

**Central Administrative Tribunal
Principal Bench**

OA No. 351/2015

Order reserved on: 28.04.2016
Order pronounced on: 23.05.2016

Hon'ble Mr. V. N. Gaur, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

Vatan
Aged 27 years, unemployed,
S/o Sh. Ram Lal
R/o 3/140B, Gali No.3,
West Kanti Nagar,
Krishna Nagar,
Delhi-51.

- Applicant

(By Advocate: Sh. Sumant Bhardwaj)

Versus

1. Union of India
Through its Secretary (Home),
Government of India,
Ministry of Home Affairs,
North Block,
New Delhi.
2. The State
Government NCT of Delhi,
Through its Chief Secretary,
New Secretariat,
New Delhi.
3. Delhi Metro Rail Corporation Ltd.,
Through its Human Resource Manager,
Metro Bhawan,
Fire Brigade Lane,
Barakhamba Road,
New Delhi.

- Respondents

(By Advocate: Sh. V.S.R.Krishna)

ORDER**Hon'ble Mr. V.N.Gaur, Member (A)**

The present OA has been filed praying for the following relief:

- “A) Withdraw the impugned letter dated 07.09.2011
- B) Issue fresh joining letter to the applicant without any condition.”

2. The applicant applied against the vacancy of Customer Relation Assistant (CRA) under respondent no.3 notified in the year 2010. The applicant qualified in the selection process and included in the panel of selected candidates dated 07.02.2011. The applicant filled up an attestation form in which he disclosed that he along with some others had been framed u/s 186/353/332/323/34 of IPC and that a criminal case was pending in the Court. The respondent no.3 by letter dated 07.09.2011 intimated the applicant that their Legal Section had opined that the panel of selected candidates was valid for a period of two years and the applicant could be allowed to join within this period of two years only after the settlement of the case. It also stated that if the validity of the panel, i.e. two years, lapsed he will have no claim for employment in DMRC.

3. The criminal case against the applicant was finalised in the Court of Chief Metropolitan Magistrate East, Karkardooma, Delhi on 17.10.2013. The applicant then approached respondent no.3

on 06.11.2013 for reconsideration of his candidature but he did not get any reply. He filed an RTI application on 23.01.2014 which was replied on 20.03.2014 with the remarks that your status is under consideration. The applicant approached the appellate authority and his appeal was disposed of on 15.12.2014 by intimating the decision of respondent no.3 on his request. Since the validity of the panel, i.e. two years from the date of appointment, had lapsed on 07.02.2013, fresh appointment had been made in lieu. The applicant has sought direction to respondent no.3 to withdraw the letter dated 07.09.2011 in which he was informed that his case would be considered after the settlement of the criminal case if it was within the validity period of the panel.

4. Learned counsel for the applicant submitted that the respondent no.3 had in an illegal manner denied the opportunity of employment to the applicant when he was first selected to the posts of CRA. The applicant had then approached this Tribunal in OA No.3681/2012 but the Tribunal had allowed the applicant to withdraw the OA with liberty to the applicant to approach the Tribunal once again at appropriate time. Applicant has, accordingly, filed this OA. According to the learned counsel the decision of respondent no.3 of stating the applicant to wait till the conclusion of the criminal case itself was against the law. A reference was made to a judgment of Hon'ble Delhi High Court on

06.08.2010 in WPC No.2068/2010 – **Govt. of NCT of Delhi and anr. Vs. Robin Singh** and to the decision of Lucknow Bench of this Tribunal dated 12.09.2012 in **Vineet Kumar vs. Union of India.**

5. Learned counsel further submitted that Rule 13 (iv) of DMRC Recruitment Rules prescribe the operation of panel for a period of maximum of three years while in the case of the applicant, the respondent no.3 has conveyed the validity of the panel to be only two years. Though a copy of the rule has not been filed by either side, learned counsel for the applicant relied on the observation of this Tribunal in para 5 of the order dated 09.03.2010 in OA No.1482/2009, which is reproduced as under:

“5. Learned counsel further contended that Rule 13 (iv) of DMRC Recruitment Rules prescribes operation of panel for a period of maximum three years and as before that the applicant was fully qualified, appointment denied to him wrongfully is to be restored back to him.”

6. Learned counsel also referred to a letter issued by the Railway Board to all the General Managers of Zonal Railways on 12.03.2007 wherein it was provided that the currency of the panel shall be for a period of two years but the General Manager may extend the life of the panel by one year in case of administrative exigencies. The respondent no.3 violated both these rules/standing instructions in restricting the validity of panel to two years and denying the applicant his right of appointment after

his selection for the post of CRA by not exercising the power to extend the panel by one more year.

7. Learned counsel for the respondents pressed the preliminary objection of limitation stating that the applicant is seeking to challenge the letter dated 07.09.2011 by filing the OA in January 2015. Even if the liberty granted by this Tribunal on 26.11.2012 in OA No.3681/2012 is taken into account, the limitation period cannot be extended. Learned counsel pointed out that in the advertisement issued in 2010 for various posts including the post of CRA it was clearly stated that the validity of the selection panel was for two years from the date of its operation. The selection process for filling up the post has to be conducted strictly in accordance with the rules notified. In this case the rule of examination has notified the validity period of the selection panel, and therefore, the respondents cannot change their validity at the later stage for the benefit of any particular candidate. The respondents have been quite fair to the applicant in intimating that if his case was finalised during the validity of the panel he would be considered for appointment. However, if it takes longer time to settle the criminal case, the respondents cannot extend the validity of the panel indefinitely. According to the learned counsel for the respondents, the judgments cited by the applicant were not applicable in the present case.

8. We have heard the learned counsels and perused the record. The panel of selected candidates which included the name of the applicant was prepared on 07.02.2011. Its validity of two years was to expire on 06.02.2013. The criminal case against the applicant in which he was acquitted was finalised on 17.10.2013. It is, therefore, obvious that by the time the criminal case was finalised the validity of the panel dated 07.02.2011 had already expired. The questions now arise are that:

- (1) whether the validity of the panel was three years or two years; and
- (2) Whether the respondents should have exercised discretion to extend the validity of the panel by one year, if there was such power with the competent authority.

9. The relevant provisions of the DMRC Recruitment Rules have not been placed on record. Reliance has been placed on the observation of this Tribunal in order dated 09.03.2010 in OA No.1482/2009 wherein the learned counsel for the applicant in that case has contended that “Rule 13 (iv) of DMRC Recruitment Rules prescribes operation of panel for a period of maximum three years”. This was not denied by the learned counsel for the respondents. We are not aware whether a copy of the rules has been filed in that case or not. In the present case a copy of the

advertisement issued in 2010 for various posts including the post of CRA has been placed on record by the applicant himself. In that advertisement in para 2 under the heading "General" it has been stated that "the validity of the selection panel is for two years from the date of its operation." This stipulation contained in the advertisement dated 21.07.2010 has not been challenged by the applicant. On the other hand, respondents have stated in their counter affidavit that as per extended rules, the panel is valid for two years only. We, therefore, conclude that the validity of the panel in this case was only two years.

10. The next question is whether the respondents had the power to extend the validity of the panel by one year. On this issue, the applicant has referred to a letter issued by the Railway Board to General Managers of Indian Railways on 12.03.2007. Learned counsel for the respondents, on the other hand, submitted that respondent no.3 (DMRC) is a public sector undertaking and all the instructions and rules of Indian Railways are not automatically applicable to that organisation. Even if we go by the assumption that the competent authority had the power of extending the validity of the panel for one year, the question would arise whether such a power has to be exercised before the validity of the panel expires or when the applicant approached the respondent no.3 about nine months after the expiry of the validity of the panel. To our mind the answer to this question is obvious,

if the validity was to be extended the decision had to be taken before the validity of the panel expired. Prior to 07.02.2013 there was nothing before the respondent no.3 especially from the applicant that could be the basis for considering the question of extension of the validity by one year. Just as the applicant was in a stint of uncertainty with regard to the likely time to be taken in the settlement of the case, the respondent no.3 could also be in no better position to expect when the case could be finalised and decide to extend the validity of the panel. Once the panel had expired and the vacancy had been filled up there is no way that the respondent no.3 can extend the validity of the panel after nine months of its expiry and offer appointment to the applicant by reverting the person who had been appointed in lieu. From that perspective the present OA also suffers from the defect of non-joinder of necessary parties.

11. Another contention raised by the applicant is that the initial decision of the respondents not to appoint him to the post of CRA only because there was a criminal case pending against him was not legally valid. In support of this contention the learned counsel has relied on the judgment of Hon'ble High Court in Robin Singh (supra) and the order of Lucknow Bench of this Tribunal in Vineet Kumar (supra). In **Vineet Kumar** (supra) the applicant was denied appointment to the post of Assistant Public Prosecutor in CBI on account of concealment/involvement in a

criminal case registered against him under Section 498-A, 323, 504, 506 IPC and Dowry Prohibition Act and later Section 324, 292, 294, 452 of IPC were also added. At the time of filling up the application form, the applicant was not involved in any criminal case. At the time of interview though he was already involved in a criminal case, the respondent did not ask for any information in this regard. First time the petitioner had the occasion to disclose that information was when he was filling up the attestation form sent by CBI on 12.08.2010. At that time he did provide the correct information. Show cause notice was later issued to him for concealment of information about his involvement in a criminal case. The Hon'ble Supreme Court took a view that the petitioner before them was not involved in an offence of a serious nature, and therefore, question of desirability to appoint him in the service was not an issue, though the respondents had not disclosed whether they had made any such consideration. The Hon'ble Supreme Court also took a view that there was no concealment at all in respect of involvement in a criminal case and the petitioner had furnished all the required information with all the particulars, therefore, the show cause notice in respect of alleged concealment was *ab initio* wrong and against the record. Instead the impugned order was passed on new ground, i.e., on the ground of involvement in a criminal case. The Manual of CBI (Admn.) provides that even if a person was convicted he can be

appointed after taking approval of the Government, if appointing authority feels that there are redeeming features and reasons to believe that the person has cured himself of the weakness, if any.

In **Robin Singh** (supra) the issue before the Hon'ble High Court was whether the pendency of a criminal proceeding or a conviction or for that matter a criminal proceeding which has already terminated either in conviction or an acquittal, be a justified ground to dismiss a Government servant from service or deny entry into Government service. The respondent in that case was 19 years of age when he was accused of committing offences punishable under Section 323/504/506 IPC but was acquitted. The Hon'ble High Court taking into account the specific facts of that case particularly the age of the applicant at the time of his involvement in a non-cognizable offence and the fact that the person was being considered for induction in the Police force as a Sub-Inspector (Executive), doing primarily clerical work, his appointment would not be against the public interest.

12. We find that in both the aforementioned cases, there were mitigating circumstances in consideration of which the Hon'ble Courts gave relief to the applicant/respondents. In the instant case, the applicant has not brought out any corresponding provision in the DMRC Rules that provides for considering the redeeming aspects of a candidate with a criminal past. Therefore, at this stage when the validity of the panel is already over and the

respondents have filled up the vacancy, this question has only academic value.

13. In the light of the foregoing discussion, we do not find any merit in the OA and the same is dismissed. No costs.

(Raj Vir Sharma)
Member (J)

(V.N. Gaur)
Member (A)

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