

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Date of Decision : 23-12-03

Original Application No. 70/2003, with MA No. 349/2003.

Alok Vishnu Bhagvan Agrawal, age 39 years, S/o Shri Vishnu Bhagvan Agrawal, resident of 2-Chha-12, Housing Board, Shastri Nagar, Jaipur.

Applicant.

versus

1. Union of India through Chairman Railway Board, Rail Bhawan, New Delhi.
2. General Manager, Western Railway, Church Gate, Mumbai.
3. Chairman, Railway Recruitment Board, Ahmedabad, First Floor, Metre Gauge, Railway Station, Ahmedabad 380002.

Respondents.

Mr. R. N. Mathur counsel for the applicant.
Mr. S. S. Hassan counsel for the respondents.

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Hon'ble Mr. M. L. Chauhan, Member (J).
Hon'ble Mr. A. K. Bhandari, Member (A).

: O R D E R :
(per Hon'ble Mr. M. L. Chauhan)

Pursuant to the issuance of an Employment Notice No.2/98-99 by respondent no.2 which was published in Employment News dated 27.02.1999, the applicant applied for appointment on the post of Health Inspector by submitting application. His application was considered by respondent no.3 and after qualifying the written test as well as interview he was selected for the said post. The applicant was informed by letter dated 17.12.1999 that he has been selected for appointment on the post of Health Inspector and recommendation for his appointment have been sent to the General Manager, Western Railway, Church Gate, Mumbai. He was also informed that his order of appointment will be issued by the competent authority, in case he otherwise found suitable, a copy of this letter has been placed on record as Annexure A-4. The applicant thereafter continued waiting for his

appointment but to no avail. It is further averred that to the knowledge of the applicant for the 5 available vacancies in the open category, 5 names were recommended and the name of the applicant is amongst the first 5 selected candidates of open category. The respondents have operated the panel and have given appointment to one candidate from General and another candidate from O.B.C. The applicant has further stated that when he did not receive any order of appointment, he personally went to the office of respondent no.2 whereby he was informed that the appointment order in his favour shall be issued shortly. Since the order of appointment was not received by the applicant and the respondents have taken decision to advertise the vacancies afresh on the ground that currency of panel was only for one year as the applicant submitted representation on 2.5.2002 (Annexure A-5) and subsequent reminders dated 7.7.2002 (Annexure A-1) and 20.10.2002(Annexure A-6). The applicant thereafter made enquiry from other selected candidates and he was informed that one selected candidate Shri Anil Kumar Tiwari had filed OA before the Hon'ble Central Administrative Tribunal, Jabalpur Bench, Jabalpur. In the said OA, the respondents have taken a stand that during the currency of panel vacancies were not available, hence the appointment could not be given and the panel could not be operated for more than one year. The applicant has further stated that the Railway Board has issued an order dated 15.03.2002 wherein it was clarified that currency of panel for recruitment in Category III is one year, however, the General Manager is empowered to extend the currency of panel but if another panel has been prepared the currency of the first panel shall come to an end except in the case where the appointment has not been detained intentionally. A copy of this communication has been placed on record as Annexure A-7. This letter further provides that the General Manager is empowered to extend the panel for a further period of one year and thereafter panel can be extended by the Railway Board. Thus according to the applicant, the currency of panel is extendable

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and the same needs consideration at the level of the General Manager and thereafter by the Railway Board and the currency of panel could not come to an end automatically. In the present case, the reason for not giving appointment is non-availability of vacancies is factually incorrect. It is stated that an indent is sent to the Railway Recruitment Board only when vacancies are available or anticipated vacancies are calculated. Such anticipated vacancies occur within a period of one year only. The process of recruitment is not initiated if the vacancies are not available. In case there was no vacancies, the process of recruitment cannot be initiated. Thus according to the applicant the decision of respondent NO.2 not to give appointment to the applicant to the post of Health Inspector despite the fact that he has been declared selected is ex-facie illegal and unjust.

2. Under these circumstances, the applicant has prayed that the directions be issued to the respondents to give appointment to the applicant on the post of Health Inspector anywhere in the Western Railway and decision of the respondents not to appoint the applicant on the post of Health Inspector may be declared illegal and unjust.

3. Notice of this application was issued to the respondents. It is not disputed that the applicant was selected by the RRB, Ahmedabad vide letter No. RRB/ADI/E/R&T/2/98-99 dated 15.11.1999 and his name in the merit list figures at Sl. NO.5 in the General category candidates. It is also not disputed that candidate at Sl. NO.1 in the General category and candidate at Sl. No.6 from OBC category were offered appointment. It is further averred that no person junior to the applicant was given offer of appointment. Further it is stated that the currency of panel is for one year and the said period has already expired, though the General Manager is empowered to extend the period for one year and beyond this period approval of the Railway Board is required but the Railway Board vide letter dated 01.04.2003

have not considered the extension of the currency of panel. The fact that Shri Anil Kumar Tiwari has filed OA before the CAT, Jabalpur Bench and stand of the respondents that the appointment to the applicant therein could not be given due to the non-availability of the vacancy and the panel cannot be operated for more than a period of one year has not been denied. It is further submitted that the vacancy shown in the notification were existing and anticipating vacancies for two years. The notification was issued on 27.02.1999. However, in the meantime, the retirement age was enhanced from 58 years to 60 years vide Railway Board Circular dated 21.05.1998 and, therefore, the anticipating vacancies did not arise.

4. The applicant has not filed rejoinder. However, at the time of hearing, the learned counsel for the applicant brought to our notice a copy of the order dated 22.07.2003 whereby Shri Anil Kumar Tiwari whose name also figured in the same selected list was offered appointment and prayed that the same may be taken on record and he does not want to file rejoinder. With the ~~w. consent~~ of both the parties, the copy of this appointment letter is taken on record.

5. We have heard the learned counsel for the parties and gone through the material placed on record.

6. Learned counsel for the applicant submits that the matter is squarely covered by the decision of the CAT, Jabalpur Bench in the case of Anil Kumar Tiwari vs. Union of India & Ors. decided on 10.04.2003 in OA No. 209/2003, a copy of which was taken on record vide order dated 17.09.2003. He further argued that the stand taken by the respondents in that OA for not giving appointment from selected panel was that the currency of the panel was one year and during the currency of panel, vacancies were not available which is the stand taken in this OA. The CAT, Jabalpur Bench has rejected the contention raised by the respondents in the said OA and granted relief to the

applicant therein, thereby directed respondents to give appointment to the applicant to the post for which he was duly selected within two months against any available vacancy. Learned counsel for the applicant further argued that the said decision has attained finality and the same has not been challenged by the respondents. Rather in compliance of the decision rendered by the Jabalpur Bench, applicant has been given appointment vide order dated 22.07.2003. Thus according to the learned counsel for the applicant his client is also entitled to the similar relief.

7. We see considerable force in the submissions made by the learned counsel for the applicant. It is not disputed that the present applicant and the applicant in OA No.209/2002 i.e. Anil Kumar Tiwari was selected by the RRB/ADI/E/Conf./07/H.I, Ahmedabad vide letter dated 15.12.1999 and the name of the applicant figured at Sl. No.5 in the select list, copy of which has been placed by the respondents with their reply as Annexure R-1. It can also not be disputed that the contention raised by the respondents that the validity of the panel was one year and there were no vacancies available during the validity of the panel as such appointment could not be given to the person whose name find mention in the select list, has been considered by the Jabalpur Bench in its decision dated 10.04.2003 in OA No. 209/2002 which has been rejected after taking notice of the decisions rendered by the Apex Court. It can also not be disputed that the aforesaid decision rendered by the CAT, Jabalpur Bench has attained finality ; rather the respondents have also offered appointment to the applicant therein.

8. Taking into consideration these facts we are also of the view that the applicant is also entitled to the same relief as was granted to Shri Anil Kumar Tiwari, applicant in OA No. 209/2002.

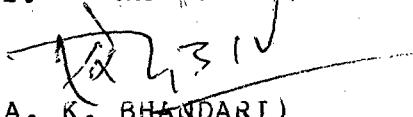
9. At this stage, we may make passing reference to the stand taken by the respondents in the reply

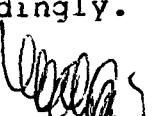
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whereby it is stated that the vacancy shown in the notification were existing and anticipating vacancies for two years and the anticipating vacancies did not arise as the retirement ^{age} was enhanced from 58 years to 60 years vide Railway Board Circular dated 21.05.1998. This contention of the respondents cannot be accepted. As per their own showing, the Railway Board issued Circular on 21.05.1998 thereby enhancing the retirement age from 58 years to 60 years whereas the notification ^(Employment News) was issued on 27.02.1999 after a period of almost 7 months which indicates the number of posts in the category of Health Inspector as 10, out of which 5 posts were reserved for General category, to which the applicant belongs. Thus it ^{can} legitimately be presumed that the process of recruitment to fill up 10 available vacancies were initiated only after ascertaining that there were equal number of vacancies and denial to give appointment to the applicant on non-availability of vacancies is ex-facie illegal. That apart, the currency of the panel does not automatically come to an end as can be seen from communication dated 15.03.2002 (Annexure A-7). The General Manager is empowered to extend the panel for a further period of one year and thereafter panel can be extended by the Railway Board. In fact the matter was also referred to the Railway Board for extending the period of panel which was declined, which shows that there were vacancies available with the Railway authorities. It is not the case of the respondents that a fresh panel was prepared and as such the earlier panel has ceased to operate. Thus the action of the respondents in not giving the appointment to the applicant cannot be legally sustained.

10. In view of what ~~as~~ has been stated above, the present application is allowed. The respondents are directed to give appointment to the applicant on the post of Health Inspector within a period of two months from the date of receipt of a copy of this order. No costs.

11. MA No.349/2003 stands disposed of accordingly.


(A. K. BHANDARI)
MEMBER (A)


(M. L. CHAUHAN)
MEMBER (J)