

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the ¹⁶ day of December, 2008

Original Application No. 50/2008

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR. B.L.KHATRI, MEMBER (ADMINISTRATIVE)

Babu Lal Dholpuria,
s/o Shri Parsa Ram Dholpuria,
working as Law Assistant,
D.R.M. Office, Kota,
West Central Railway, Kota
r/o 10/4, P.W.D. Colony,
Vigyan Nagar, Kota.

.. Applicant

(By Advocate: Mr. Nand Kishore)

Versus

1. Union of India
through the General Manager,
North Central Railway,
Jabalpur
2. Divisional Railway Manager,
West Central Railway,
Kota.
3. General Manager, Western Railway,
Churchgate,
Mumbai.

.. Respondents

(By Advocate: Mr. Anupam Agarwal)

O R D E RPer Hon'ble Mr. M.L.Chauhan

The applicant has filed this OA thereby praying for the following reliefs:-

- (i) The respondent No.3 may be directed to award 10% relaxation awarding the total marks obtained by the applicant and his name may be placed in the Amended panel dated 30.9.1999 (A/3).
- (ii) Without prejudice the above submissions, the applicant can be declared successful in view of the Supreme Court judgement and placed on the amended panel dated 30.9.99.
- (iii) Without prejudice to the above submission the applicant can be treated as Best amongst the failure and his name can be included in the amended panel because the work of the applicant is quite satisfactory.
- (iv) The General Manager, West Central Railway may be directed to regularize the service of the applicant before regularizing the other candidates of SC (A/6).
- (v) Any other direction and orders, which are, deem proper in the facts and circumstances of the case may kindly be allowed to the applicant.

2. Briefly stated, facts of the case so far as relevant for disposal of this case are that respondents notified 10 vacancies of Law Assistant in the year 1996 (Ann.R1) which were meant for general category candidates. As can be seen from this notification, selection was to be made by way of written as well as oral test of the candidates possessing requisite qualification mentioned therein. The applicant being eligible applied for the post of Law Assistant. The respondents prepared a panel dated 4.6.1997 (Ann.A1) wherein name of the applicant find mention. However, validity of the said panel was



challenged by one Km. Seema Verma by filing OA No.403/97 before the Mumbai Bench of this Tribunal, inter-alia, alleging that the panel has not been prepared correctly as awarding of 15 marks under the heading seniority is not proper. The plea taken by Km. Seema Verma in the aforesaid OA was accepted by the Tribunal and directions were issued to the respondents to prepare a revised/amended panel thereby excluding 15 marks for seniority. Accordingly, the General Manager, Western Railway prepared a revised panel vide letter dated 30.9.99 (Ann.A3). As can be seen from this panel, there were 8 persons incorporated in the panel who were declared successful after excluding 15 marks of seniority. However, the said panel which was final was made subject to the decision pending before the Courts. It may be stated that initially the department has challenged the judgment of the Mumbai Bench of this Tribunal before the Hon'ble High Court but subsequently the same was withdrawn. However, the applicant has filed Writ Petition against the judgment rendered by Mumbai Bench of this Tribunal and the said Writ Petition was dismissed and ultimately the applicant filed SLP (C) No.3382/2000 before the Hon'ble Supreme Court which was converted into Civil Appeal No.6622/2001. The Hon'ble Supreme Court was pleased to pass interim stay thereby directing the respondents to maintain status-quo between the parties therein as on 21.9.2001 with

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regard to the subject matter which was in dispute before the Bombay High Court till final disposal of the appeal. However, the said appeal was also disposed of by the Hon'ble Supreme Court vide order dated 12.2.2008.

The applicant has also filed Misc. Application for condonation of delay on the ground that he could not file this OA earlier in view of the matter being agitated before the Hon'ble High Court as well as before the Hon'ble Apex Court, as such, he was prevented to raise the issue regarding relaxation of 10% marks or provisions of Railway Board circular dated 7.12.90 particularly para 3.9.2. Thus, according to the applicant, the fact that he was pursuing the remedy before the appropriate court is sufficient ground to condone the delay.

It may be stated here that the case as has been set up by the applicant for the purpose of aforesaid relief is that he belongs to Schedules Caste (SC) category and there was deficiency of SC candidates and even if the applicant is treated as failure candidate his name should have been placed on the panel after awarding trial for six months in terms of aforesaid provisions of the railways. It is further averred that had there been 10% relaxation as per provisions of the railways, the applicant could have been placed on the panel. It is further submitted that the applicant made a representation dated 26.12.2003 (Ann.A13) to

the authorities and such representation was also forwarded by respondent No.2 to respondent No.3 for his decision vide letter dated 14.6.2004, which is pending. It is on the basis of these facts that applicant has filed this OA thereby praying for the aforesaid reliefs.

3. The respondents have filed reply. In the reply, the respondents have raised preliminary objection regarding limitation as according to the respondents, the order under challenge relates to the year 1997 to 1999 while the limitation prescribed under Section 21 of the Administrative Tribunals Act, 1985 does not permit to challenge the same at this stage. It is further stated that the present OA is also not maintainable in view of the dismissal of the Writ Petition and SLP by the Hon'ble Apex Court. On merits, it has been stated that as can be seen from the notification dated 4.11.1996 (Ann.R1), there is no reservation for SC and ST category. Thus, the contention raised by the applicant that two vacancies were available for SC at the relevant time is without substance. It is stated that initially applicant as well as one Shri D.Waghmare who belong to SC category were empanelled as general candidates by virtue of merit obtained in the written test and viva-voce and not as per reservation for the community. However, after excluding marks for seniority in terms of the

judgment of the Mumbai Bench of this Tribunal, the applicant could not be empanelled as he has not secured requisite passing marks meant for the purpose of empanelment of a candidate. Since, according to the respondents, the applicant has not secured requisite marks so as to place his name in the revised panel dated 30.9.99, as such, his name was not empanelled whereas one Shri D.Waghmare who also belongs to SC category, his name was empanelled as general category against the vacancy meant for general category.

According to the respondents, the applicant is not entitled to the benefit of the circular dated 7.12.90 which stipulates 10% marks relaxation in respect of SC/ST category as was extended to candidates empanelled vide panel dated 9.3.2007 (Ann.A6) as there were vacancies for SC/ST category and railway board circular was applicable. Further, it is stated that the applicant failed to appear in the subsequent selection, as such, he cannot be granted benefit over and above the persons who have been empanelled vide Ann.A6.

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

5. We are of the view that the applicant is not entitled to any relief for more than one reason. First

of all, we will deal with the preliminary objections

raised by the respondents regarding maintainability of the OA. As can be seen from relief clause, prayer of the applicant is that panel dated 30.9.99 (Ann.A3) may be amended by giving him benefit of para 3.9.2 of the railway board letter dated 7.12.90 which provides awarding of 10% relaxation to the SC candidate. According to us, the cause of action, if any, arose to the applicant in the year 1999 when his name was not included in the revised panel dated 30.9.99 which panel was prepared pursuant to the judgment rendered by the Mumbai Bench of this Tribunal which has been upheld upto the Apex Court. The contention raised by the applicant that he was pursuing the remedy before the Hon'ble High Court and subsequently before the Hon'ble Apex Court is of no consequence. The matter which was in issue before the Hon'ble High Court as well as before the Hon'ble Apex Court was regarding the correctness of the decision rendered by the CAT, Mumbai Bench whereby the Mumbai Bench has held that 15 marks for seniority could not have been awarded and direction was given to the railway authorities to prepare revised panel ignoring marks of seniority. Once name of the applicant was not found in the amended panel dated 30.9.99, it was permissible for him to challenge validity of that panel on all permissible grounds, which he has raised in this OA. Having not done so, we are of the view that the

present OA is hopelessly time barred and the same cannot be entertained.

6. That apart, the relief to the applicant cannot be granted yet on another ground. It is admitted case between the parties that validity of the panel dated 30.9.99 was for a period of 2 years. Once the panel has lapsed no mandamus can be issued by the court directing the respondents to incorporate name of the applicant even if the applicant has got a case on merit i.e. whether the applicant was entitled to 10% relaxation of total marks obtained by him in terms of the aforesaid circular, although the respondents have categorically stated that there is no post of SC category available, as such, benefit of such circular was not available to the applicant.

7. The law on the point is no longer res-integra. At this stage it will be useful to quote decision of the Apex Court in the case of State of Bihar vs. Amrendra Kumar Mishra, JT 2006 (12) SC 304. That was a case where selection process was completed in the year 1992 and the respondent before the Apex Court was selected and he was directed to join within 15 days vide letter dated 21.12.1992. The said offer of appointment was sent to the respondent therein by ordinary post. It was the case of the applicant before the High Court that the said letter was never received by him and he

came to know there about in the year 1994 and thereafter he made a representation in the year 1995 and 2000. Ultimately, the Writ Petition was filed in the year 2001. The Hon'ble high Court was of the view that since post of Pashudhan Sahayak is still vacant and the applicant could not join due of unavoidable circumstances, his case should be considered against such post which is still vacant and the respondent before the Apex Court was permitted to join the aforesaid panel within a period of four weeks from the date of receipt of copy of the order. The matter was carried to the Apex Court and the Apex Court has held that in the aforesaid situation where the life of the panel remained valid for a year, the respondent has no legal right to be appointed. It was further held that once the panel lapses unless appropriate order is issued by the State, no appointment can be made out of the said panel. The Apex Court has also held that in the absence of any legal right, the court should not issue a writ or in the nature of mandamus on the basis of sympathy. According to the Apex Court, the High Court committed a manifest error in allowing the writ petition and accordingly, the judgment of the High Court was set-aside. The ratio as laid down by the Apex Court in the case of Amrendra Kumar Mishra (supra) is squarely applicable in the instant case. Thus, in view of the law laid down by the Apex Court,

we are of the view that the applicant has no legal right to be appointed once the panel has lapsed.

8. At this stage it will also be useful to quote another decision of the Apex Court in the case of Union of India vs. B.Valluvan and Ors., 2007 (2) AISLJ 445 whereby the Apex Court has held that even if name of person exists in the panel that does not create a right to be appointed. Life of the panel is limited, which can be extended by the State only if the statutory rule permits. At this stage, it will be useful to quote para 15 of the judgment, which thus reads:-

“15. The life of the panel ordinarily is one year. The same can be extended only by the State that too if the statutory rule permits to do it. The High Court ordinarily would not extend the life of a panel. Once a panel stands exhausted upon filling up of all the posts, the question of enforcing a future panel would not arise. It was for the State to accept the said recommendations of the Selection Committee or reject the same. As has been noticed hereinbefore, all notified vacancies as also the vacancy which arose in 2000 had also been filled up. As the future vacancy had already been filled up in the year 2000, the question of referring back to the panel prepared in the year 1999 did not arise. The impugned judgment, therefore, cannot be sustained.”

As already stated above, in the instant case, name of the applicant is also not in the panel. The prayer of the applicant is that his name should be incorporated in the panel dated 30.9.1999 validity of which has already been lapsed in 2001. Thus, according to us, in view of the law laid down by the Apex Court

as noticed above, no relief can be granted to the applicant even if he has got some case on merit.

9. Further, one of the prayer made by the applicant (prayer No.8(iii)) is that his services should be regularized before other candidates of SC category who have been empanelled vide Ann.A6. As can be seen from Ann.A6, the selection for the post of Law Assistant was made pursuant to notification dated 31.5.2006 in which name of 3 persons were included in the panel besides 3 persons who were empanelled on the basis of best amongst failure scheme. Admittedly, the applicant has not appeared in the selection. The post of Law Assistant is selection post. In case the relief prayed by the applicant is granted to him, it will affect the persons who have been empanelled vide Ann.A6 and those have not been impleaded as respondents by the applicant in this OA, as such, no relief can be granted. Further empanelment of the applicant pursuant to panel dated 30.9.99 will also affect right of Law Assistants who have been selected pursuant to the selection held after preparation of the said panel including the panel prepared vide office order dated 9.3.2007 (Ann.A6), as such, granting relief to the applicant from back date will adversely affect those Law Assistants who have been selected subsequent to the panel dated 30.9.99. Thus, on this ground the applicant is not entitled to any relief. Even

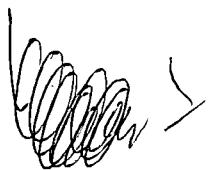
otherwise also granting relief to the applicant from back date without impleading the persons who have been selected as Law Assistant during the aforesaid period to the detriment of the persons so selected is not permissible without impleading those persons as parties and also without challenging validity of the order whereby such persons have been appointed. This is one of the grounds which disentitle the applicant for grant of relief. Thus, even if the applicant has got any case on merits, no such relief can be granted to the applicant in view of what has been stated above.

10. For the foregoing reasons, the OA is bereft of merit, which is accordingly dismissed with no order as to costs.

11. In view of disposal of the OA, no order is required to be passed in MA No.48/2008, which stands disposed of accordingly.


(B.L.KHATRI)

Admv. Membe


(M.L.CHAUHAN)

Judl.Member

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