he was in Jail. Having received such a report, the respondents state that the applicant could not have been appointed against a safety category post, where Police verification of the character antecedents is an essential condition. The learned counsel for the respondents, while admitting that the applicant has been acquitted of the offences by the criminal court, submitted that currency of the panel had expired in 1998 itself while the acquittal of the applicant is in the year 2002. Because the panel now is dead, it is not possible to appoint the applicant.

3. The learned counsel for the applicant contested this position by stating that the plea of currency of the panel having expired is not valid because the panel had already been operated when the applicant was offered an appointment vide letter dated 23.3.98. Conceding that the applicant could not have been appointed while the criminal case was going on against him, the learned counsel asserted that he has now have a right to be appointed as he has been acquitted of the charges. Denying appointment on the plea of panel having lapsed, would be totally unfair and unjust, according to the learned counsel.

4. We have given our careful consideration to the facts of the case and the position taken by the parties in support of the rival contentions. The plea of the respondents that the appointment cannot be offered because the currency of the panel has lapsed, does not hold any ground for the simple reason that appointment had already been offered to the applicant vide letter dated 23.3.98. The moment that offer was made, the panel stood operated in regard to the applicant. He was also sent for medical examination and was declared fit. It is only that some other events intervened and he was charged with criminal offence u/s 498A & 304B of IPC. The proceedings in the criminal court ended in his acquittal. In such a situation, it would be totally unjust to deny the appointment to the applicant. We have carefully perused his appointment letter (Ann.A/2), in which number of conditions have been indicated which were required to fulfilled before the appointment could be made. There are 17 conditions which are required to be satisfied by the applicant. We have gone through these conditions. There is no mention that this offer is subject to Police verification. Ordinarily, if the Police verification is a necessary condition for appointment, in our considered view, the appointment should have been offered only after the respondents had

satisfied themselves about the antecedents of the applicant. Having not done that, we would have still understood their case if the applicant was actually punished in the criminal case. But here is a case where he was held to be not guilty. Now denying him appointment on the ground of currency of the panel having lapsed, has no justification. The prayer of the applicant is liable to be accepted.

5. We, therefore, allow this OA and direct the respondents to appoint the applicant on the post of Assistant Driver, for which he was duly selected. Of course, his appointment shall be subject to satisfaction of all the conditions stipulated in the offer of appointment dated 23.3.98. We wish to make it clear that the applicant shall have no claim of seniority over all the Assistant Drivers who are already in position before the date of his appointment after successful completion of prescribed training. The respondents shall comply with this order within a period of two months from the date of receipt of a certifide copy of this order. In the circumstances, no order as to costs.

Ans
(A.P.NAGRATH)

MEMBER (A)

G.L.Gupta
(G.L.GUPTA)
VICE CHAIRMAN