

WESTERN RAILWAY

P.S.No.6/2012

Headquarter Office,  
Churchgate, Mumbai-20

No. E/Court/649/2/CAT (Judgment)

Date: 23.01.2012

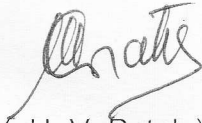
To,  
All DRMs / CWMs & Units Incharge,  
C/- Genl. Secy., WREU-GTR / WRMS-BCT.  
C/- GS-All India SC/ST Rly Employees. Assn,'W' Zone, Mumbai  
C/- GS-All India OBC Rly Empl. Assn, Mumbai.

Sub CAT/ADI's Judgement Dated 19.12.2011 in M.A. 158/2011 in O.A.  
163/2011 & M.A. 162/2011 in O.A. 169/2011 filed by Shri Anil  
Kumar Gupta and Shri Pramodkumar R. Bhindwar.

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A copy of CAT/ADI's Judgment Dated 19.12.2011 in the above MA/OA  
filed by Shri Anil Kumar Gupta is sent herewith for information and guidance. It is  
requested that effective use of the said judgment may please be made while  
contesting similar cases pending on your division/ unit.

Encl: As above.

  
( U. V. Patel )  
For General Manager(E)

FREE COPY (FR 22 OF  
C.A.T. (PROCEDURE) RULES.

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MA/158/11 in OA/163/11 & MA 162/11 in OA 169/11

CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH, AHMEDABAD

MA/158/2011 in OA/163/2011 & MA 162/2011 in OA 169/2011

Ahmedabad, this the 14<sup>th</sup> day of December, 2011

CORAM :

HON'BLE MR. MUKESH KUMAR GUPTA : MEMBER(J)  
HON'BLE DR. K. S. SUGATHAN : MEMBER(A)

MA/158/2011 in OA/1632011

Anil Kumar Gupta  
Add.: House No. 11,  
Pramukh Residency,  
Nr. Chandkheda Rly. Station,  
Chandkheda, Ahmedabad - 382 470.

.....APPLICANT

ADVOCATE : MR. M.S.RAO

V/S

1. Union of India through  
The Chairman & Ex Officio Special Secy. to GOI,  
Railway Board, Ministry of Railways, Govt. of India,  
Rail Bhavan, New Delhi 110 001.
2. The General Manager,  
W. Rly., Zone, W. Rly. Hqrs.,  
Church Gate, Mumbai - 400020.



3. Railway Recruitment Board, Ahmedabad  
through its Chairman,  
1<sup>st</sup> Floor, Meter Gauge Building, Railway Station  
Kalupur, Ahmedabad – 380 002. ....RESPONDENTS

ADVOCATE : MR. M.J.PATEL (R- 1&2)  
MS. R. R. PATEL (R-3)

MA 162/2011 in OA 169/2011

Pramodkumar R. Bhindwar  
Add.: Room No. 11,  
Buldg. No. 84,  
Railway colony, Vishalnagar, Vasai Road,  
Mumbai – 401 202.

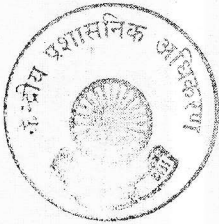
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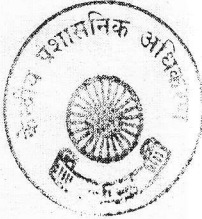


**ORDER****PER : HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER(J)**

Issues raised in these two applications being grounded on identical facts and also related to same selection, are being dealt with by present common order.

2. Facts as stated in these two OAs are as follows.

In response to an advertisement dated 30<sup>th</sup> September, 2006 issued by Railway Recruitment Board, Ahmedabad, applicants herein being duly eligible, applied for post of Supervisor (P-Way), and, appeared in written test; which they qualified. Their candidature for further consideration for appointment to said post was turned down on the plea that they did not meet prescribed educational qualification. Said written examination's result had been shown on the website of the Railways on 3<sup>rd</sup> August, 2008. Applicant in OA 163/2011 belongs to OBC category; while applicant in OA 169/2011 though belongs to OBC category but appeared against GDCE quota being working as a railway employee in group-D post as Trackman under SSE (P. Way), BYR, W. Rly., at the relevant point of time. As per notification, total number of posts notified were 197 ( 35 SC, 15 ST, 54 OBC, 93 UR and 18 Ex). Applicant in OA163/2011 is holding degree of B.SC. (Hon.) with Mathematics as Honours subject, from Jai Prakash University, Chapra, Bihar and had studied Mathematics, Physics and Chemistry; while applicant in OA 169/2011 is also holding said educational qualification from Lalit Narayan Mithila University, Darbhanga District, Bihar, & was recruited as Group-D employee in the cadre of Trackman under SSE (P.Way), W.Rly. Mumbai and applied for said post under 25 % direct recruitment vacancies as a general departmental

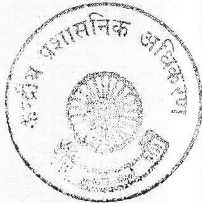




competitive examination (hereinafter referred as GDCE). In total 36 vacancies were meant for said category ( Gen 18, SC-5, ST-3, OBC-10)

3. Projection made in OA for condonation of delay vide MA/162/2011 (OA No. 169/2011) is that he had seen final selection result declared by RRB vide its notification dated 3<sup>rd</sup> August, 2008 displayed on the official website of Respondent no-3 excluding his name on the ground that he did not fulfill educational qualification laid down vide impugned notification dated 3.7.2006 issued by G.M., W. Rly. Mumbai. It is stated that he was not aware that his candidature was rejected on aforesaid ground, which factum came to his notice only in March, 2011. He came to know about this aspect under RTI Act. From the information furnished to him under RTI Act, it was revealed that he was placed at rank no.2 in the list of those successful candidates under GDCE quota. Further, some other information came to his notice in the month of Feb. 2011, that, way back in Feb. 2009, some 13 persons hailing from state of Bihar had all the way came from their native places and approached this Tribunal being aggrieved by aforesaid impugned panel. OAs filed by them i.e. similarly situated persons were allowed by this Tribunal vide common order dated 1<sup>st</sup> July, 2009 in OA 42, 43, 50, 74 & 75 of 2009. Being aggrieved, UOI preferred SCA 10402/09 to 10406/2009 and Hon'ble High Court, vide order dated 3<sup>rd</sup> Feb. 2010 observed that : "B.Sc. degree, as notified, does not exclude B.SC. Hons. degree".

4. Ultimately, direction of this Tribunal have been implemented by appointing said applicants. Out of ten, nine have been appointed against 10 vacancies of GDCE-OBC quota. Only 12 persons belonging to said category were declared pass and 9 of them have been selected and appointed. Thus one vacancy remain available for him and if delay is condoned, no prejudice will be caused to respondents. He could be appointed against said vacancy. Reliance was also



placed on Shri Shaileshkumar Singh applicant in OA 75/09, who was allowed such benefits vide common judgment dated 1<sup>st</sup> July, 2009. He was similarly placed to applicant, as he was also a candidate holding B.SC. (Hon.) in Mathematics with Physics & Chemistry.

5. As far as applicant in OA 163/2011 is concerned, plea raised was that factum of similar case being allowed, came to his notice only in last week in April, 2011, when some of the aforesaid 13 persons, visited Sabarmati, where he is still serving as ESM Gr.-I. It was further stated that he was not at all aware about the factum of RRB displaying select panel on 3<sup>rd</sup> August, 2008 on its official website. He is not a computer savvy and at the relevant point of time, he was preoccupied with on going 18 months' training in Railways. Thus, immediately after it came to his notice about aforesaid event, he contacted advocate on or around 7<sup>th</sup> May, 2011 and took steps to file present OA/MA, preferred on 18<sup>th</sup> May, 2011.

6. Shri M. S. Rao counsel for applicants placed strong reliance on AIR 1987 SC 1353, Collector, Land Acquisition, Anantnag v/s Katiji to contend that the term "sufficient cause" should be construed liberally as ordinarily a litigant does not stand to benefit by lodging a matter late. Reliance was also placed on (1985) 2 SCC 648 Inder Pal Yadav v/s UOI to contend that similarly situated persons are entitled to similar treatment, if not by anyone else than at the hands of Apex Court. Further reliance was placed on (2001) 6 SCC 176 M. K. Prasad v/s P. Arumugam, to suggest that Court has to keep in mind that discretion under Section-5 of the Limitation Act, has to be applied to advance substantial justice. By placing reliance on (2005) 4 GLR 2863 Mullabhai N. Chavda v/s UOI & Ors., it was suggested that when substantial justice and technical consideration are pitted against each other, cause of substantial justice deserves to be preferred.



Lastly, reliance was placed on an order dated 23/06/2010 in MA 471/2009 in OA 372/2009 wherein aforesaid judgment have been followed and delay was condoned.

7. Separate reply was filed by the respondent no.1 & 2 as well as R-3 and matter has been contested vigorously stating that no cogent and sufficient reasons have been assigned by applicants seeking condonation of delay. Respondent No. 3 in its reply stated that challenge made to notification dated 23<sup>rd</sup> June 2010 in OA 163/2011 is totally misconceived, as said notification was issued in compliance of orders of this Tribunal and therefore, it was beyond the purview of challenge.

8. RBE 45/2007 dated 22<sup>nd</sup> March, 2007 was issued by Ministry of Railway providing interalia that : "such selections through Direct Recruitment by Railway Recruitment Boards where notification(s) has/have not been issued by RRB's shall henceforth be abandoned. Ongoing selections etc. for filling up the posts of Track Supervisors (erstwhile P.W. Mistries/Supervisors Permanent Way) against LDCE/Seniority-cum-suitability quota, which have not been finalised till the date of these orders should be canceled/abandoned." There is established procedure in railways to publish notification in employment news as well as on official website. Applicants are serving with Railways since some years, hence it was impossible that they remained unaware about publishing of said final list on 8<sup>th</sup> March, 2008. Assuming without admitting that, applicant in OA 163/2011 is not a computer savvy, even then he could have found out from some other sources about final outcome of selection procedure. It can not be said that he was unaware of the result of said selection during all these years. He was thus not vigilant. He was working as ESM Grade-II and later promoted as Grade-I. He has failed to name the person from whom he derived knowledge about selection/appointment. Category of Supervisor (P-Way) no longer exists and any appointment at this stage



would lead to multiplicity of litigation. Those who sit tight and remain dormant for many years, do not have right to seek condonation of delay and that too without assigning any plausible & justified reasons.

9. Similar reply had been filed in OA 169/2011. It was also pointed out therein that said applicant was working with railways and it was impossible and unbelievable that he was not aware about outcome of the final select list and would not take any reasonable step to challenge said result dated 8<sup>th</sup> March, 2008 particularly when he is working with Railways. His conduct depicts that he is acquiesced in the matter and principle of estoppel is also applicable, strongly emphasised by Ms. R R Patel, learned counsel for R - 3.

10. We have heard learned counsel for parties, perused pleadings and other record very carefully.

11. Admitted facts are that both the applicants are employed with Railways. Applicant in OA 163/2011 was initially appointed as ESM-Grade-II and later promoted as ESM- I; while applicant in OA 169/2011 is serving in group-D cadre as Track man under SSE (P-Way), Mumbai. Plea raised by applicant in OA 169/2011 is that he had no knowledge about declaration of result by Railway Recruitment Board, Ahmedabad on 8.3.2008; while plea raised by applicant in OA 163/2011 is that he came to know about such fact only in last week of April, 2011. Applicant in OA 169/2011 had sought certain information under RTI Act on 3<sup>rd</sup> March, 2011 which was attended on 16<sup>th</sup> March, 2011. Projection made by both applicants is that they came to know about factum of judgment of this Tribunal only when 13 persons, who were applicants before this Tribunal, visited Sabarmati. Applicant in OA 169/2011 has further projected that he came to know this fact through one Shri Mithlesh Kumar, who is also serving under SSE.





Bhayander, Mumbai, when he had met aforesaid group of persons during course of the training at Udaipur.

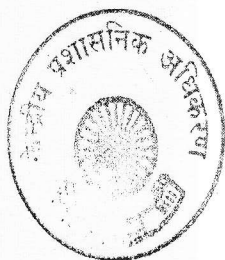
12. Short question which requires consideration is whether sufficient cause has been shown to condone delay.

13. As per the projection made by the respondents, in terms of RBE No.45/2007 selection by direct recruitment to post of Supervisor (P-Way) has been canceled and is no more a source of recruitment.

14. Hon'ble Supreme Court in (1996) 6 SCC 267, **State of Karnataka & Ors. V/s S. M. Kotrayya & Ors.** had occasion to examine almost similar facts and observed that justification made was not proper explanation at all. In that case, the respondent woke up to claim relief, which were granted to their colleagues by Tribunal with an application to condone delay. Tribunal condoned delay. Thereafter, State Govt. approached Hon'ble Supreme Court and after considering matter, Hon'ble Supreme Court observed as under :

*"Although it is not necessary to give an explanation for the delay which occurred within the period mentioned in sub-section (1) or (2) of Section 21, explanation should be given for the delay which occasioned after the expiry of the aforesaid respective period applicable to the appropriate case and the Tribunal should satisfy itself whether the explanation offered was proper. In the instant case, the explanation offered was that they came to know of the relief granted by the Tribunal in August, 1989 and that they filed the petition immediately thereafter. That is not a proper explanation at all. What was required of them to explain under sub-sections(1) and (2) was as to why they could not avail of the remedy of redressal of their grievances before the expiry of the period prescribed under sub Section (1) or (2). That was not the explanation given. Therefore Tribunal was wholly unjustified in condoning the delay."*

(emphasis supplied)



15. In **M/s Rup Diamonds & Ors. v. UOI & Ors. AIR 1989 SC 674** it was observed that those people who were sitting on the fence till somebody else took up the matter to the Court for refund of duty, can not be given the benefit". Hon'ble Supreme Court was further pleased to observe that : "petitioners were not vigilant but were content to be dormant and chose to sit on the fence till somebody else's case came to be decided. Their cases can not be considered on the analogy of one where a law had been declared unconstitutional and void by a Court, so as to enable persons to recover monies paid under the compulsion of a law later so declared void. There is also an unexplained inordinate delay in preferring this petition."

16. Admitted facts of present cases are that applicants are working under Railways. They were not vigilant, rather were dormant and chose to sit on the fence and came forward raising plea that similarly situated persons have been granted benefits. Plea raised that they came to know about this fact only when group of persons from Bihar visited Sabarmati, does not inspire any confidence and is a story which has been hacked to give a colour, as if applicant were vigilant. Is it a co-incidence that applicant in OA 169/2011 sought certain information under RTI in March, 2011 while applicant of other case happened to meet someone from Bihar visiting Sabarmati in last week of April, 2011 ?. In our considered view answer to above query has to be in negative. Furthermore, time of filing of present OAs also can not be totally overlooked. OA 163/2011 was preferred on 18<sup>th</sup> May, while OA 169/2011 was preferred immediately thereafter i.e. 23<sup>rd</sup> May 2011. Entire averments made therein, barring minor difference, are virtually same. We are not impressed by the so called explanation given by the applicants & the story projected is an after thought.



17. In the given circumstance, we are of the considered opinion that it is law laid down by Hon'ble Apex court in (1996) 6 SCC 267, State of Karnataka & Ors. V/s S. M. Kotrayya & Ors. as well as M/s Rup Diamonds & Ors. v. UOI & Ors. reported in AIR 1989 SC 674, which is squarely applicable and much closer to facts of present cases than judgments cited by the applicants. Thus, we are of the view that no sufficient cause has been shown warranting condonation of delay. MAs No. 158/2011 & 162/2011 are accordingly dismissed. Consequently, OAs No. 163 & 169 of 2011 respectively also fail. No costs.



(K.S. Sugathan)  
Member(A)

(Mukesh Kumar Gupta)  
Member(J)

cmj/

तैयार करनेवाला  
Prepared by K.K. Bishal  
मिलानेवाला  
Compared by  
सहि. प्रमाणिका  
TRUE COPY

अनुभाग अधिकारी (न्या.)  
Section Officer (J)  
केन्द्रीय प्रशासनिक अधिकरण  
Central Administrative Tribunal  
अहमदाबाद न्यायपीठ  
Ahmedabad Bench