

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**
ORIGINAL APPLICATION NO. 180/00454/2015

Monday, this the 10th day of September, 2018

CORAM

**HON'BLE MR.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE MR.ASHISH KALIA, JUDICIAL MEMBER**

Amalnath.S
Aged 29 years
S/o.Sasidharan.B
Prasanthi
Kadakkavoor P.O
Thiruvananthapuram ... **Applicant**

[By Advocate M/s.Varkey & Martin]

V.

1. Union of India represented by the General Manager South Railway, Chennai-600 003
2. The Chairman, Railway Railway Recruitment Board Chennai- 600 008
3. Senior Divisional Personal Officer Southern Railway Madurai Division Madurai – 2

... **Applicant**

Respondents

(By Advocate Mr.Sunil Jacob Jose)

This application having been finally heard on 5.9.2018, the Tribunal on 10.9.2018 delivered the following in the open court.

ORDER

Per: MR.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

Original Application No.180/454/15 is filed by Shri.Amalnath.S, aggrieved by denial of appointment to him as Senior Section Engineer in Railways on account of the fact that he had suppressed some facts while applying for the same. The reliefs sought in the Original Application are as follows:

"I) Declare that the applicant is eligible to be considered further in the selection process initiated in pursuant to Annexure A1 notification and to direct the 2nd respondent accordingly.

II) Declare that the action of the respondents in cancelling the candidature of the applicant is unjust and to direct the 2nd respondent to consider the applicant on the basis of the declaration above.

III) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case."

2. The applicant had applied in pursuance to Centralised Employment Notice No.02/2014 issued by respondent no.2, a copy of which is available at Annexure A-1. The notification was for open recruitment to fill up the vacancies in various Divisions including Trivandrum Division and eligible applicants were called upon to apply online. Accordingly, the applicant submitted his application online, a copy of which is available at Annexure A-2. At the time of submission of Annexure A-2 application, the applicant was undergoing training as an Apprentice Trainee, Grade II under the Southern Railway. Applicant submits that he had not been appointed to any post and had not entered into the regular service of Railways.

3. Applicant came out successful in the written examination conducted as part of the selection process, pursuant to Annexure A-1 and a call letter was issued to him for appearing for verification of documents vide Annexure A-4. In the meanwhile, the applicant had been appointed as Technician Grade II on 4.3.2015. He procured No Objection Certificate issued by respondent no.3 and appeared for verification of documents.

4. During the verification of documents he was questioned on the answer he had submitted against column no.17 in Annexure A-2 application wherein he had submitted that he was not employed under Government/Public Sector Undertaking (PSU for short). It was his belief that being engaged as a Trainee

Apprentice under respondent Railways would not amount to an employment as mentioned in the particular column. He submitted these facts to respondent no.2 by way of a representation dated 24.5.2015 (Annexure A-6). However, inspite of his claiification, respondent no.2 proceeded to reject his candidature on the ground of suppression of facts in the application and this was made known to the applicant through the web site of respondent no.2, a print out of which is available at Annexure A-7.

5. As grounds, applicant maintains that he was an Apprentice as per admitted facts and the definition of Apprentice as given in para 103 (IV) of Chapter I, Section B of IREM Volume I is as follows:

“ Apprentice or a Trainee means a person undergoing training with a view to employment in railway service who draws pay, leave salary, subsistence allowance or stipend during such training but is not employed in or against a substantive vacancy in the cadre of a branch of department on satisfactory completion of his training, is eligible for appointment on probation in a substantive vacancy but no guarantee or such appointment is given. ”

Thus the answer given by the applicant to question no.17 in Annexure A-2 cannot be construed as a false statement amounting to suppression of facts. At the best, it could be only seen as a bonafide mistake.

6. Respondent no.2 have filed reply statement wherein the facts of the applicant's appointment and the submission made by him in his application form have been admitted. It is stated that CEN No.02/2014 had been published on 20.9.2014 and candidates were required to submit their application online on or before 19.10.2014. As per the condition stated under para 12 of CEN, candidates serving in any Central/State Government/Public Sector Undertakings were required to apply directly to RRB after duly informing their employer and No

Objection Certificate (NOC for short) has to be produced at the time of document verification. The applicant who has been engaged as a Trainee Technician Grade II as on 30.7.2013 replied in the negative to the question whether he was employed under the Central Government or Public Sector Undertaking, when the online application was submitted on 19.10.2014. When the applicant was called for document verification on the basis of his performance in the written examination, he produced a No Objection Certificate dated 14.5.2015 wherein it was stated that his date of appointment is 5.8.2013 vide Annexure R-2.

7. Applicant had been offered appointment as Technician Grade II Signal Maintainer after being selected by the RRB, Trivandrum. He had been the beneficiary of all privileges on account of being a Railway employee and for him to turn around and state that he was not a Railway employee till 4.3.2015 is done with an intention to cover up his false declaration.

The respondents submits that in terms of 13.03 of CEN 02/2014 furnishing of any false information to the RRB or deliberate suppression of any information will render the applicant disqualified and also debar him from appearing at any selection for appointment in the Railways (Annexure R-3).

8. Heard Shri.Martin G Thottan representing M/s.Varkey & Martin, learned counsel for the applicant and Mr.Sunil Jacob Jose, learned counsel for the respondent Railways and perused the documents.

9. Shri.Martin G Thottan, learned counsel for the applicant called to his assistance several documents which he has filed along with rejoinder and subsequently by way of a Miscellaneous Application. He has submitted the applicant's appointment order as Trainee Technician Grade II dated 10.6.2013 wherein he has been appointed on a stipend vide Annexure A-9. It is stated herein

that after completion of his training, he will be required to pass departmental examination and only on passing the same, he will be eligible for absorption, with absorption itself, being followed by a probation period. He was also required to enter into a "Form of Agreement for Apprentices" indicating the terms of service which are offered to him. The draft of same is produced as Annexure A-10. In para 17 of the said document it is stated as follows:-

"17. The apprentice shall undergo training for such trade or trades as may be specified in terms of clause (I) hereof, no guarantee or promise of employment, temporary or permanent on completion of apprenticeship, is given or implied by the Railway Administration. But on the successful completion of the apprenticeship, the apprentice shall (if he/she is so required) serve the railway administration faithfully and efficiently for a minimum period of five years (subject to earlier determination at the sole discretion of the Railway Administration) in any capacity for which he/she may be considered fit and on the scale of pay and on the terms and conditions which may be in force from time to time during the tenure of his/her employment under the Railway Administration. In the event of the apprentice not being absorbed on any Railway Administration on completion of his/her apprenticeship will be given certificate on completion of his/her apprenticeship training to ensure him/her to find employment outside the Railway, while those apprentice absorbed in working posts will be given such a certificate only on completion five years of service. "

The learned counsel for the applicant drew our particular attention to the beginning portion of the above paragraph which is quoted again:

" The apprentice shall undergo training for such trade or trades as may be specified in terms of Clause (I) hereof, no guarantee or promise of employment, temporary or permanent on completion of apprenticeship, is given or implied by the Railway administration. "

10. Shri.Martin.G.Thottan maintains that this is hardly indicative of a regular employment. He also drew our attention to the definition given in IREM for an Apprentice or trainee which has already been quoted above. It is made clear in the Manual that "no guarantee for such appointment is given" to an Apprentice or

Trainee. Under the Railways Act, a copy of which is made available at Annexure A-14, Railway Servant is defined as "any person employed by the Central Government or by a Railway administration in connection with the service of a railway;[including member of the Railway Protection Force appointed under clause (c) of sub-section (1) of Section 2 of the Railway Protection Force Act, 1957 (23 of 1957]". Clearly the applicant cannot claim this privilege.

11 He further called to his assistance the judgment of the Hon'ble Gujarat High Court in ***Maheshkumar Dhirajlal Thakkar v. State of Gujarat*** wherein the status of the apprentice and whether he would qualify to be a Railway employee is discussed at length. "

"In any case, this is a general definition which appears to be in consonance with the scheme under which the present petitioner was accepted for receiving training under the agreement, ex.69. Apparently, he was not a railway servant as defined in the Indian Railway Establishment Code, Vol I. Chapter I, Rule 102 gives definitions. Clause 13 of the said rule defines a railway servant. A railway servant means- "A person who is a member of the service or who holds a post under the Administrative control of the Railway Board and includes a person who holds post in the Railway Board. " It cannot be said that the petitioner was a railway servant who was a member of the service or who held post under the administrative control of the Railway Board. Only for the purpose of disciplinary action, he was made liable under the code. That would not mean that he was considered as a railway servant as defined in Clause 13 of Rule 102, referred to above. Indian Railway Establishment Code, Vol.II, Rule 2202, Sub-rule (2) defines 'Apprentice'. Apprentice means a person deputed for training in a trade or business with a view to employment in Government service, who draws pay at monthly rates from Government during such training but is not employed in or against a substantive vacancy in the cadre of a department. Thus, even if the apprentice receives some payment in the nature of stipend, he cannot be said to be a railway servant as defined in the Code. The definition of 'apprentice' as given in the Code is very wide. 'Apprentice' means a person who is employed for the training in a trade or business with a view to employment in Government service. Thus as stated, such a person may draw pay at the monthly rate during such training but he is not employed in or against a substantive vacancy in the cadre of a department. The very fact that this definition states that the apprentice would mean a person deputed for training in a trade or business with a view to employment in Government service, would

clearly rule out the interpretation put by Mr.Mehta that an apprentice receiving pay or stipend would be deemed to be in the employment of the Government. This definition clearly states that a person is employed for training with a view to employment in Government service. Reading the definition of 'railway servant' and 'apprentice' as given in the Code and the definition of 'apprentice' as given in the Apprenticeship Act, I am of the view that the present petitioner could not be said to be a railway servant at all, during the period of his training."

12. Shri.Sunil Jacob Jose on the other hand stated that by virtue of the answer he gave to the specific query amounted to denial of the fact that he was employed under the Railways. Among other factors he stated that the NOC submitted by the applicant at Annexure R-2 clearly indicated that the date of his joining was on 5.8.2013 under the sub heading "Training".

13. The issue involved lies in a narrow compass. The allegation against the applicant leading to his dis-qualification from selection as Senior Section Engineer was the answer he submitted to the query whether he was employed under Government or by a PSU. He replied in the negative to the said query which according to the respondents amounts to suppression of information of his status as a Railway employee. He had been appointed as a Trainee Technician Grade II as per Annexure A-9 document. With the appointment order mentioning under one of the conditions that he will be bound by an indemnity agreement, copy of which is at Annexure A-10. The agreement is also under the title of 'Form of agreement for Apprentices. One of the terms of this agreement is that the applicant's assignment carries with "no guarantee or promise of employment, temporary or permanent on completion of apprenticeship, (which) is given or implied by the Railway administration.

14. Further, the NOC which the applicant had sought and obtained for presenting before respondent no.2 during verification provides the following as service particulars:

“	Date of Birth	-	30.12.1985
	Date of appointment	-	5.8.2013 (Training)
			4.3.2015 (Regular absorption) ”

15. On an examination of all the facts before us with due consideration given to the pleadings made by both learned counsel, the applicant cannot be accused of having suppressed any information. He is indicated as a 'Apprentice Trainee' at the time when he submitted his application. The definition of Apprentice Trainee in the IREM has been quoted at Annexure A-13 and it is clearly stated that there is no guarantee of "regular" appointment. "Railway Servant" as defined under the Railways Act, 1989 extracted at Annexure A-14 does not include Trainees or Apprentices. All told, the judgment cited by the applicant and quoted at some length above in the case of ***Mr.Maheshkumar Dhirajlal Thakkar v. State of Gujarat*** is quite unequivocal in its view that an Apprentice cannot be said to be a Railway Servant at all during the period of training.

16. Based on the discussion above, we conclude that the Original Application has merit and it succeeds. The relief sought for in the Original Application are granted to the applicant in full. This direction will be implemented as expeditiously as possible and at any rate, within 30 days from the date of receipt of a copy of this order. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures

Annexure A-1 No.02/2014	True copy of the extracted copy of the notification bearing
Annexure A-2 applicant	- True copy of the application submitted by the applicant
Annexure A-3	- True copy of the call letter issued to the applicant for appearing for the written examination
Annexure A-4 applicant	- True copy of the letter dated 30.4.2015 issued to the applicant
Annexure A-5	- True copy of the joining report dated 4.3.2015
Annexure A-6 second respondent	- True copy of the representation dated 24.5.2015 to the second respondent
Annexure A-7	- True copy of the print out taken from the 2 nd respondent's website showing the rejection of applicant's candidature
Annexure R-1 applicant	- Photocopy of the application form submitted by the applicant
Annexure R-2 the 3 rd respondent	- Photocopy of the No Objection Certificate issued by the 3 rd respondent
Annexure R-3 No.02/2014	- Photocopy of the Centralised Employment Note
Annexure A-8 submitted by the applicant	- True copy of the representation dated 6.10.2014 submitted by the applicant
Annexure A-9	- True copy of the offer of appointment No.U/(S).563/IX/SLT/Group – C dated 10.6.2013
Annexure A-10 Department and applicant	- True copy of the agreement entered into between the Department and applicant
Annexure A-11 No.76/9/S&T/2013 dated 30.7.2013	- True copy of the Office order
Annexure A-12 4.2.2015	- True copy of the joining report No.SI.B.92 dated 4.2.2015
Annexure A-13	- True extracted copy of the Indian Railway Establishment Manual of Para 103 (IV) of Chapter I
Annexure A-14 Section 2(34)	- True extracted copy of the Railways Act containing Section 2(34)
Annexure A-15 reported in (1974) 15 GLR 293	- True copy of the Gujarat High Court Judgement reported in (1974) 15 GLR 293
Annexure A-16 the third respondent. //	- True copy of the No Objection Certificate issued by the third respondent. //