

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD**

Misc. Delay Condonation Application No.330/00685/2017
in
O.A. No.330/01166/2017

Pronounced on 29.1.2019

HON'BLE MR. JUSTICE BHARAT BHUSHAN, MEMBER (J)
HON'BLE MR. MOHD. JAMSHED, MEMBER (A)

Kripa Shankar aged about 43 years son of Raghu Banshi Lal resident of 154/09, J.K. college, Jajmau, Post Jajmau, Kanpur, Uttar Pradesh.

Applicant

By Adv: Shri A.D. Singh

V E R S U S

1. Union of India through its General Manager, North Central Railway, Allahabad.
2. Divisional Railway Manager (Personnel) NCR, Agra.
3. Chairman, Railway Recruitment Board, Allahabad.

..... Respondents

By Adv: Ms. Shruti Malviya

ORDER

By Hon'ble Mr. Justice Bharat Bhushan, Member (J)

Misc. Application No. 330/00685/2017 for condonation of delay

The applicant, Kripa Shankar has filed the present Original Application for the following reliefs:-

- i) Quash the impugned orders dated 4.8.2014, 13.11.2014, 13.1.2015 and 11.2.2015 issued by respondent No. 2 (shown as Annexure No. 1 to this O.A. in compilation No.1).
- ii) Direct the respondents to issue a fresh amended order of appointment letter for joining the applicant on the post of Commercial Inspector/Apprentice in the category of Ex-Service Man instead of Traffic Inspector (Operating) with all consequential benefit.

- iii) Deem fit and proper.
- iv) Allow the original application with costs of litigation in favour of the applicant.

2. The brief facts of the case are enumerated as follows:-

The applicant is a former Armed Forces person who applied for the Centralized advertisement of employment Notice No. 03/2012 dated 6.2.2012 of Graduate Category/ N.T.P.C. posts under category of ex-serviceman.

3. Admit Card was issued to the applicant for appearing in interview. It appears that applicant wanted the post of Commercial Apprentice/Inspector while the Railway had offered him the post of Traffic Apprentice. Feeling aggrieved, the applicant moved various applications under Right to Information Act, 2005 seeking various kinds of information. Some of those information were admittedly provided to him. However, the applicant was not satisfied and filed the present Original Application (O.A.) before this Tribunal on 8.9.2016. Registry found this O.A. barred by time. This report was considered by the Division Bench of this Tribunal on 5.10.2016. Counsel for applicant offered to file delay condonation application. He was permitted to do so by the Tribunal. Therefore, in pursuance of the proceedings/permission dated 5.10.2016, the present delay condonation application has been filed by the applicant.

4. Ms. Shruti Malviya, counsel for respondents has also filed objection on their behalf on the delay condonation application.

5. Heard Sri A.D. Singh, Advocate for applicant and Ms. Shruti Malviya, Advocate for respondents.

6. Applicant has sought relief for setting aside the orders dated 4.8.2014, 13.11.2014, 13.1.2015 and 11.2.2015 of

respondents. Considering the relief sought, the O.A. is barred by time as it was filed on 8.9.2016 after more than one year of last order dated 11.2.2015.

7. Learned counsel for applicant has submitted that applicant had applied for the post of Commercial Inspector/Apprentice under reserved vacancy for ex-serviceman. Therefore, his appointment as Traffic Inspector/Apprentice (Operation) is not sustainable in the eyes of law.

8. On the other hand, Ms. Shruti Malviya, counsel for respondents has argued that advertisement was issued for centralized recruitment and that no option was given for candidates for particular position. She has further argued that applicant being devoid of choice, cannot claim a particular post. She further argued that recruitment result was declared on 20.5.2015. Prior orders indicated by applicant are in fact nothing but merely offers for recruitment and they do not give any vested right to the applicant on a particular post or appointment.

9. We do not want to enter into merit of the case in the present O.A. at this stage. We are merely considering the validity of delay condonation application. Delay Condonation application, available on record, indicates that final result of concerned recruitment was declared on 20.5.2015. Some queries were made by the applicant under Right to Information Act, 2005 by moving various applications. It appears that he also invoked the jurisdiction of Allahabad High Court by filing Writ A No. 25984 of 2016 (Kripa Shankar Vs. Union of India and 2 others) under wrong advice. The order dated 4.7.2016 passed by Hon'ble High Court is reproduced as below:-

"List has been revised. None appears for the petitioner.

Sri Saurabh holding brief of Sri Manoj Kumar Sharma is present for respondents.

Petitioner is seeking quashing of the orders dated 4.8.2014, 13.11.2014, 13.1.2015 and 11.2.2015 and is also seeking a direction to the respondents to issue appointment letter for his joining on the post of Commercial Inspector/Apprentice in the category of Ex-service Man instead of Traffic Inspector (Operating).

This is a service matter relating to the Railways. Therefore, the remedy available to the petitioner is by approaching the Central Administrative Tribunal in view of the judgment of the Supreme Court in the case of L. Chandra Kumar Vs. Union of India and others reported in 1997 (3) SCC 261.

The writ petition is therefore, not maintainable in the High Court and is accordingly dismissed."

10. It appears that applicant filed the writ petition under wrong advice. Whereupon, the Hon'ble High Court was constrained to dismiss the writ petition. After dismissal of the writ petition on 4.7.2016, the applicant filed the present O.A. on 8.9.2016 i.e. within 2 months of dismissal of writ petition. If we believe that right to file the present O.A. accrues after final result dated 20.5.2015, it would mean that applicant could have filed the present O.A. on or before 20.6.2016. The applicant instead of approaching this Tribunal, filed a writ petition before Hon'ble High Court under wrong advice. This Writ petition was dismissed on 4.7.2016. The applicant could not have filed the present O.A. during the pendency of aforesaid writ petition. The O.A. has been filed by the delay of only two

months, if we take the proceedings of aforesaid writ petition before Hon'ble High Court under consideration. We think that applicant is ex-serviceman. He is seeking fresh job under reserved category for ex-serviceman. There is no undue delay in filing the present O.A.

10. Considering the various RTI applications moved before the department by the applicant and pendency of writ petition before Hon'ble High Court, we believe that delay is minor and can be ignored.

11. Accordingly, Misc. Delay Condonation Application No. 330/00685/2017 is allowed. Delay is condoned. O.A. to proceed regularly.

12. Counter reply has already been filed. Let Rejoinder Reply, if any be filed within 4 weeks.

13. List on 5.3.2019.

(Mohd. Jamshed)
Member (A)

(Justice Bharat Bhushan)
Member (J)

HLS/-

