

(2011) 08 DEL CK 0331

In the Delhi High Court

Case No : Writ Petition (C) No. 7380 of 2009

Rajvir Singh

APPELLANT

Vs

Chairman, Railway Recruitment Board

RESPONDENT

Date of Decision : 17-08-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 08 DEL CK 0331

Hon'ble Judges : Sudershan Kumar Misra, J;Anil Kumar, J

Bench : Division Bench

Advocate : A.P. Sahay, for the Appellant; R.L. Dhawan, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.

CM Nos. 5252-53/2011

Considering the facts and circumstances, the applications are allowed. The delay in filing the application for restoration is condoned and the writ petition is restored to its original number.

W.P.(C) No. 7380/09

1. The Petitioner has challenged the order dated 1st September, 2008 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No. 2073/2007 and M.A. No. 2061/2007 titled as "Sh. Rajbir Singh v. Chairman, Railway Recruitment Board" dismissing the original application of the Petitioner and declining the prayer of the Petitioner to quash the Order No. RRB/BPL/RTI/286 dated 12th April, 2007. The Tribunal declined the plea of the Petitioner that his candidature for the post of Assistant Loco Pilot in the scale of Rs. 3050-4590/- was wrongly denied and that the Petitioner was entitled to 5 years of age relaxation as per the prescribed conditions.

2. Brief facts to comprehend the grievance of the Petitioner are that he is a

graduate from Agra University and that he has done his graduation in ITI Electronics. In response to a notification issued and published by the Railway Recruitment Board, Bhopal in the Employment News Notice No. 1/2006 (Centralized) dated 24th February, 2006, the Respondent had applied for the post of Assistant Loco Pilot in the scale of Rs. 3050-4590/- against 202 vacancies.

3. The general instructions for filling up the vacancies for the post provided certain specific eligibility conditions such as SSE plus Act Apprenticeship from ITI in specific trades like Fitter, Electrician, Electronic Mechanic, Mechanic, etc. According to the general instructions, the age had to be reckoned as on 1st July, 2006 and the prescribed age limit was 30 years. The notification for filling up the vacancies also contemplated age relaxation in Para. 2.1.3.

4. In Para 2.1.3 of the said notification, age relaxation was contemplated for the staff of quasi administrative offices of Railway organization who had put in a minimum of 3 years of service for which maximum age relaxation of 5 years could be granted. Para 2.1.3 of the general conditions is as under:

2.1.3 In case of staff of quasi administrative offices of Railway organization such as Railway Canteen, Railway Institutes and Railway Co-operative Societies who have put in 3 years" service, relaxation in age will be given to the extent of service rendered by them, subject to a maximum of 5 years.

5. Besides the age relaxation to the staff of quasi administrative offices of Railway organization, other categories of age relaxation were also contemplated. In para 2.1.9 of the said notification, age relaxation was also contemplated in case of Course Completed Act Apprentices applying for categories where ITI/Act App. which is an essential qualification to the extent of apprentice training undergone under the Apprentice Act, 1961 subject to para 2.1.2 and 2.1.6." Para 2.1.9 regarding age relaxation contemplated in the said notification is as under:

2.1.9 Upper age limit in case of Course Completed Act Apprentices applying for categories where ITI/Act App. is an essential qualification, shall be relaxed to the extent of Apprentice training undergone under Apprentice Act, 1961 subject to para 2.1.2 and 2.1.6.

6. The plea of the Petitioner was that his date of birth is 15th May, 1972 and as on 1st July, 2006 he was 34 years 1 month and 17 days and in case age relaxation of 4 years 1 month and 17 days was allowed then he would have become eligible for the said post.

7. In order to seek age relaxation, the Petitioner contended that after doing graduation he had done ITI Electronics for 2 years from Maharaja Suraj Mal Institute, Janakpuri, New Delhi and thereafter an Act Apprenticeship for one year. He had also worked as a salesman in the Northern Railway Traffic Accounts Office Employees" Consumer Cooperative Stores Ltd., Kishanganj, Delhi from 01.05.1995 to 31.12.2001 for about 5 years. Therefore, when he had applied pursuant to the said notification for the post of Assistant Loco Pilot, along with

his application he had submitted the requisite certificates including a certificate dated 14th January, 2003 issued by the Northern Railway Traffic Accounts Office Employees? Consumer Cooperative Stores Ltd., Kishanganj, Delhi.

8. The Petitioner contended that he was issued a roll number, being 31110544, and he was directed to appear in the examination on 16th July, 2006. The result of the examination was published in the Employment News dated 21-27th October, 2006. However, the roll number of the Petitioner was not included in the list of qualified candidates. Since the Petitioner was sure about his success in the written examination, he had sent a representation dated 2nd November, 2006 seeking re-evaluation of his answer sheets and also submitted a request under the Right to Information Act on 7th November, 2006 for getting his answer sheets rechecked and to show the same to the Petitioner for his satisfaction.

9. Pursuant to the representation made by the Petitioner for re-evaluation and rechecking of his answer sheets, by communication dated 22nd November, 2006 he was informed that the Petitioner being over age was not eligible and hence his candidature had not be taken into consideration. The Petitioner, thereafter, sent various communications and made another application under the Right to Information Act, however, the claim of the Petitioner was rejected by letter dated 12th April, 2007. In the said communication, it was disclosed that the case of the Petitioner was not considered because he was over age and he was an ineligible candidate. It was also stated that appearance in the entrance examination and the result thereof was provisional. It was pointed out that in his application for the said post, the Petitioner had sought age relaxation under para 2.1.9 and since the Petitioner had completed Act Apprentice for a period of 1 year, therefore, he could be considered for age relaxation of 1 year only and not for 4 years 1 month and 17 days. It was categorically communicated to the Petitioner that he had not stated in the application about working with Northern Railway Traffic Accounts Office Employees? Consumer Cooperative Stores Ltd. Kishanganj, Delhi, nor had he submitted any enclosure in support thereof. Consequently, age relaxation which had not been sought in the application and in respect of which no certificate was given, could not be given to the Petitioner. It was also emphasized that any information which had not been given in the original RRB application form and brought subsequently could not be considered.

10. Aggrieved by the rejection of the claim of the Petitioner by communication dated 12th April, 2007, he filed original application, being OA No. 2073 of 2007, titled as "Sh.Rajvir Singh v. Chairman Railway Recruitment Board, Bhopal", contending, inter-alia, that the plea taken by the Respondent that he had not submitted the working certificate in Northern Railway Traffic Accounts Office Employees? Consumer Cooperative Stores Ltd. Kishanganj, Delhi and that the Respondent had not given the age relaxation on the basis of the certificate dated 14th January, 2003 of Northern Railway Traffic Accounts Office Employees? Consumer Cooperative Stores Ltd. Kishanganj, Delhi is factually incorrect.

11. The pleas and contentions of the Petitioner were contested by the

Respondent contending, inter-alia, that the relief claimed by the Petitioner in the original application, i.e. age relaxation, was not sought by him in his application for appearing in the examination for Assistant Loco Pilot, a copy of which was filed by the Respondent along with their counter affidavit dated 5.3.2008 before the Tribunal. Along with his application the Petitioner had only produced a certificate issued by Hewlett Packard Ltd. certifying that the Petitioner had undergone Apprenticeship training from 16th April 1994 to 15th April, 1995. Besides the certificate for 1 year, the applicant had annexed with his application his mark sheet and certificates issued by the Ministry of Labour, National Council for Vocational Training. The Petitioner had also produced a copy of his degree of Bachelor of Arts issued by Dr. Bhimrao Ambedkar University, Agra along with his mark sheet during the graduate course and the certificate for Intermediate Examination, 1991 and the mark sheet of the Intermediate Examination, 1991. The Petitioner also produced the copy of the certificate issued by the Central Board of Secondary Education for Delhi Secondary School Examination, 1989 and the mark sheet for the same, besides personal data sheet of Railway Recruitment Board, Bhopal.

12. The Respondent categorically asserted that the age relaxation under two heads was not permissible as per para 2.1.7 of the Employment Notification which is as under:

2.1.7 Candidates may note that age relaxation benefits will not be permitted simultaneously under more than one heads.

The Respondent categorically pleaded that as per the application filed by the Petitioner, he had sought age relaxation under para 2.1.9 for 1 year, during which he completed the Act Apprentice, for which he had also submitted documentary proof. No other age relaxation in the application form was sought, nor was any proof for the same submitted.

13. The Respondent also relied on para 6.4 of the Employment Notification contemplating that the Railway Recruitment Board was free to reject any application not fulfilling the requisite criteria at any stage of recruitment. Para 6.4 of the notification is as under:

Before applying for the post, the candidates should ensure that he/she fulfils the eligibility criteria. The R.R.B will be free to reject any application not fulfilling the requisite criteria at any stage of recruitment and if appointed such candidate is liable to be summarily removed from service.

14. The Tribunal considered the pleas and contentions of the parties and held that in Colum-6 of the application regarding grounds for seeking age relaxation which was filled by the Petitioner in his own handwriting, he sought relaxation under para 2.1.9 of the said notification for the period in which he had completed the course of apprentice. The Tribunal noted that the fact that the Petitioner worked in the Northern Railway Traffic Accounts Office Employees' Consumer Cooperative Stores Ltd., Kishanganj, Delhi for 5 years had not been mentioned in

his application. The Tribunal also came to the conclusion that the Petitioner informed the Railway Recruitment Board that he worked in the Northern Railway Traffic Accounts Office Employees? Consumer Cooperative Stores Ltd., Kishanganj, Delhi for 5 years only later on and, consequently, the RRB could not have granted age relaxation to the Petitioner on a ground which was not canvassed by him and for which no certificate had been submitted along with the application form. Therefore, in these circumstances, Railway Recruitment Board was fully justified in not considering the Petitioner's application for service for the post of Assistant Loco Pilot, nor was he entitled for age relaxation on account of his alleged service in the Northern Railway Traffic Accounts Office Employees? Consumer Cooperative Stores Ltd., Kishanganj, Delhi.

15. Aggrieved by the order of the Tribunal dated 1st September, 2008 dismissing his original application, the present writ petition has been filed by the Petitioner contending, inter-alia, that he had attached the requisite documents with his application form which also included the certificate dated 14th January, 2003 issued by the Northern Railway Traffic Accounts Office Employees' Consumer Cooperative Stores Ltd., Kishanganj, Delhi certifying that he had worked with them, from 1st May, 1995 to 31st December, 2001. The grievance of the Petitioner is that his application should have been rejected summarily and since he was allowed to appear in the written examination, therefore, his candidature could not have been rejected and he should have been given the age relaxation of 5 years. The Petitioner again reiterated that he had submitted the requisite documents seeking age relaxation.

16. Before this Court, pursuant to a direction, an affidavit dated 1st February, 2010 was filed on behalf of the Respondent contending categorically that for the post of Assistant Loco Pilot Grade Rs. 3050-4590/- the prescribed age limit was 18-30 years as on 1st July, 2006. The notification categorically stipulated that the candidates applying for the post should ensure that they had fulfilled the eligibility criteria, otherwise, the Railway Recruitment Board was entitled to reject any application not fulfilling the requisite criteria at any stage of the recruitment and the appointment of such candidates was also liable to be cancelled. Regarding allowing the Petitioner to appear in the examination, it has been contended that the entrance in any examination is provisional as all the applications are checked thoroughly at a later stage, on account of a large number of applications being received by the Railway Recruitment Board Examination. It was reiterated and emphasized that the Petitioner had only sought age relaxation of 1 year and had also attached only one certificate in support of his claim for age relaxation of 1 year and the alleged certificate from the Northern Railway Traffic Accounts Office Employees? Consumer Cooperative Stores Ltd. Kishanganj, Delhi was neither categorically stated in the application form, nor was any certificate annexed with the same and hence the plea of the Petitioner that all the requisite certificates were annexed with the application form is incorrect.

17. This Court has heard the learned Counsel for the parties in detail and has also perused the writ petition and the affidavit filed on behalf of the Respondent and the record of the Central Administrative Tribunal, which has been filed along with the writ petition. The Respondent also produced the original record and the original application submitted by the Petitioner to the Railway Recruitment Board. On perusal of the original application, a copy of which was also filed before the Tribunal, it is apparent that the Petitioner had not filed the certificate dated 14th January, 2003 issued by the Northern Railway Traffic Accounts Office Employees' Consumer Cooperative Stores Ltd. Kishanganj, Delhi certifying that the Petitioner had worked as salesman from 1st May, 1995 to 31st December, 2001. Non filing of the said certificate along with the application is also augmented by the fact that in the column seeking age relaxation, the Petitioner had not indicated that he is seeking relaxation also on account of having worked as salesman with the Northern Railway Traffic Accounts Office Employees' Consumer Cooperative Stores Ltd. Kishanganj, Delhi from 1st May, 1995 to 31st December, 2001.

18. The learned Counsel for the Petitioner is also unable to give any satisfactory reply nor has he pointed out any facts from which it can be inferred satisfactorily and rationally that the said certificate was produced along with the original application submitted to the Railway Recruitment Board for consideration for the post of Assistant Loco Pilot in the scale of Rs. 3050-4590. This has not been denied and cannot be denied by the Petitioner that under para- 2.1.7 of Employment Notice, it is categorically stipulated that age relaxation benefits would not be permitted simultaneously under more than one head. In the application, the Petitioner had sought age relaxation under para 2.1.9 in respect of COURSE COMPLETE ACT APPRENTICESHIP and therefore, in terms of Clause 2.1.7, the Petitioner could not have claimed age relaxation on account of having worked as salesman with the Northern Railway Traffic Accounts Office Employees' Consumer Cooperative Stores Ltd. under the COURSE COMPLETE ACT APPRENTICESHIP, under a different head. The Petitioner was entitled for age relaxation for one year and therefore, the age relaxation for more than one year could not be given to him nor the learned Counsel for the Petitioner has been able to show any other term and condition of employment notice or any other Office Order or direction under which the Petitioner, in these circumstances, could get age relaxation of more than one year. With the age relaxation of one year, the Petitioner is ineligible and this fact cannot be refuted by the learned Counsel for the Petitioner. Since age relaxation was not permitted simultaneously under more than one head, therefore, the period from 1st May, 1995 to 31st December, 2001 as salesman with the Northern Railway Traffic Accounts Office Employees' Consumer Cooperative Stores Ltd. Kishanganj, Delhi could not be considered nor it was sought by the Petitioner. The Tribunal has rightly held that since the Petitioner had not sought age relaxation for the period he worked as salesman in the above said organization, neither the Respondent could have known about it nor could have considered the age relaxation for the said period for the Petitioner, nor it was permissible under the Terms and Conditions of the

Employment notice. The reasons, as detailed and inferred by the Tribunal, declining the relief sought by the Petitioner in paragraph 5 to 8 in the impugned order dated 1st September, 2008, are as under:

5. The Applicant has also enclosed a copy of the Application submitted by him to the RRB, which is placed at Annex A-3. At page 2 of the Application, there is column 06 regarding the grounds for the applicants for seeking age relaxation. The Applicant has, in his own hand, filled against this column "PARA-2.1.9 COURSE COMPLETE ACT APPRENTICESHIP". The fact of his working in the Railway Cooperative Society for five years has not been mentioned in the application.

6. The learned Counsel for the Applicant has not been able to give any specific answer to the query as to how the RRB could have given relaxation to the applicant if he had not mentioned the fact of his having worked in the quasi administrative office of Railway Organisation.

7. The Applicant has informed the RRB only later that he had worked in the Railway Cooperative Society for five years. The document, which he has himself submitted i.e. the Application form, adverted to above, itself clearly shows that he has claimed age relaxation only under paragraph 2.1.9 of the advertisement. The RRB could not have clairvoyance to decipher somehow that the applicant had worked in such an organisation and would be entitled to age relaxation.

8. Under these circumstances, the RRB was fully justified in not considering the Applicant's service in Northern Railway Traffic Accounts Office Employees' Consumer Cooperative Stores Limited for grant of age relaxation. Finding no merit in the OA, it is dismissed. There will be no order as to costs.

19. If the Petitioner could not claim the age relaxation as claimed by him in the original application and in the writ petition, he remained ineligible. In the circumstances, he cannot invoke estoppel or any other right against the Respondent by saying that as he was allowed to appear in the written examination, therefore, he became eligible for the said post. The Respondent had filed the affidavit dated 27th January, 2010 pursuant to the order dated 12th November, 2009 passed by this Court. No response to the said affidavit was filed by the Petitioner. It is categorically averred in the affidavit by the Respondent that the examination for selection to the post of Assistant Loco Pilot was provisional, which was also detailed in para 6.4 of Employment Notification. The reason given by the Respondent is that the applications are checked thoroughly at a later stage as the number of applications received in any Railway Recruitment Board Examination are very high and consequently, if any candidate does not fulfill the terms and conditions stipulated in the Employment Notice, his candidature is liable to be cancelled at any stage, whenever the ineligibility is noticed. Reliance has been placed by the Respondent on A.P. Public Service Commission Vs. Koneti Venkateswarulu and Others, . It was held by the Supreme Court that when the column for disclosure of particulars in the application form is

left blank and declaration of non-employment was falsely made, the Commission was justified in cancelling candidature of the applicant. The Petitioner also sought age relaxation under para- 2.1.9 of COURSE COMPLETE ACT APPRENTICESHIP and not for having worked as salesman in the Northern Railway Traffic Accounts Office Employees? Consumer Cooperative Stores Ltd. In the circumstances, no irregularity or illegality can be attributed to the Respondent in cancelling the candidature of the Petitioner even though he was allowed to appear in the examination as later on it transpired that he was ineligible.

20. In the circumstances, inference of the Tribunal that the Railway Recruitment Board was fully justified in not considering the Petitioner's service in the Northern Railway Traffic Accounts Office Employees? Consumer Cooperative Stores Ltd. for grant of age relaxation and, thus, holding that he was ineligible for the post of Assistant Loco Pilot in the scale of Rs. 3050-4590 cannot be termed to be illegal or having such irregularity which will entitle the Petitioner to the relief claimed by him that the Respondent be directed to review the case of the Petitioner for appointment to the said post, nor the order of the Tribunal impugned by the Petitioner can be set aside in the facts and circumstances.

21. In the totality of the facts and circumstances, the learned Counsel for the Petitioner has failed to show any illegality, irregularity or such perversity in the order dated 1st September, 2008 passed in OA No. 2073/2007 by the Central Administrative Tribunal, Principal Bench, dismissing the original application of the Petitioners so as to entail any interference of this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition is, therefore, dismissed. Parties are, however, left to bear their own costs in the facts and circumstances of the case.