

(2012) 05 AHC CK 0060

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 24625 of 2009

Raj Kumar

APPELLANT

Vs

Central Administration Tribunal and Others

RESPONDENT

Date of Decision : 08-05-2012

Acts Referred:

Administrative Tribunals Act, 1985 — Section 21

Citation : (2012) 8 ADJ 281 : (2013) 1 AWC 166

Hon'ble Judges : Rakesh Tiwari, J; Het Singh Yadav, J

Bench : Division Bench

Advocate : Arun Kumar Singh, for the Appellant; Govind Saran and Sushil Kumar Srivastava, for the Respondent

Final Decision : Dismissed

Judgement

Hon"ble Rakesh Tiwari, J.—Heard learned counsel for the parties and perused the record. The petitioner challenges the impugned order dated 17.8.2007 passed by the Divisional Railway Manager, Jhansi and order dated 27.3.2009 passed by Central Administrative Tribunal, Allahabad in O.A. No. 314 (D) of 2009, Raj Kumar v. UIO and others. He also prayed for mandamus commanding the respondents to permit him to work as Assistant Station Master (hereinafter referred as Pro ASM) and pay him his salary of the post regularly.

2. The brief facts of the case are that notification No. RRB/BPL/5/96 was published in Newspaper by the Railway Recruitment Board, Bhopal inviting applications for appointments on various posts in the Railway. The petitioner submitted his application for consideration of his candidature on the post of Pro ASM. After clearing written examination and interview he was selected for the post of Pro Asm on 3.12.1997 at Faridabad and was required to undergo practical training at Bhusawal before appointment. A Perusal of the communication dated 17.8.2005 (Annexure 5 to the writ petition) shows that representation of the petitioner to the Minister of Railways was not considered favourably as inspite of four opportunities provided to him to clear the training he could not do so. Hence

he was not appointed appointment on the said post. Letter dated 17.8.2005 reads thus:

3. It appears that the petitioner then moved representations dated 5.3.2008 to the General Manager, North Central Rly., Allahabad as well as to the Senior Divisional Personnel Officer North Central Rly. Jhansi for granting him one more opportunity to clear the training for the post of Pro ASM but no heed is alleged to have been paid to his representations. Therefore he moved the Central Administrative Tribunal, Allahabad by means of O.A. No. 314 (D) of 2009, Raj Kumar v. Union of India and others, which was dismissed by the Tribunal vide its judgment dated 27.3.2009 in the following terms:

Registry to place Serial No. of inward Register (Register No. 1 as the number of O.A. Qualified capital letter "D" and after year capital letter "N.R." within brackets.

2. Accordingly to scrutiny report and Note of Registry dated 26.3.2009, O.A. Is time barred about 08 years and no application for condonation of delay, as required under law, has been filed.

3. It is clear from the facts stated in the O.A. That the applicant has been representing before the respondents from 26.6.2003 and thereafter on 5.3.2008 and 20.11.2008. He again waited without "good reason" from 20.11.2008 i.e. for about 07 months. According to the applicant, in response to representation dated 26.6.2003, he received certain information from the respondents vide letter dated 17.8.2007, this does not furnish adequate explanation to show that the applicant has acted diligently and bona fide. His conduct in this respect, is casual," negligence and full of apathy.

4. Cause of action, if any, arose in the year 1997, thereafter in 2003 and then in 2007 since the period of limitation prescribed u/s 21 of Administrative Tribunal Act 1985, is only one year from the date of initial causes of action arose", the O.A. (unnumbered) is highly time barred and it is accordingly dismissed.

5. There will be no order as to costs.

4. Learned counsel for the petitioner submits that if the petitioner is provided with one more opportunity to appear in the training he would clear it and that his third opportunity got wasted as he could not appear in that training due to reason that he was suffering from Typhoid at that time therefore he should be given another opportunity to appear in the training in lieu thereof.

5. Learned counsel for the respondents submits that the petitioner had already been granted four opportunities to clear the training but he could not do so and that a person cannot be granted infinite opportunities till he clears the training particularly when other subsequent batches were coming for training hence it is not be possible to give training to one person time and again merely because he was not able to clear it.

6. We have considered the submissions advanced by the parties.

7. On perusal of the judgment passed by the Central Administrative Tribunal, firstly which has recorded a finding unexplained delay of eight years in moving the Tribunal. It is settled that repeated representations do not relax the limitation under the statutory provisions u/s 21 of Central Administrative Tribunal. The limitation to move the Central Administrative Tribunal is one year from the date of cause of action arises.

8. Moreover, in the facts and circumstances of the case, we are of the considered view that the petitioner though was able to clear the written examination and interview for post of Pro ASM but failed to clear the training even though opportunities were granted to him by the Railways at least four times. Thus he having failed in the training examination for which the recruitment process is already over in 1999, the respondents cannot be directed to appoint the petitioner now on the post of Pro ASM by giving him another opportunity the fifth time to clear the training. As regards his contention that during the period third opportunity was granted to him he suffered from Typhoid and as such could not appear in the examination to clear it, hence was entitled to another opportunity, we can only say that railway had been liberal enough to give him another opportunity the fourth time to clear the training examination in which he again failed.

9. To our mind the petitioner is a through incompetent person as far as passing of practical training is concerned. The post of Pro ASM is a post of responsibility involving rail traffic. Lives of passengers and accident free running of trains requires a competent person. They cannot be put in the hands of such persons who are not able to clear even basic training for the post even in four attempt.

10. In our considered opinion no further opportunity is required to be given to the petitioner for clearing the training of the post of Pro ASM now after lapse of almost fourteen years of his passing of the written examination and interview particularly when no rule provides for repeated opportunities. The Original Application was moved by the petitioner after about eight years for which there is no reasonable explanation in law. He even did not move any application alongwith the O.A. for condonation of delay showing sufficient cause for delay.

11. For all these reasons stated above, there is no illegality or infirmity in the impugned order dated 27.3.2009 passed by the Central Administrative Tribunal rejecting to him and to appoint him as Pro ASM. We, therefore, uphold the impugned orders dated 27.3.2009 of the Tribunal as well as the order dated 17.8.2007 passed by the authority.

12. The writ petition accordingly dismissed. No orders as to costs.