

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O.A.No.260/220/2014

Date of Reserve:03.04.2019

Date of Order:14.05.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)  
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Sohan Lal Mali, aged about 40 years,S/o. Punya Mali, At-Gadi Gaon, PO-Mal Nagar, PS-Mandrayal, Dist-Koraoli, Rajasthan.

...Applicant

By the Advocate(s)-M/s.N.R.Routray  
Smt.J.Pradhan  
T.K.Choudhury  
S.K.Mohanty

-VERSUS-

Union of India represented through:

1. The General Manager, East Coast Railway, E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda.
2. Deputy Chief Personnel Officer (Recruitment) Railway Recruitment Cell, 2<sup>nd</sup> Floor, E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar-17, Khurda.

...Respondents

By the Advocate(s)-Mr.R.S.Behera

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

In this Original Application under Section 19 of the A.T.Act, 1985, the applicant has prayed for the following reliefs:

- i) To quash the show cause notice dtd. 11.01.2012 passed by the Respondent No.2 under Annexure-A/4.
- ii) And to direct the Respondents to appointment the applicant as Junior Trackman & Helper-II.

2. The factual matrix of the case is that the applicant was one of the contenders for the post of Junior Trackman & Helper-II (Group-D) in pursuance of an Employment Notice dated 28.10.2006 (A/1) issued by the East Coast, Railway (Recruitment Cell), Bhubaneswar. Accordingly, he did appear the written test and consequent upon his qualifying the said test, he was called upon to Physical Efficiency Test (PET) on 04.04.2008. In the PET test the applicant got through. While the matter stood thus, Respondent No.2 vide letter dated 11.01.2012 asked the applicant to submit his explanation as to why his candidature should not be cancelled on the ground that during the course of verification of documents, the following discrepancies were noticed:

- i) Application is unsigned/application is with signatures that are not in running script/signature not in Hindi or English/Signed in capital letters/signatures drastically different at different places.

3. In response to this, the applicant submitted his explanation vide A/5 dated 27.01.2012 in which he categorically denied any such infirmity in the application submitted by him. There being no response, the applicant submitted a representation dated 29.08.2013 to Respondent No.2 with a prayer to allow him to appear in the medical test and his documents may be verified so that he could get an appointment to the post in question. Since no action was taken by the respondent-railways, the applicant has invoked the jurisdiction of this Tribunal in this O.A. praying for the reliefs as aforementioned.

4. It is the case of the applicant that some similarly situated persons had approached this Tribunal in O.A.No.531 of 2009 and this Tribunal, vide order dated 12.03.2010 decided the O.A. in favour of the applicants therein. Against this order, the Railway Administration preferred an appeal before the Hon'ble

High Court in Writ Petition No.10324/2010. The Hon'ble High Court vide judgment and order dated 08.12.2010 dismissed the said Writ Petition. Being dissatisfied, the Railways filed SLP before the Hon'ble Supreme Court, which according to applicant, has been dismissed.

5. Applicant has pointed out that after dismissal of SLP by the Hon'ble Supreme Court, the respondents proceeded to implement the order as passed by this Tribunal in O.A.No.531/2009 and consequently, they started scrutiny of applications. At the time of verification of the application of the application, Respondent No.2 noticed the deficiencies as already quoted above. The applicant has submitted that similar matter was the subject matter of dispute in a batch of cases (O.A.No.703 of 2009 to O.A.No.866 of 2009) before the CAT, Calcutta Bench. The CAT, Calcutta Bench vide 20.8.2009 allowed those OAs in the following terms:

"23. In the result, we set aside and quash all the impugned rejection/cancellation orders of these applicants challenged in these OAs and direct that their candidature shall be proceeded further to the next step where they were stopped and the respondents shall consider their candidature for selection on merits and communicate the result through internet, and till such consideration of the candidature of the applicants is made, the final panel stated to be containing 5300 names shall not be finalized, published and/or appointment orders issued. In order to provide equal opportunity to all these similarly placed candidates who may not have come before us, we further direct that the recruitment cell shall issue appropriate notice within a fortnight from the date of this order, giving one months' time from the date of such notice to them to submit representations against such cancellation and decide the same within one month from the date of their receipt in the light of our observations made above".

6. It has pleaded that had there been any deficiency in the application submitted by the applicant, the same should have been rejected at the scrutiny stage and certainly not after he being declared successful through a process of

selection. His further contention is that the rejection of his candidature is based on flimsy grounds purportedly to deprive him of the job.

7. Applicant has filed an M.A.No.253/2014 seeking condonation of delay in approaching this Tribunal. According to applicant, Respondent No.2 issued show cause notice dated 11.01.2012 for cancellation of his candidature in the post of Junior Trackman & Helper-II by granting 15 days time for submission of his explanation. In response to this, he submitted his explanation vide communication dated 27.01.2012 by Regd.Post within the stipulated time. Although it was expected of Respondent No.2 to pass appropriate orders, the reasons best known, no such order was passed. Thereafter, the applicant submitted a representation dated 29.08.2013 to Respondent No.2 and since no reply was received, he has approached this Tribunal in the present O.A.

8. Respondents have filed their counter opposing the prayer of the applicant. They have submitted that the applicant submitted his application for the post in question without his full signature in running script, notwithstanding the instructions issued in the Employment Notice under Para-9(iii) that full signature in running script in English or Hindi should be given in the box below the photograph and also vide Para-9(vi), it has been indicated that the signature of the applicant must be full in running hand. It has been submitted that the applicant was given an opportunity through letter dated 11.01.2012 to explain in writing by 10.02.2012 as to why his candidature should not be cancelled. Since the applicant's reply was not reasoned one, his candidature against the Employment Notification dated 28.10.2006 was cancelled. Respondents have pointed out that in the notification itself there was a stipulation that the applications would be

verified in detail at a later stage and if deficiency is found, it would be straightway rejected.

9. Applicant has filed a rejoinder to the counter by pointing out that he had clearly mentioned his name as 'Sohan Lal Mali' and put his signatures both in Hindi & English. Hence, the allegation that the applicant deliberately committed mistake by overshooting the instruction is not correct.

10. We have heard the learned counsels for both the sides and perused the records. We have also gone through the decisions relied upon by both the sides in support of their respective contentions.

11. Before proceeding to consider the matter on merit, in the first instance, the Tribunal is to consider Misc. Application No.253/2014 for condonation of delay. Admittedly, the applicant was given an opportunity vide letter dated 11.01.2012 issued by Respondent No.2 to explain in writing by 10.02.2012 as to why his candidature should not be cancelled. In response to this, the applicant submitted his explanation vide communication dated 27.01.2012 by Regd. Post within the stipulated time. Since the applicant's reply was not reasoned one, his candidature against the Employment Notification dated 28.10.2006 was cancelled, without however, communicating any reasoned order to the applicant in that behalf. In view of this, by any stretch of imagination the show cause notice issued to the applicant vide A/4 dated 11.01.2012 could be construed to mean the impugned order of rejection of his candidature nor thereby, there existed a cause of action for approaching this Tribunal. Therefore, the cause of action in this O.A. is deemed to have started from 27.01.2012 when the applicant submitted his explanation with an expectation that he might receive any such reply on his explanation. In this

connection, it is profitable to refer to Section 21 of the A.T.Act, 1985, which states as follows:

"21. Limitation.—

(1) A Tribunal shall not admit an application,—

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where—

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court, the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.

12. In the instant case, as already noted above, show cause notice dated 11.01.2012 (A/4) cannot be said to be the final order with the scope and meaning of Section -21 (1) (a). Since the applicant in response to show cause

notice, had filed his explanation dated 27.01.2012 (A/5) and he did not any response to this, the provisions of Section-21(1)(b) as quoted above is fully attracted to his case. Therefore, the applicant should have approached this Tribunal within a period of one year and six months from the date of submission of his explanation dated 27.01.2012 whereas he has approached this Tribunal after a delay of about nine months. It reveals that since the applicant did not receive any response to his explanation from the respondents, he had submitted a representation dated 29.8.2013 and thereafter, approached this Tribunal. In consideration of explanation offered, this Tribunal is satisfied that there was sufficient cause for the applicant for not making the application within the prescribed time frame and delay if any, caused, being not abnormal, the same is condoned. M.A.No.253/2014 is thus allowed.

13. We have considered the rival submissions and also gone through the decisions cited by the respective parties.

14. Learned counsel for the respondents has relied on the decision of Hon'ble Supreme Court in Civil Appeal No.9388 of 2013 (arising out of SLP (C) No.706 of 2014) (UOI & Anr. Vs. Sarwan Ram & Anr.). In that case, the appellants had issued notification dated 19<sup>th</sup> November, 2010 to fill up 800 posts of Group D (Ex-serviceman quota). Condition No.8.7(i) of the said employment notice mandated the applicants to paste photograph in military uniform. Pursuant to the said notification, Respondent No.1 had applied for the posts but failed to comply with the mandate, i.e., condition to paste photograph in military uniform along with application form. The application being defective was rejected after he participated in selection process when the defect was noticed. Being aggrieved, Respondent no.1 preferred Original

Application No. 84 of 2011 before the Central Administrative Tribunal, Jaipur which dismissed the said O.A. vide order dated 1<sup>st</sup> April, 2011. This decision of CAT, Jaipur Bench was challenged before the Hon'ble High Court of Judicature, Rajasthan at Jaipur and the Hon'ble High Court allowed the writ petition. The decision of the Hon'ble High Court on being challenged, the Hon'ble Supreme Court vide judgement dated 8<sup>th</sup> October, 2014 in the above mentioned Civil Appeal held as under:

"Condition No. 8.7(i) is one of the conditions made mentioned in the employment notice. We are of the view that in non-compliance of such condition, it was always open to the competent authority to reject such application being incomplete. Respondent No.1 having failed to do so, the competent authority has rightly rejected the application. In such circumstances, it was not open to the High Court to direct the authorities to consider the case of respondent no.1 for appointment, sitting in appeal over the scrutiny of application by referring to certain certificate of length of service. "High Court under Article 226 of the Constitution of India is not competent to scrutinize the applications filed for appointment and cannot substitute its own opinion based on some evidence to come to a conclusion whether the application for is defective.

In view of the reasons recorded above, we have no other option but to set aside the impugned judgment dated 28<sup>th</sup> May, 2013 passed by High Court of Judicature for Rajasthan, Jaipur Bench at Jaipur in D.B. Civil Writ Petition No.13032 of 2011".

15. On the other hand, the applicant has relied on the decision of this Bench in O.A.No.526 of 2013 decided on 12.01.2017. On a perusal of the said decision, it is found that one Surendra Kumar Laxman Ghusakar who was a candidate for the post of Junior Trackman & helper-II pursuant to the same Employment Notice dated 28.10.2006 as in the present O.A., had appeared in the written test and undergone a Physical Efficiency Test (PET) and had come out successful. His candidature was rejected by the railway authorities on the ground that "application without full signature in the box provided below the

space for pasted photograph". This Tribunal vide order dated 12.01.2017 allowed the said O.A. in the following terms:

"12. Learned counsel for the respondents has no doubt argued that employment notice is the most important document and any deviation from the same would render candidature of an applicant ineligible. However, one has to examine the seriousness of the defect. In the present case, the defect detected at a later stage would not be considered serious enough to debar a candidate from being appointment if he has been selected on the basis of his merit. While dealing with this matter, we would be failing in our duty if we do not give justice to the applicant because of some administrative failures on the part of respondent authorities. Applicant undergone a recruitment process and also had some legitimate expectations. Once a candidate has been admitted to the process of written examination and was thereafter put through PET, he certainly will have a legitimate expectation of getting an employment. In the present socio economic situation, for a young person, the expectation of getting a job would be the biggest expectation of his life. In process of recruitment and selection if someone has come out successful, raising an object of such nature that too at the penultimate moment, would certainly bring frustration to such individual. We, therefore, do not find any legitimate ground for rejection of the candidature of the applicant. In this regard, we have perused the judgments of Hon'ble Apex Court also as cited above and find that in respect of recruitments as well as academic examinations, Hon'ble Apex Court in similar matters had taken a view that respondents having admitted someone cannot snatch-away his chances at the penultimate moment by raising such objections. We, therefore, find merit in this case and accordingly, we quash the impugned orders dated 21.2.2012 and 24.7.2012 and direct the respondents to issue an offer of appointment to the applicant, if he has been selected as per merit within a period of 90 (ninety) days from the date of this order. The O.A. is thus allowed".

16. Aggrieved by this order of the Tribunal, the railway administration approached the Hon'ble High Court of Orissa by filing W.P.(C) No.6268 of 2017. The Hon'ble High Court vide judgment and order dated 01.05.2017 dismissed the said writ petition, the operative part of which reads as follows:

"9. Considering the rival submission of the parties and after going through the materials available on record, it reveals

that the name of the applicant being so long is not to be adjusted in the box provided in the application form. The application of opposite party no.1 was rooted through the Screening Committee and the same was not rejected at the time of screening. He was allowed to appear in the written examination as well as Physical Efficiency Test. There is no stipulation in the notification that in case the letters exceed the box provided in the application form, what will be the consequences. Since the Tribunal has passed a reasoned order and as there is no error apparent on the face of the record, this Court is not inclined to interfere with the same in exercise of the jurisdiction under Article 227 of the Constitution of India.

The Writ Petition is accordingly dismissed".

17. This Tribunal has taken note of all the decisions relied upon by the parties. In Union of India & Anr. Vs. Sarwan Ram & Anr. cited supra, as relied upon by the respondents, it came to the notice of the authorities that bogus persons by enclosing fake certificates started getting recruited. In that view of the matter for eliminating the possibility of any bogus person getting such recruitment, condition no. 8.7(i) was introduced to paste photograph in military uniform on the application form apart from condition no.8.7(iii) that inter alia requires all the applicants to submit attested copies of certificates from the appropriate authority giving their length of regular service and Army Class I certificate. It was also not a case of the respondent no.1 that he had appeared any examination in which he had been declared successful. In view of this, the decision as cited by the respondents being distinguishable from the facts of the present O.A. is of no help. On the contrary, in our considered view, the facts in OA.No.526 of 2013 as relied upon by the applicant being quite similar and identical to the facts of the present O.A. and the order of this Tribunal dated 12.01.2017 having been confirmed by the Hon'ble High Court of Orissa in the above mentioned writ application, this Tribunal cannot make a departure from the view already taken under similar facts and circumstances.

In view of this, the impugned show cause notice dated 11.01.2012 (A/4) stands quashed and set aside. Resultantly, respondents are directed to consider the candidature of the applicant and issue offer of appointment in his favour, provided that he has been selected and is otherwise suitable for the post in question. This exercise shall be completed within a period of 90 (ninety) days from the date of receipt of this order.

18. In the result, the O.A. is allowed as above, with no order as to costs.

(SWARUP KUMAR MISHRA)  
MEMBER(J)

(GOKUL CHANDRA PATI)  
MEMBER(A)

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