

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH, JAIPUR.

Jaipur, the 11<sup>th</sup> day of August, 2008.

ORIGINAL APPLICATION NO.299/2008

WITH

MISC. APPLICATION NO.255/2008

CORAM :

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER  
HON'BLE MR.B.L.KHATRI, ADMINISITRATIVE MEMBER

Babu Lal Dholpuria  
S/o Shri Parsa Ram Dholpuria,  
R/o 10/4, PWD Colony,  
Vigyan Nagar,  
Kota.

... Applicant

(By Advocate : Shri Nand Kishore)

Versus

1. Union of India through  
General Manager,  
Western Railway,  
Churchgate,  
Mumbai.
2. Union of India through  
General Manager,  
West Central Railway,  
Jabalpur.

... Respondents

(By Advocate : - - - )

ORDER (ORAL)

PER HON'BLE MR.M.L.CHAUHAN

The applicant has filed this OA thereby challenging the impugned order dated 1.1.2003 (Ann.A/1) on the ground that the respondents had

advertised 15 vacancies in the grade of Rs.6500-10500, out of which two vacancies were meant for SC category but only one SC candidate was selected. According to learned counsel for the applicant, there is a violation of the instructions as contained in Para 10.2 of the Brochure, which stipulates that if the requisite number of SC/ST employees are not empanelled, the best among the failed SC/ST employees are to be promoted for six months on ad hoc basis against reserved vacancies, whereas there is a shortfall in the vacancies.

2. Alongwith the OA, the applicant has also filed a Misc. Application for condonation of delay. In the application for condonation of delay, the applicant has submitted that against the selection notified in the year 1996, which was set aside by the Tribunal, the matter was pending before the Apex Court and the applicant was continuing on ad hoc basis for more than 10 years by virtue of stay granted by the Apex Court. As such, he could not approach this Tribunal. Further, the applicant has cited two judgements of the Apex Court namely; **Sanjay Singh & Ors. v. UP Public Service Commission Allahabad & Ors.** [2007 (1) SCT 754] and **Union of India & Ors. v. Madras Telephone SC & ST Social Welfare Association** [2006 (4) SCT 504] to the effect that delay, if any, should be condoned.

3. We have given due consideration to the submissions made by learned counsel for the applicant. We are of the view that the present OA deserves to be dismissed on the ground of limitation.

Even on merit, the applicant has got no case. Admittedly, the applicant has challenged the panel dated 1.1.2003. Validity of the said panel was for two years. The applicant has not challenged the validity of this panel till filing of this OA. As such, we are of the view that the present OA deserves to be dismissed on the ground of limitation. Explanation given by the applicant that he was continuing on ad hoc basis against the selection made in the year 1996, is not a valid ground for the purpose of condonation of delay or even challenging the panel dated 1.1.2003. The reliance placed by the applicant to the decisions of the Apex Court in the case of Sanjay Singh & Madras Telephone SC & ST Social Welfare Association (supra) is wholly misconceived. In the case of Sanjay Singh, the Apex Court has considered the violation of fundamental right of a citizen in a petition filed under Article-32 of the Constitution. It was in that context that the Apex Court has held that the petition cannot be dismissed. Further, the reliance placed by the applicant in the case of Madras Telephone SC & ST Social Welfare Association, also cannot be applicable in the facts and circumstances of this case. That was a case where interpretation of the provision was involved and it was in that context the Apex Court held that rightful claim of the applicant, <sup>in</sup> terms of interpretation cannot be rejected on the ground of delay. In this case, no such interpretation is involved. As per the provisions contained in Section-21 of the Administrative Tribunals Act, 1985, the OA has to be filed within a period of one year

from the date when the cause of action has arisen. In this case, the cause of action had arisen on 1.1.2003. The applicant has not made any representation to the authorities till filing of this OA. Thus, according to us, the present OA has to be dismissed on the ground of limitation.

4. Even on merit, the applicant has got no case. Admittedly, it is a case where promotion in Group-C has to be made on the basis of selection. As per para-215 of IREM Vol.I, selection post shall be filled by a positive act of selection made with the help of Selection Boards from amongst the staff eligible for selection. Para-215(b) stipulates that selection for promotion to a selection post shall be made on the basis primarily of merits. In the face of such statutory provision, the applicant cannot be made eligible for selection.

5. Learned counsel for the applicant submitted that as per Para-123 of IREM, Vol.I, Second Edition, it was incumbent upon the respondents to extend the benefit of ad hoc promotion suo-moto without asking the applicant. We have given due consideration to the submission made by the learned counsel for the applicant. We are of the view that such contention of the applicant has to be rejected at the threshold. However, <sup>in case,</sup> it was for the respondents to grant suo-moto benefit to the applicant in terms of para 10.2 of the brochure, appropriate stage for the applicant was to approach this Tribunal in the year 2003 or to make a representation to the authorities. Having not done

so, the applicant cannot be permitted to raise this ground at this stage.

6. Be that as it may, even as per Para 10.2 of the brochure, the persons of SC/ST have been granted limited scope of granting promotion for a period of six months. As such, we are of the view that the applicant has not made out any case for grant of relief and his name cannot be placed in the panel dated 1.1.2003, the life of which panel has already expired after two years and the same cannot be made valid/operative after the expiry of such period.

7. Accordingly, the OA and the MA for condonation of delay are dismissed with no order as to costs.

  
(B.L.KHATRI)  
MEMBER (A)

  
(M.L.CHAUHAN)  
MEMBER (J)

vk