

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR

Original Application No. 753 of 2003

On this the 10th day of January, 2005

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Judicial Member

1. Raghuwar Dayal, S/o. Shri Gangoo,
Aged 70 yrs. Residing at Village –
B – Hadroli, District – Gwalior M.P.
2. Pooran Singh Gaur, s/o. Shri Raghuwar
Dayal, aged 42 yrs. Occupation –
Unemployed residing at Village –
Bhadroli Distt. Gwalior at present R/o.
Ham Singh Ki Parad, Gomti Ki Fadi,
Lashkar, Gwalior (M.P.). Applicants

(By Advocate – Shri R.R. Sharma)

V e r s u s

1. Union of India, through the General
Manager, Central Railway, Chhatrapati
Shivaji Terminal, Mumbai.
2. The Chief Personal Officer (Eng. & Con)
Central Railway, CST, Mumbai.
3. The Divisional Railway Manager (P),
Central Railway, Solapur (Maha.).
4. The Deputy Chief Engineer (Cons.),
Central Railway, Gwalior (MP). Respondents

(By Advocate – Shri V.K. Bhardwaj)

O R D E R

By Madan Mohan, Judicial Member –

By filing this Original application the applicants have claimed
the following main reliefs :

“1. to allow this application and further be pleased to quash the
order of termination of service dated 2.7.2001 passed by



respondent No. 2 and to modify the order of this Tribunal dated 25.4.2003,

2. the, respondents authorities may be ordered to allow the applicant to work as per appointment order dated 21.12.2000 and shall be treated on duty w.e.f. 16.1.2001 with all ancillary benefits with the cost of application.”

2. The brief facts of the case are that the Collector, Gwalior, acquired the applicants' land vide notification dated 30.6.1989, for construction of Guna Etawah Broad Gauge Railway Line, between Gwalior to Bhind. The respondent No. 4 also published a notification, whereby it was said that on acquiring the land of private owner, employment would be offered to one of the legal heir of the land owner as per terms of the Government of India. The first cause of action arose w.e.f. 26.6.1989 and on the aforesaid date the applicant No. 2 was within the age limit as his date of birth was 3.9.1960. According to the notification published in Annexure A-2 the applicant No. 2 who is the son of applicant No. 1 has submitted an application to the respondents for services in the Railway Department. But due to gross negligence of the Railway authorities he was not appointed. Aggrieved by the conduct of the respondents the applicant filed OA No. 870/1996 and after hearing the parties the Tribunal passed the order dated 24.7.1998. Various other persons who have been given appointment were also over aged, which caused injustice to the applicant. Despite the directions of the Tribunal, when there was no response from the respondents the applicant moved a contempt petition No. 5/1999. After notices were sent to the contemnors the General Manager, Central Railway, Mumbai issued an order of appointment in favour of the applicant No. 2 vide order dated 21.12.2000 (Annexure A-6) and he was posted at Sholapur Division. He was medically examined and found fit in all respects. At that time the age for appointment in general category was 28 years. Hence, the applicant was within the age limit. When the proposal was sent for approval of the General Manager of Central Railway at Mumbai, at that time also all the concerned authority thoroughly checked the documents regarding the



qualification and age of the applicant but no question of over age was raised at any level. But even then the appointment order in favour of the applicant was rejected, which is an unjustified and illegal action of the respondents in the light of law. The applicant belongs to OBC community and he is entitled for the benefit of relaxation in his age for appointment as per the policy of the Government of India. Thus, there is not question of over age in the aforesaid circumstances. The cancellation/rejection of the appointment of the applicant by a subordinate authority gives a new cause of action to the applicant which arose on 2.7.2001 i.e. the date when his appointment order was rejected without proper enquiry. The applicant filed an execution application No. 1160/2001 which was dismissed by the Tribunal on 25.4.2003 on the ground of misleading submissions made by the respondents. The applicant preferred a Writ Petition No.1769/2003 before the Hon'ble High Court which was also dismissed on the count that rejection of the case of the petitioner for appointment is a fresh cause of action which cannot be considered on execution petition (Annexure A-10). Hence, this Original Application is filed.

3. Heard the learned counsel for the parties and carefully perused the records.


4. It is argued on behalf of the applicant that the applicant was appointed by the respondents when he filed the CCP No. 5/99. He was medically examined and found fit and was posted at Sholapur Division. But subsequently vide order dated 2.7.2001 his appointment order was cancelled by the respondents without issuing any show cause notice or without hearing him on the ground that he was over aged. The applicant filed Misc. Application No. 1160/2001 which was dismissed vide order dated 25th April, 2003, because the respondents had put forward misleading facts before the Tribunal. Thereafter, the applicant filed writ petition No. 1769/2003 before the Hon'ble High Court, and the Hon'ble High Court has held that the case of the petitioner for appointment is a fresh cause of action which cannot be considered in a execution



application. This Writ Petition was dismissed vide order dated 30.6.2003 (Annexure A-10). It is further argued on behalf of the applicant that according to the letter dated 18th August, 2000 (Annexure R-5) the age limit prescribed was 28 years and relaxation of 3 years was also given by this letter. The respondents have not considered the case of the applicant in accordance with the aforesaid letter. Hence, this Original Application deserves to be allowed.

5. The learned counsel for the respondents argued that the appointment of the applicant was cancelled vide order dated 2.7.2001 on the ground that the applicant was over aged. The applicant had filed a Misc. Application No. 1160/2001 relating to OA No. 870/1996 which was also dismissed by the Tribunal vide order dated 25.4.2003. He also filed a WP before the Hon'ble High Court which was also dismissed vide order dated 30.6.2003. Hence, the applicant cannot take the benefit of his proper age at this stage.


6. After hearing the learned counsel for the parties and on careful perusal of the records, we find that the applicant's execution application No. 1160/2001 relating to OA No. 870/1996 was dismissed vide order dated 25.4.2003 and against which the applicant had filed WP No. 1769/2003 before the Hon'ble High Court of Madhya Pradesh. That Writ Petition was also dismissed by the Hon'ble High Court vide order dated 30.6.2003. The Hon'ble High Court has held that "the respondents considered the case of the petitioners and issued letter for appointment subject to fulfillment of certain conditions. Later on the petitioners case was considered and it was found that they were not eligible for appointment at the time when the applications were submitted. The Tribunal held that such order is not executable as the cases of petitioners have been considered. Rejection of the case of petitioners for appointment is a fresh cause of action which cannot be considered in an execution application". The applicant has filed the present OA mentioning the fact of his age. We have perused Annexure R-5 dated 18th August, 2000 in



which the prescribed age limit given was 28 years and relaxation of three years in upper age limit was also given. We have perused the letter dated 2.7.2001 (Annexure A-9) i.e. the cancellation of the appointment order of the applicant on the ground of age limit. We find that the respondents have not considered the case of the applicant no. 2 in true spirit i.e. in accordance with their own letter dated 18.8.2000. Thus, in view of the Hon'ble High Court's judgment and Annexure R-5 dated 18.8.2000 the impugned order dated 2.7.2001 (Annexure A-9) is quashed and set aside and the respondents are directed to consider the case of the applicant in view of the observations made above within a period of three months from the date of receipt of a copy of this order.

7. Accordingly, the Original Application stands disposed of. No costs.

(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman

“SA”

पृष्ठांकन सं. ओ/न्या.....जबलपुर, दि.....

पल्लिविधि समर्थेति।—

(1) सचिव, उच्च न्यायालय, नई दिल्ली-110002, जयपुर

(2) आवेदन सं./दिनांक : के वाउंचर

(3) फायदे की जानकारी के अनुसार के अनुसार

(4) ग्रंथपाल, ले. 191, जयपुर जयपीठ

सूचना एवं आवश्यक कार्यवाही हेतु उप रजिस्ट्रार

B. R. Stevens Dutied

V. K. Bhandwaj BSc

True

Issued
on 25.01.05
BS