

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.1329 of 2013

**Reserved: 11.09.2018
Order pronounced: 17. 09.2018**

Between:

M. Vijay Kumar, S/o. M. Kumara Swamy,
Aged about 27 years, R/o. BN-169, H. No.26-95/11/3,
Balramnagar, Safilguda, Secunderabad-500047.

... Applicant

And

1. Union of India, represented by
The General Manager, South Central Railway,
3rd Floor, Rail Nilayam, Secunderabad.
2. The Chief Personnel Officer,
South Central Railway, Headquarters Office,
4th Floor, Personal Branch, Secunderabad.

... Respondents

Counsel for the Applicant ... Dr. A. Raghu Kumar

Counsel for the Respondents ... Mr. M. Brahma Reddy, SC for Railways

CORAM:

Hon'ble Mr. B.V. Sudhakar ... ***Member (Admn.)***

Hon'ble Mr. Swarup Kumar Mishra ... ***Member (Judl.)***

ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.)}

The O.A is filed challenging the non-feasance on the part of the respondents in not considering his case for appointment to the post of Group D under the category of Act Apprentices Training in workshops as Substitutes in Pay Band of Rs.5,200 –20,200 with grade pay of Rs.1,800 when others similarly trained along with him and with lesser percentage of marks have been appointed and thus, their action is one of arbitrary in character and violative of Articles 14 and 16 of the Constitution of India and rules on the subject matter.

2. Brief facts are that having passed SSC followed by qualifying in the intermediate exams, the applicant has obtained the National Apprenticeship Certificate by undergoing Apprenticeship Training at Carriage Workshop, Lalaguda of South Central Railway. He has further at his credit qualification in the Typewriting English Lower test and is NCC 'C' certificate holder. The respondents issued notification No. SCR/P-HQ/135/Act Appt dt 9.2.2011 for filling up erstwhile Group D posts by engaging Act Apprentices trained in Workshops as substitutes and the applicant being eligible in all respects applied for the same. The mode of selection is 'walk in interview' and screening by a screening committee. Applicant appeared before the screening committee on 10.3.2011 but his name was not shortlisted though some candidates who secured lesser marks than him made it. Hence this OA.

3. The applicant contends that on approaching the concerned authorities he was informed that his photo affixed on the application does not match with his physical appearance. Due to hair fall the applicant explained the difference in his appearance. Meanwhile, the respondents issued another notification dt.17.8.2012 and the applicant once again applied for the same. The applicant then sought reason for non selection under RTI Act and he was informed vide letters dt. 25.2.2013 & 18.3.2013 that it was for want of verification of identity and that the competent authority has not approved his candidature vide letter dt.3.10.12 though the record of the meetings show that the applicant's case was not considered at all. As the applicant case was not considered against both the notifications cited, the applicant made a detailed representations explaining the reasons for the difference vide letter dt.29.7.2013 and provided proof of his identity by submitting educational certificates, photos of his school days in Railway high school and certificates from several officers from the respondent organisation, but of no avail.

4. The respondents who were expected to file their counter immediately after issue of notice in 2013, took five years to file their final counter at their own leisure time in 2018 wherein it has been contended that they could not consider the case of the applicant for want of verification of identity. The respondents through an additional affidavit filed on 11.9.2018 stated that the Railway Board has handed over the appointment process to the Railway Recruitment Cell by giving 20 percentage quota to Act Apprentices in open market appointments with effect from 12.4.2017.

5. Heard the 1st counsel for both sides.

6. The learned counsel for the applicant has reiterated that despite providing abundant evidence about his identity and not replying to his representation only speaks of the prejudiced action of the respondents. The 1st counsel for the respondents informs that the power to recruit has been delegated to Railway Recruitment Cell w.e.f 12.4.17 and therefore the respondents cannot decide the issue.

7. The undisputed facts include that the applicant studied in Railway High School. He did apprenticeship training at Carriage Workshop, Lalaguda, S.C. Railway. Both the organisations are under the control of the respondents. Apart from the submission of his identity through the educational certificate, which by itself would have sufficed for ascertaining identification, the applicant has also submitted proof of his identity duly certified by the senior officers APO/M/SC and DPO/SC of the respondent organisation as has been vividly stated in the representation made to the General Manager, South Central Railway on 29.7.2013, which fact remains unrebutted. With these adequate data on hand, the respondents could have easily and effortlessly verified the identity of the applicant in no time, as the school in which the applicant studied, the workshop in which he

underwent necessary apprenticeship have all been under the administrative control of the Railways. Further, applicant's father was working in respondents' canteen which fact is also fully known to the respondents. A simple investigation could have revealed the truth. The testudinal pace with which the respondents were reacting to the request of the applicant in respect of his appointment which has been lingering since 2011 reflects only the recalcitrant attitude of the cunctator respondents. Hibernating till date without disposing the applicant's representation dt. 29.3.2013 the respondents try to take shelter in a subsequent event that the powers of the General Manager on the subject have now been withdrawn and file an additional affidavit on 11.9.2018 in this regard. The crucial documents to establish and substantiate their so called conducting of the verification to arrive at the conclusion that the applicant be not appointed, are yet to be made available to the Tribunal by the respondents for scrutiny. Nearly 8 years have passed and yet the respondents could not verify from their own records the identity of the applicant. What is surprising is that even the certificates issued by their own officers as stated in the representation of the applicant the respondents could not entail a conclusion about the identity for 8 years. All this goes to prove that the act on the part of the respondents is arbitrary, illegal and unjust and establishes beyond doubt as to non application of mind to process the issue. Manifestly and explicitly visible is the clear bias since the respondents have every bit of information available with them to ascertain the identity but did not do so, but have appointed others even with a lower merit. The Railway is a prodigious organization and it is the biggest employer in the largest peninsula and is expected to act as a model employer being the "State" under Art. 12 of the Constitution of India, as held by the Apex Court in the case of Mohan Singh vs Railway Board, (2015) 10 SCC 759. The respondents are found to be badly wanting in dealing

with the issue. There is inordinate delay and indecision for reasons best known to the respondents. Justice has thus been made a casualty in the process.

8. The applicant has crystallized his vested right of being considered for selection. Again, the fact that those with less meritorious performance having been appointed, there has been a hostile discrimination in as much as he has been ignored without being considered. The reason for the non consideration is as flimsy and feeble as the one in question which cannot stand the touchstone of equality clause of the Constitution.

9. In view of the aforesaid facts, the OA is allowed. To meet the ends of justice the respondents are directed to consider taking action as under:

i) Investigate the identity of the applicant within 30 days of the receipt of this order on the basis of the school certificates, the certificates authenticated by the Railway Officers and other attendant documents, if any produced by the applicant.

On verification and if being found as valid, the issue be referred to Railway Board for approval to take the applicant on the respondent rolls against notification dated 9.2.11 on the date on which the last candidate selected of the said notification has joined the respondent organisation.

ii) If any pre-appointment training is required the same be arranged and completed.

iii) The applicant be brought on roll with notional seniority to be fixed from the date the individual next in merit of the applicant has been afforded.

iv) No back wages to be paid for the interregnum period from the date of fixing notional seniority till the date of joining the respondents but pay shall be fixed notionally with the attendant increment and revision of

pay as per the VII Pay Commission Recommendation so that the applicant is not placed in a state of “junior drawing more pay”

- v) The nonfeasance being not one of inadvertent in character, exclusion of the applicant in the appointment is one of machination by someone in the respondents’ organization. Respondents shall make proper investigation and hold an inquiry and take disciplinary action, in accordance with the extant Rules, against the concerned Workshop Manager for not processing the case to its logical end as it involves the future of a poor unemployed youth and it does send a signal to others in the respondent organisation to be alert on issues of public importance.
- vi) Time calendared to complete the exercise is 5 months from the date of receipt of a certified copy of this order. The applicant is at his liberty to move the matter before this Tribunal, if there be any delay on the part of the Respondents in this regard.
- vii) Although the case justifies exemplary cost to be imposed on the respondents for the lackadaisical way in which a simple issue that could have been resolved by the respondents with the Himalayan resources they command but yet we refrain in doing so hoping that the respondents will not come up for such adverse notice in future in the best interest of the Respondent organisation and the Nation at large.

10. No order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (JUDL.)

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 17th day of September, 2018

evr