
(2010) 12 CAL CK 0098
In the Calcutta High Court
Case No : W.P.C.T. 13 of 2008

Ram Sevak Gupta

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 24-12-2010

Acts Referred:

Citation : (2010) 12 CAL CK 0098

Hon'ble Judges : Pranab Kumar Chattopadhyay, J;Ashoke Kumar Dasadhikari, J

Bench : Division Bench

Advocate : Partha Sarathi Bhattacharyya and Mukundalal Sarkar, for the Appellant;Ashim Kumar Ganguly and Bellal S.K., for the Respondent

Final Decision : Dismissed

Judgement

Pranab Kumar Chattopadhyay, J.—In the instant case, we are required to decide whether any illegality can be allowed to be sustained on the sole ground of delay and laches.

2. The Petitioner herein is aggrieved by the judgment and order dated 31st August, 2007 passed by the Central Administrative Tribunal, Calcutta Bench whereby and whereunder the said learned tribunal refused to entertain the original application filed by the said Petitioner and accordingly dismissed both the original application being O.A. 257 of 2006 and the connected application being MA 235 of 2006 on the ground that the same were time barred.

3. From the records we find that the Petitioner herein applied for the post of Assistant Station Master in response to an advertisement issued by the Railway Recruitment Board. The Railway Recruitment Board thereafter, conducted written examination as well as viva voce for the purpose of selecting candidates. The Petitioner was selected in the said written examination and viva-voce test.

4. Accordingly, the competent authority offered provisional appointment to the said Petitioner as Trainee ASM subject to his passing the prescribed medical examination by the authorised medical officer of the Railways.

5. The Petitioner herein was initially sent to the Chief Medical Officer, Dhanbad Railway Medical Hospital for medical examination in the month of September 1993. It has been submitted on behalf of the Petitioner that before appearing for the medical examination at Dhanbad Railway Medical Hospital, he was asked to accept some preconditions which have no link with the medical examination. Since the Petitioner could not accept those pre-conditions, he was forced to come back without appearing at the medical examination at Dhanbad.

6. The Petitioner thereafter by a written communication dated 5th October 1993 requested the Senior Personnel Officer (RP), Eastern Railways to issue further medical Memo for medical examination by any authorised medical officer of the Railway excepting Dhanbad Railway Medical Hospital. Considering the aforesaid prayer further medical memo was issued to the Petitioner for medical examination by the Railway Medical Officer, Howrah.

7. The concerned railway medical officer at Howrah examined the Petitioner and declared him medically fit for appointment as Trainee ASM. The Petitioner submitted the aforesaid medical certificate issued by the Railway Medical Officer, Howrah to the Senior Personnel Officer for the purpose of allowing him to join the training. According to the Petitioner, the competent authority of the Railways did not allow the said Petitioner to undergo training in spite of submission of the medical fitness certificate.

8. The Petitioner, thereafter, filed the application before the learned Central Administrative Tribunal, Calcutta Bench in the year 2006 i.e. after long lapse of almost 13 years. The learned Tribunal by the impugned judgment and order dated 31st August, 2007 dismissed the original application filed by the Petitioner being O.A. 257 of 2006 and the connected application for condonation of delay being MA 235 of 2006 on the ground that the same were time barred.

9. The learned Counsel representing the Petitioner urged before this Court that illegality cannot be allowed to be sustained only on the ground of delay and/or laches. It has been argued on behalf of the Petitioner that the learned Tribunal should have issued an appropriate direction to the Respondent authorities to allow the said Petitioner to undergo the prescribed training so that the Petitioner could be absorbed in the regular category of the Railways after successful completion of the training period.

10. The learned Counsel of the Petitioner referred to and relied on a decision of the Supreme Court in the case of M/s. Dehri Rohtas Light Railway Company Limited Vs. District Board, Bhojpur and District Board, Shahabad and others, wherein the Hon"ble Supreme Court observed:

13..... The real test to determine delay in such cases is that the Petitioner should come to the writ court before a parallel right is created and that the lapse of time is not attributable to any laches or negligence. The test is not to physical running of time. Where the circumstances justifying the conduct exist, the illegality which is manifest cannot be sustained on the sole ground of

laches....

The learned Counsel representing the Respondent-Railway authorities, however, submitted before this Court that the said Petitioner lawfully could not appear before the second medical board in view of the specific provision mentioned in the Indian Railway Medical Manual. Clause 523 of the said Medical Manual clearly provides that if the competent authority is satisfied on the evidence produced by the candidate concerned with regard to an error of judgment in the decision of the examining medical authority then only re-examination can be allowed. Clause 523(1) of the said Medical Manual is reproduced hereinbelow:

523. Provision for reconsideration of adverse reports.- The following provisions shall apply in regard to the reconsideration of adverse reports of physical examination:

(1) Candidates- (i) Ordinarily, there is no right of appeal from the findings of an examining medical authority, but if Government are satisfied on the evidence produced before them by the candidate concerned of the possibility of an error of judgment in the decision of the examining medical authority, it will be opened to them to allow re-examination. Such evidence should be submitted within one month of the date of the communication in which the decision of the first medical authority is communicated to the candidates; otherwise, ordinarily, no request for an appeal for a second medical examination will be considered....

The Petitioner herein, made serious allegation in respect of his first medical examination and submitted representation before the competent authority and upon considering such representation, office memo was issued to the Petitioner for holding second medical examination. In any event, Petitioner was declared fit in the second medical examination conducted by the Medical Officer attached with the Railway Hospital, Howrah. Therefore, aforesaid subsequent finding of the competent Medical Officer attached with the Railway Hospital, Howrah declaring the Petitioner medically fit could not be ignored altogether by the concerned authority.

11. In terms of the Memo dated 15th September, 1993 competent authority informed the Petitioner about his selection as a trainee ASM subject to condition that the said Petitioner upon passing the prescribed medical examination conducted by the authorised medical officer of the Railways and production of the original certificate will be entitled to join the training. In the instant case, therefore, after passing the prescribed medical examination conducted by the authorised medical officer of the Railways at Howrah, Petitioner was entitled to join the training course meant for the trainee ASM. The Respondent-Railway authorities wrongfully and illegally denied the said opportunity to the Petitioner herein.

12. It is now to be decided whether any relief at this stage can be granted to the Petitioner herein.

13. By the aforesaid Memo dated 15th September, 1993 Senior Personnel Officer (RP), Eastern Railways, Calcutta informed the Petitioner regarding his provisional appointment as Trainee ASM subject to fulfilment of certain conditions which were duly accepted by the Petitioner herein. Some of the important conditions which are very much relevant for the purpose of deciding the issues raised in this petition are set out hereunder:

2. Training period will be commenced from the date you are enrolled as such in the training School, which includes further particular training of 60 weeks. It may be clearly understood that effect will be made to absorb you in the regular cadre of this Railway after successful completion of the training if there is any vacancy but no such guarantee is given thereto.

3 *** ** 4 *** ** 5 (i) If you are selected for appointment against working post on completion of your training, you will have to serve the Railway Administration for a minimum period of five years if required by the Administration and,....

Undisputedly, the Petitioner is aged about 56 years (approx). In the event, the Petitioner is asked to undergo the training for a period of 60 weeks then after completion of the training period Petitioner will be more than 57 years of age. Therefore, in the aforesaid circumstances, it would not be possible for the said Petitioner to serve the Railway administration for a minimum period of five years even if he is appointed immediately after completion of the prescribed training period.

14. This Court cannot be unmindful to the fact that in the instant case candidate concerned decided to challenge the inaction and/or non-action on the part of the Respondent-Railway authorities after lapse of considerable period of 13 years. This Court cannot permit a candidate to be appointed to a post on the verge of attaining the normal age of super-annuation.

15. In the present case, if any direction is issued in favour of the Petitioner at this stage then the same would virtually compel the Respondent-Railway authorities to appoint an employee just before attaining the age of super-annuation, which would not be just and proper.

16. For the aforementioned reasons, we are not inclined to grant any relief to the Petitioner and, therefore, we dismiss this writ petition without awarding any costs.

17. Let urgent Xerox certified copy of this judgment and order, if applied for, be given to the learned Advocates of the parties on usual undertaking.

Ashoke Kumar Dasadhikari, J.

18. I agree.