

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No.835/2016

Dated This The 30th day of November, 2017

CORAM: HON'BLE SHRI A.J.ROHEE, MEMBER (J)
HON'BLE SHRI R.VIJAYKUMAR, MEMBER (A)

Zala Dipaksinh Amarsinh,
Village Khara,
District : Mahesana
(North Gujarat)
District : Gujarat
Pin Code - 384002. ... Applicant
(By Advocate Shri M.S.Rao)

Versus.

1. Union of India
(To be represented through
its Chairman Railway Board,
Ministry of Railways,
Government of India,
Rail Bhavan,
New Delhi - 110001).
2. Western Railway
(Notice to be served through
its General Manager,
Western Railway Zone,
W.Rly Hqrs., Church Gate,
Mumbai-400020).
3. The Deputy Chief Personnel Officer
(Recruitment)
Railway Recruitment Cell,
Western Railway,
Parcel Depot, Alibhai Premji Road,
Grant Road (East),
Mumbai-400007. Respondents.
(By Advocate Shri V.S.Masurkar)

Reserved on :- 16.11.2017

Pronounced on :- 30.11.2017

ORDER

Per : R.Vijaykumar, Member (A)

This application was filed on
19.12.2016 seeking the following reliefs :-

"A) quash and set aside the impugned Provisional Panel (Part-III) dated 15.5.2013 at Annexure-A/1 hereto, in so far as it seeks to arbitrarily and discriminatorily exclude the roll number of the applicant herein in the said Provisional Panel on the specious plea that the applicant herein has not filled up the application form in his own handwriting.

B) call upon the respondents herein to place before this Hon'ble Tribunal all the original documents, noting file, etc., pertaining to the case of the applicant herein, which allegedly gave rise to the rejection of the applicant's candidature which he had offered in response to the Public Employment Notice No.02/2010 (RR/WR) dt. 16.12.2010 :-

D) on perusal of the aforesaid document as also the documents on the record of the present OA. your Lordships may be further graciously pleased to quash and set aside the decision of the respondents herein to reject the candidature of the applicant, holding and declaring the same as totally arbitrary, unreasonable, discriminated and is actuated by extraneous considerations

on the part of the respondents herein.

(D) further hold and declare that the applicant herein, having successfully participated at all the stages of the selection process initiated on 16.12.2010 i.e. qualifying in the written test, qualifying in the physical endurance test, satisfying the bona fide of all the original testimonials and certificates at the time of document verification and finally successfully qualifying in the medical examination, followed by a formal declaration by the respondent no.3 herein in their official website that the petitioner herein has been provisionally declared successful, is as of right entitled in law to be offered an appointment against the erstwhile Group D category of posts in pursuance of the Employment Notification dated 16.12.2010 at par with all those who were granted similar appointment on the basis of the impugned Provisional Panel, (Part-III) dt. 15.5.2013 at Annexure-A/1 hereto, with all consequential benefits flowing therefrom, including seniority, arrears of pay, etc., etc.

(E) issue appropriate directions, in the nature of Writ of Mandamus commanding the respondents herein to forthwith offer to the petitioner herein an appointment against the erstwhile Group D category of posts in pursuance of the Employment Notification dated 16.12.2010 at par with all those who were granted similar appointment on the basis of the impugned Provisional Panel, (Part-III) dt. 15.5.2013 with all consequential benefits flowing therefrom, including

seniority, arrears of pay, etc., etc.

(F) grant such other and further relief/s as may be deemed fit and proper in the peculiar facts and circumstances of the present case".

2. The applicant had responded to an Employment Notice for filling up vacancies in PB-1 with GP 1800 (erstwhile Group 'D' post of Western Railway) issued on Employment Notice No.2/2010 (RRC WR) dt. 16.12.2010. The Notice required applications to be given in the prescribed format and to be filled in, inter alia, by the candidate in his own handwriting in all respects of the application form. It has also specifically provided that applications having deficiencies, discrepancies or irregularities will be summarily rejected and includes specifications. Para 8.11 (vii), (viii) and (xvi) as bases for rejection as relevant to the case of the applicant. The applicant was to appear in the written examination and thereafter pass Physical Efficiency Test (PET) and then would be called again for document verification followed by a

Medical Examination.

3. The applicant has submitted that he duly applied in the prescribed format, but he had got some of the columns viz. 1, 2 and 4 to 18 of the personal data sheet filled through his friend so that no error would take place. He has claimed that this was done because he was nervous and this was his first application for an examination. He was held successful in the written examination and was called for the PET on 7.11.2012 and thereafter appeared for document verification on 4.12.2012. Next, he was asked to appear for Medical Examination and he did so on 11.12.2012. Thereafter, he was awaiting results and on learning from his friends in May, 2013 that some of them had been appointed, he checked the official website and saw that his roll number yielded the endorsement "results shall be declared later" on 29.5.2013. He claims that when he verified in June, 2013 the endorsement changed to "Congratulations you are provisionally declared

successful". Subsequently, in October, 2013 the endorsement of May was repeated. He then asked for information in a formal email and received a reply that his result shall be declared later. This position continued in subsequent verifications up to 20.3.2014. He then filed an application before the CAT, Ahmedabad Bench in OA No.418/2014 which was decided on 14.8.2015. These orders noted the lack of territorial jurisdiction of that Bench in view of specific mention in the Employment Notice that jurisdiction lies only with CAT, Mumbai Bench. However, based on the response from the respondents that there was a difference found between the handwriting of the applicant in the application format and in the OMR examination sheets as opined during the Government Examiner of Questionable Documents (GEQD) verification, the applicant's candidature had been placed on hold and had been subsequently rejected. The CAT, Ahmedabad Bench asserted that since selection process

occurred within their jurisdiction, the Ahmedabad Bench would also be appropriate. The Bench also afforded reliefs to the candidate and directed the respondents to refer the case of the applicant to another GEQD at his cost within three months of the order. The applicant agitated the matter in Writ Petition No.18244 of 2016 on the need for him to pay for the handwriting examination in this Writ Petition. The Hon'ble High Court decided the matter on 5.12.2016 holding that in this case, the CAT, Ahmedabad Bench had clearly no jurisdiction or the matter which would lie only with the CAT, Mumbai Bench and accordingly quashed the orders of the Ahmedabad Bench and informed the candidate that it would be open for them to challenge the decision before the CAT, Mumbai Bench. This application was filed in consequence on 19.12.2016.

4. The applicant had also filed an MP for condonation of delay which he computes from 15.5.2013 from the impugned provisional panel

(part-3), cites his claim that he saw his positive result in June, 2013 wherein he was provisionally declared successful, and that till much later he was not aware that his candidature had even previously been rejected by the Railway Administration. He cites the previous and later endorsements on the website for the roll number as his reasons for conclusion and that it was only after developing suspicions, that he approached the Ahmedabad Bench of this Tribunal and then the Hon'ble High Court wherein he was directed place his matter before this Bench.

5. The respondents have cited the provisional panel published on 15.5.2013 and that this application filed before this Bench on 19.12.2016 suffers from grave delay and laches which requires dismissal purely on the ground of limitation. They mention that in response to the said notification, 7.3 lakh candidates applied of which 2,03,483 candidates appeared in the written examination

and 7,244 candidates qualified, of these 7,105 non PH candidates were found eligible to attend PET and a total of 2,146 qualified candidates were called for document verification. Thereafter, 2,062 candidates were empanelled as per their merit marks. Therefore, this is claimed to be a very objective and fair employment process where all stipulations in the notice had to be followed scrupulously by the candidates and that the respondents also worked strictly according to the Rules published for this recruitment process. They acknowledged that the applicant went through various levels of examination. However, they followed the Railway Board's confidential letter dt. 25.6.2009 by which it was directed that no panel should be declared without cross checking the original and duplicate OMRs for which a Committee of two officers were nominated. Based on this Committee's report, the handwriting in the application form, written examination, PET and document

verification stages were matched and 53 candidates including the applicant was referred to the GEQD. On the basis of the GEQD report candidature of nine candidates including that of applicant was cancelled for variation between the documents and this number rose to 11 for further reasons of OMR mis-match and wrong declaration of date of birth. They state that the applicant being provisionally declared successful in May/June, 2013, was due to an inadvertent technical error. In this regard, they emphasised the admission by the applicant that he had violated the instructions for filling the application format by asking his friend to fill it up and this rendered his application itself as invalid. They have given the chronological tabulation of the process of declaration of results by which 1927 non PH candidates were declared successful on 20.2.2013 and results of 42 such candidates referred to GEQD for final report. Based on the GEQD report, decision was declared on

15.5.2013 for non PH candidates. They have asserted that the examination process was very transparent, fair and unbiased and the applicant's candidature was cancelled for good reason based on the GEQD Report and the further fact that the applicant had not filled up the application from in own handwriting.' They also point to the judgement of the Ahmedabad Bench of this Tribunal in which it did not give any particular reliefs to the applicant, but only suggested a further reference to GEQD at the applicant's cost.

6. We have heard Shri M.S.Rao, learned Advocate for the applicant and the reply arguments of Shri V.S.Masurkar, learned Advocate for the respondents.

7. We have carefully gone through the entire pleadings of the parties including various documents relied upon by them in support of their rival contentions and have also perused the facts, circumstances and law points involved in the case.

8. The matter has been carefully examined on the issue of delay. The applicant noted as early as 20.2.2013 that his result had been delayed and even if we accept that he came to know that he had been provisionally rejected as early as May, 2013 he was obliged to file his representation before the appropriate Bench of this Tribunal, at least by May, 2014. However, he pursued the matter through the Ahmedabad Bench and the Hon'ble High Court and the High Court finally decided the matter on 5.12.2016. The date of filing is not mentioned in the order of the Tribunal by the Ahmedabad Bench but it is sated to be around 22.9.2014 by the applicant. Although the applicant may have filed this case with condonation of delays before this Tribunal in the Ahmedabad Bench, the total time from May 2013 to December, 2016 when this case was finally placed before this Bench would be relevant for the purpose of laches. Laches are reflective of the applicant's urge for early relief and any error

of jurisdiction shall lie with the applicant and cannot be an excuse for urging condonation of delay.

9. With regard to the merits of the matter, the applicant has admitted that he did not fill up the application in entirety as was required by the Employment Notice. At that very moment, his application became null and void and it can only be considered as an invalid application. The further process that the applicant went through may be unfortunate but cannot be placed at the door of respondents for they have explained the reasons for rejection etc. The applicant makes much of the fact that he received an endorsement while verifying roll numbers on respondents website in June, 2013 that he was provisionally declared successful. During arguments it was noticed by this Bench that this particular sheet at Annexure-A17 differed from the other similarly downloaded enquiry printouts because it did not bear any date and had a line at mid-way just below the

middle of the sheet which suggested that a paper had been used to block the other contents. When attention of the learned counsel for the applicant was drawn to these discrepancies of lack of date and apparent cover up and he was directed to produce the original paper, he was unable to do so and proceeded to the other aspects of his arguments. This document is clearly not to be relied upon and the lack of reliance is important because it showed the existence of continuity and the credibility between the initial decision of the respondents right up to the very end when the final results were communicated. For this case, however, the respondents appear to have overlooked these discrepancies in their response and they have admitted to some alleged inadvertent technical error which is a most unfortunate omission by an alert examination authority but is clearly not in consonance with evidence which, however, favours the respondents. The applicant has

neither urged any bias nor does it seem possible as explained by the respondents at length in their submissions on the process by which examination was conducted and results finalised. The respondents have been fair and have followed a clearly transparent process beginning from the logic of filling up forms in candidate's own handwriting linked it to examination correction, and conducted appropriate checks. It could be argued that respondents should have rejected invalid applications even prior to examination but given the large number of applicants, this may not have been as feasible as it was at the short listed stage. The applicant alone is to be faulted for not following the system and has to bear the cross for the failure despite his excuses of innocence, etc. This displays a clear lack of bona fides considering that so many other candidates running to lakhs in comparison had followed all instructions. The application itself, therefore, lacks all merits

and even if this Bench were to condone the delay on the part of the applicants in approaching the right forum, it would not help his case given the lack of any basic merits. The O.A. is dismissed. No costs.

(R.Vijaykumar)
Member (A)

(Arvind J. Rohee)
Member (J)

B.

