

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 289 of 2002

Jabalpur, this the 10th day of April 2003.

Hon'ble Mr. R.K. Upadhyaya - Member (Admnv.)
Hon'ble Mr. A.K. Bhatnagar - Member (Judicial)

Anil Kumar Tiwari, aged about 31
years, s/o Shri Sukhdeo Prasad
Tiwari, resident of Gali No. 3,
Maharana Pratap Ward, Sandiya Road,
Pipariya Distt. Hoshangabad (M.P.)

APPLICANT

(By Advocate - Shri L.S. Rajput)

VERSUS

UNION OF INDIA , Through,

1. GENERAL MANAGER,
WESTERN-RAILWAY, CHURCH GATE,
MUMBAI (MAHARASHTRA)

2. CHAIRMAN, Railway Recruitment Board,
First Floor, Meter Gauge Railway
Station, AHMEDABAD-380001(GUJRAT)

RESPONDENTS

(By Advocate - Shri M.N. Banerjee)

ORDER

By A.K. Bhatnagar, Member (Judicial) :-

By this original application the applicant has
prayed the following reliefs :-

- "(a) Summon the entire original record concerning the present case from both the respondents for kind perusal of the Hon'ble Tribunal.
- (b) Direct the respondents to offer appointment to the applicant as Health Inspector Gr. Rs. 5500-9000 (RSRP) on any division of Western Railway or any Railway.
- (c) Any other relief, which the Hon'ble Tribunal may deem just and proper in the interest of justice & Equity."

2. That the applicant is a Science Graduate (B.Sc.) with diploma in Health Inspector's course. That in pursuance of the notification of employment No. 2/98-99, issued by respondent No. 2 Railway Recruitment Board, Ahmedabad (Gujrat) for certain categories published on

27/02/1999, the applicant applied for the post of Health Inspector in the Grade of Rs. 5500-9000 (RSRP). The applicant qualified the written test as well as Viva-voce and was placed on panel of the selected candidates which is Annexure A/3. It contains the role number of the applicant as 4400147 in category No. 4. The applicant also gathered that his name was at serial No. 2 in the order of merit. It is also claimed that the applicant was informed about the selection for appointment to the post of Health Inspector vide letter dated 17/12/1999 (Annexure A/4). The applicant after waiting for some time, having no response from respondent No. 1 sent a representation under certificate of posting to respondent No. 1 General Manager, Western Railway and also to the Chief Personnel Officer, Church Gate, Mumbai on 28/01/2000, followed by several representations and several reminders in various dates and finally sent a reminder on 22/10/2001 by registered post, but no reply was received by the applicant. Side by side the applicant took personal interview with the concerning officer on various dates which is shown by filing copies of the visitors memo, Annexure A/5. The applicant finally sent a legal notice to the respondents on 06/03/2001 which is Annexure A/8. Lastly the impugned order dated 08/03/2002 (Annexure A/1) was received by the applicant **advising** that the panel of selected candidates (Annexure A/3) was prepared by respondent No. 2 on 09/12/1999 and the time of one year has lapsed on 08/12/2000, as the life of the panel was only 1 year and there were no vacancies available in this period. It is also claimed by the applicant that the applicant under the legitimate expectation of being selected has crossed the age limit for any Government employment also. Hence this OA.

3. The learned counsel for the respondents has contested this Original Application by filing the counter reply. The counsel of the respondents invited our attention to paragraph 3 and argued that the original application is time barred, so it should be rejected on this ground.

4. We have heard the learned counsel Shri L.S. Rajput for the applicant and Shri M.N. Banerjee for the respondents. The learned counsel for the applicant argued that the action of respondent No. 1 in cancelling the part of select panel without any reason is arbitrary, illegal and against the rules of recruitment. The learned counsel for the applicant finally submitted that the case is fully covered by the judgments of the Apex Court and various Benches of this Tribunal and the Hon'ble High Court. In the case of Purushottam Vs. Chairman, MSEB & Ors, 1999 SCC (L&S) 1050, the apex court held that :

A) "Appointment-Denial of-Held, duly selected candidates could not be denied appointment on the pretext that panel's term had expired-

Para 4 - In view of the rival submission the question that arises for consideration is whether a duly selected person for being appointed and illegally kept out of employment on account of untenable decision on the part of the employer, can be denied the said appointment on the ground that the panel has expired in the meantime. We find sufficient force in the contention of Mr. Deshpande appearing for the appellant inasmuch as there is no dispute that the appellant was duly selected and was entitled to be appointed to the post but for the illegal decision of the screening committee which decision in the meantime has been reversed by the High Court and that decision of the High Court has reached its finality. The right of the appellant to be appointed against the post to which he has been selected cannot be taken away on the pretext that the said panel has in the meantime expired and the post has already been filled up by somebody else. Usurpation of the post by somebody else is not on account of any defect on the part of the appellant, but on the erroneous decision of the employer himself. In that view of the matter, the appellant's right to be appointed to the post has been illegally taken away by the employer. We, therefore, set aside the impugned order and judgment of the High Court and direct the Maharashtra State Electricity Board to appoint the appellant to the post for which he was duly selected within two months from today. We make it clear that appointment would be prospective in nature."

B) "2000(2) SLJ (CAT) 319, Sunil Ghanshyam Tiwari Vs. Union of India & Ors.

Para 8 - The procedure is to prepare a select list and a reserve list. The object is that if the candidate in the select list does not accept the offer then the candidate in the reserve list

should be appointed. In the present case, Mr. Kumaran has declined the offer and he has taken some other appointment, hence there was no legal impediment to release the name of the candidate from the reserve panel. The applicant claims that his name is in the reserved list. The U.P.S.C. only says that it is confidential, Whether it is the name of the applicant or somebody else, in our view, the same should be released from the reserved panel for appointment. As already stated the U.P.S.C. is concerned about the office not with regard to possible seniority dispute. The Learned Counsel for the applicant, on instructions, fairly submitted that applicant will not claim any seniority over the candidature of Jaiswal, who is selected in the subsequent panel. Even otherwise, while granting relief, this tribunal can impose a condition that applicant will get seniority only from the date of his actual appointment and assumption of charge."

c) "2001(1) SLJ (CAT) 85, Satyaendra Nath Jha Vs. Union of India & Others :-

Para 6 - And once the said panel was being operated the respondents should have gone strictly by the merit mentioned in that panel. Any pick and choose from a merit panel just cannot be accepted and has to be treated as improper, Arbitrary and violative of Articles 14 & 16 of the Constitution of India. Thirdly, the respondents seem to be washing off their hands by stating that the life of the panel had expired. In this regard we must straightaway mention that when the panel was alive and 3 employees from that panel were promoted to WTM Gr. III on 17/12/1993, the applicant deserves to be promoted and there should have been no occasion to appoint two persons (S/Shri Govind Singh and Udaiveer Singh) who ranked juniors to the applicant in the panel. Life of a panel is normally one year or exhaustion of the vacancies and respondents have not shows us rules under which the panel was considered to have expired. In this case, the very first operation of the panel was after one year. In any case since we have already held that the applicant should have been appointed before promotion given to those having lower ranks then him, the question of panel having become "expired" does not arise. The applicant was a duly selected person against notified vacancies".

AN

5. In view of the decision of the Hon'ble Apex Court and the rulings of the Tribunals cited above we are of the opinion that the claim of the applicant appears to be tenable. We therefore direct the respondent No. 1 to appoint the applicant to the post for which he was duly selected within 2 months ^{against any available vacancy} from the receipt of the order of this Tribunal with no consequential benefits. Accordingly, the Original Application is allowed with no order as to cost.

bdr
(A.K. BHATNAGAR)
MEMBER (J)

R. K. Upadhyaya
(R.K. UPADHYAYA)
MEMBER (A)

पृष्ठांकन सं ओ/व्या.....जवलपुर, दि.....

परिवर्तित दिनांक.....

(1) रमेश, ओ/व्या.....के द्वारा, जबलपुर

(2) अमरलाल, ओ/व्या.....के द्वारा L.S. Rayput, Aeh.

(3) प्रसादी की, ओ/व्या.....के द्वारा M.N. Banjare, Aeh.

(4) चंद्रपाल, ओ/व्या.....जवलपुर ज्यायपीड़ि

सूचना एवं आवश्यक कार्यवाही हेतु

अप्रैल २००३
17/4/03

Issued
17.4.03
"SA"