

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.**

O.A. No. 776/2014

Date Of Decision: 16th November, 2018.

**CORAM: HON'BLE SHRI. R. VIJAYKUMAR, MEMBER (A).
 HON'BLE SMT. RAVINDER KAUR, MEMBER (J).**

Shri Uttam Shankar Vyavahare,
S/o Shankar Vyavahare,
Age: 54 years, Formerly working as
Casual Labourer, Central Railway,
Bridge Engineering Workshop,
Manmad and residing at:
Krishna Nagar, At & Post Nandgaon,
Taluka: Nandgaon Dist: Nashik,
Pin code:- 422 403,
State: Maharashtra.

...Applicant.

(By Advocate Ms. Vaishali Agane)

Versus

1. The Union of India,
 Through: The General Manager,
 Central Railway, CSTM, Mumbai.
2. The Chief Workshop Manager,
 Bridge Engineering Workshop,
 Central Railway, Manmad,
 Pin code: 423 104.
3. The Divisional Railway Manager,
 Central Railway, Bhusawal Division,
 Bhusawal- 425 201.

...Respondents,

(By Advocate Shri V S Masurkar)

Reserved on : 18.09.2018

Pronounced on : 16.11.2018

ORDER**PER:- R. VIJAYKUMAR, MEMBER (A) .**

This application has been filed on 07.11.2014 under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"a) This Hon'ble Tribunal may be graciously pleased to call for the records of the case from the Respondents and after examining the same it may be declared that impugned order dated 07.03.2012 i.e. Anx.A-1, is illegal, arbitrary and malafide and the same may please be quashed and set aside and direct the respondents to absorb the applicant as Trainee post of Safaiwala in Gr.D post with all consequential benefits in accordance with Railway Board Order dated and 09.10.1998 and 09.12.2011;

b) This Hon'ble Tribunal may be pleased to declare that the Applicant is entitled to pass 10th Standard examination while working as trainee safaiwala;

c) This Hon'ble Tribunal be pleased to declare order dated 13.08.2014 refusing to grant opportunity to applicant to pass 10th Standard Examination while in service as Trainee Safaiwala is illegal, arbitrary and malafide and the same may be quash and set aside;

d) The Hon'ble Tribunal may be pleased to grant such other relief as this Hon'ble Tribunal feels it necessary to grant the same with costs."

2. The applicant provides details of the number of days he had worked from his first appointment as Casual Khalasi on 03.06.1976 upto 18.06.1889 totalling a period of 674 days based on which he claimed benefits of Railway Board Notification dt. 09.10.1998 and and of 18.05.1999 for regularization of Casual Labour borne on the live register. Since the application dt. 19.06.1999 was not favourably considered, he filed an OA No. 14/2004 which was decided on 24.12.2004 directing the respondents to nominate a Competent Authority to consider his case for absorption noting that he was not 8th Standard pass prior to the relaxation in educational qualification given on 21.02.2001. The Competent Authority was directed to decide on his absorption and pass a detailed and speaking order. The respondents took this matter in Writ Petition where the direction was upheld without examining the merits of the matter in orders dt. 12.03.2008. The orders noted that the applicant had not filed his application before the stipulated period

on or before 22.06.1999 and therefore, rejected his request for regularization in their orders No. BSL.P.540.EBW.Court case dt. 26.05.2008. The applicant then filed an OA No. 396/2009 which was decided on 12.01.2012 directing the respondents to pass a fresh speaking order. The applicant then made an appeal to the DRM on 11.05.2012 stating that the qualifications for Group D were raised to 8th Standard on 08.12.1998 and previously only required literacy for which he was 7th standard pass at that point in time. He stated that he had also passed 8th standard in May, 2011. He acknowledged that he had failed in the Gangman Medical Examination and therefore, based on the orders of the 1998, he should be absorbed as Safaiwala as on 21.05.1999. He stated that he was not governed by the Railway Board letter dt. 09.12.2011. However, in the speaking orders passed by respondents impugned at Annexure A-1 in compliance with the orders of this Tribunal in OA No. 396/2012 dt. 12.01.2012, which were issued in

reference No. 540/EBW/Court case/USV dt.
07.03.2012, the following order has been
passed:-

"As per the service particulars of the employee, it is seen that he is of 52 years old, his date of birth being 01.04.1959.

In terms of Rly. Bd's L.No.E(G)II/2011.RR.1/11 dt. 09.12.2011, relaxation in exceptional circumstances can be considered for the persons in Gr.'D' category whenever grant of appointment is considered in any of such persons not in possession of prescribed educational qualification for the post then the persons can be engaged as trainees, who will be given regular pay bands and grade pay only on acquiring the minimum educational qualification prescribed under the recruitment rules. The emoluments during the period of their training & before they are absorbed in the Govt. as employees, will be governed by the minimum of the 1S pay band without any grade pay. The period spent in the 1S pay band by the future recruits will not be counted as service for any purpose as their regular service will start only after they are placed in the pay band PB-I of Rs. 5200-20200 alongwith grade pay of Rs.1800/-.

The applicant has passed 8th Standard in the year 2011 as per the certificate submitted by him on 02.05.2011.

In this connection, it is highlighted that the employee is fit in cye two. The vacancies

available in the cey two category in Gr.D. is very less as also the applicant has to acquire the qualification of 10th Std. Unless he acquires prescribed educational qualification for Gr.D employment in Railways, he cannot be treated as regular employee & whatever service he has rendered will not be counted for pensionary benefits. The employee is now 52 years. It is beyond doubt that he can acquire 10th Std. Prescribed educational qualification for Gr.'D'. Thus giving opportunity for acquiring the educational qualification of Xth Std. by applying Board's letter dated 09.12.11 is not going to serve the purpose. The employee was called on 07.03.2012 and explained the above position to him, so accordingly the representation has been disposed off."

3. As noted in the reliefs claimed, the applicant seeks the benefit of regularization extended by respondents in orders dt. 09.10.1998 and also the benefit of relaxation set out for exceptional circumstances in the circular of respondents referred in the reply dt. 09.12.2011.

4. The applicant has also filed an MA No. 333/2015 for condonation of delay since the orders dt. 07.03.2012 rejecting his application were only taken up in this

application which was filed on 07.11.2014 and should have been filed within six months. The reasons given are that after these orders were received by him, he filed a representation on 09.05.2012 and an appeal under the Railway Servants(D&A) Rules on 21.08.2012 and then sought information under the RTI which was finally given on 13.08.2014. The MA for condonation of delay is, therefore, not the fault of the applicant who did not receive any reply from the respondents on his representations against the said order.

5. Respondents have replied to the MA for condonation of delay explaining that the so-called appeal under the Railway Servants(D&A) Rules is not applicable since he is not a Railway employee. They have referred to the extensive examination in compliance with the orders of this Tribunal and that there is clear delay of 605 days for which no reasons had been given especially since these were orders passed after several rounds of litigation and in compliance with

the orders of this Tribunal.

6. On the main OA itself, they have stated that following the examination by the High Power Committee set up based on the orders of this Tribunal, orders were passed on 09.06.2010 and all medically fit persons were absorbed. However, the applicant who had been screened for the post of Gangman on 08.04.2016 could have been appointed but in medical examination, he was found only fit in Cye-1 but unfit for Aye 3, Bee-1, Bee-2 and therefore, failed to fulfil the medical criteria for Gangman which is a Group-D Post. Further, since he had not passed 8th Standard examination at the time of screening on 08.04.2010, he could not be appointed for any other Group-D Post. The applicant was also given the benefit of further review after the Railway Board letter dt. 05.01.2011 prescribing guidelines for those cases who had not been finalized and where offer of appointment had not been issued. However, the requirement at that time was for absorbing in Group-D Post was minimum 10th

Standard passed by 01.04.2011 which was not satisfied by the applicant.

7. We have heard the learned counsel for the applicant and learned counsel for the respondents and carefully considered the facts and circumstances, law points and legal contentions in this case.

8. It is apparent that the respondents have given very careful and sympathetic consideration to the applicant. The applicant has sought the benefits of the Regularization Scheme of 1998 but he did not satisfy the minimum educational qualifications of 8th standard pass at that point in time. He also did not meet the medical requirements for the post of Gangman. These aspects were recognised when the orders were passed by the High Power Committee on 08.04.2010. The applicant passed 8th standard examination only on 02.05.2011. He has sought the benefit of the relaxation issued in respondents guidelines which required minimum 10th standard pass for absorption in Group-D Post from 01.04.2011. The applicant

did not satisfy this requirement and in fact, he had not passed the 8th standard on that date. Relaxing the 10th standard qualification requirement cannot by any means imply a total relaxation even of the 8th standard requirement and therefore, the question of appointing a person as trainee when he has not even passed the examination previous to the specified qualification is simply not supported by any rationale. The applicant is taking alternately different stands. It is apparent that he wants to have a relaxation which was offered in the 2011 orders and apply it to the 1998 orders which required 8th standard pass for entry into the Group-D at that point in time. That opportunistic approach is certainly not permissible and the applicant is clearly barred from making such claims to seek the benefit of the Regularization Scheme of the respondents.

9. It is also apparent that only six months were available for filing this application from the date of impugned orders

considering that these had been passed as speaking orders in compliance with the orders of this Tribunal. The correspondence under RTI has no relevance to the pursuit of his challenge before this Tribunal. The delay is clearly excessive and no reasons have been furnished and cannot be condoned. However, the case has also been considered on its merits as above and is found lacking any basis whatsoever. The OA is accordingly dismissed without any order as to costs.

(Ravinder Kaur)
Member (J)

(R. Vijaykumar)
Member (A)

Ram.