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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 9429/2016**

VATAN

..... Petitioner

Through: Dr. Sumant Bhardwaj and
Mr. Sagar Roy, Advocates.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr. Anil Panwar, CGSC with Mr. G.L.
Bhatia, Advocate for R1.
Mr. Santosh Kr. Tripathi, ASC with
Mr. Shashank Tiwari and Mr. Parth Vasisth,
Advocates for R2.
Mr. V.S.R. Krishna, Advocate for DMRC.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

% **27.02.2018**

1. The petitioner is aggrieved by the order dated 23.05.2016, passed by the Central Administrative Tribunal dismissing his original application assailing a letter dated 07.09.2011, issued by the respondent No.3/DMRC informing him that he could not lay a claim to his candidature for the post of a Customer Relation Assistant (in short “CRA”) after the validity of the panel drawn for the said post, had lapsed.
2. By the impugned order dated 23.05.2016, the Tribunal dismissed the original application filed by the petitioner with the observation that when the

validity of the panel was already over and the respondent No.3/DMRC has filled up the vacancy, there was no question of entertaining the prayer made by the petitioner.

3. The brief undisputed facts of the case are that the respondent No.3/DMRC had issued an advertisement in the year 2010 for filling up vacancies to the post of CRA. The petitioner had qualified in the selection process and was included in the panel of selected candidates prepared on 07.02.2011, as per Rule 13 (iv) of the DMRC Rules, which deals with formation of a panel and its validity. Each panel for direct recruitment has a validity period of two years from the date of its approval by the Competent Authority and the said panel ceases to operate on expiry of two years, unless it is specifically extended by the Competent Authority for a further period, not exceeding 12 months. Applying the said rule to the present case, as the panel of selected candidates was prepared by the respondent No.3/DMRC on 07.02.2011, the prescribed period of two years would have expired on 06.02.2013 and in the absence of any specific order passed by the Competent Authority, the panel stood lapsed on the said date.

4. It is the case of the petitioner that he had disclosed in his attestation form that he alongwith some others were framed in a Criminal Case vide FIR No.176/2010 under Section 186/353/332/323/34 of the IPC and the said case was pending against him.

5. Vide letter dated 07.09.2011, impugned by the petitioner before the Tribunal, the respondent No.3/DMRC had informed him that he could be offered joining during the currency of the panel, i.e. within a period of two

years and only after settlement of the criminal case against him and that on lapsing of the period of two years, the said panel would also lapse and then he would not have any claim for employment in the respondent No.3/DMRC.

6. Aggrieved by the aforesaid order, the petitioner had approached the Tribunal by filing O.A. No.3681/2012, which was withdrawn by him on 26.11.2012, with liberty granted by the Tribunal to file a fresh O.A., if so advised. Instead of taking immediate steps to file a fresh O.A. within a reasonable time, the petitioner went into deep slumber and woke up only in January, 2015, when he filed O.A. No.351/2015, on which the impugned order came to be passed.

7. In the said O.A., the petitioner has averred that the criminal case filed against him had been finalised by the court of Chief Metropolitan Magistrate (East), Karkardooma, Delhi only on 17.10.2013, wherein he had been honourably acquitted and thereafter, he had approached the respondent No.3/DMRC on 06.11.2013, for reconsideration of his candidature but failed to get any response. Thereafter, the petitioner adopted the RTI route to gather some information from the respondent No.3/DMRC, which as per him took some time and resultantly, he could file a second O.A. only in January, 2015.

8. Notice was issued in the said O.A. and the respondents were called upon to file their counter affidavits. The contention of the petitioner before the Tribunal was that though Rule 13(iv) of the DMRC Rules makes a provision for extension of the validity of the panel by 12 months, the respondent No.3/DMRC had illegally restricted the validity of the panel to two years only to deny his right of appointment after his selection to the subject post.

9. *Per contra*, learned counsel for the respondent No.3/DMRC had pointed out before the Tribunal that the advertisement issued in the year 2010, in respect of several posts including the subject post, had clearly stated that the validity of the selection panel would be for a period of two years from the date of its operation. He stated that the respondents were quite fair to the petitioner and had informed him that if the criminal case pending against him could be finalised during the validity of the said panel, he would be considered for appointment. If not, then the respondent No.3/DMRC could not extend the validity period of the panel for an indefinite period.

10. Upon hearing the arguments advanced by the counsels for the parties, the Tribunal observed that the panel of selected candidates for the post that included the name of the petitioner had been prepared on 07.02.2011 and it could have operated for a period of two years, that had expired on 06.02.2013. However, the criminal case pending against the petitioner in which he was acquitted, was finalised eight months thereafter, only on 17.10.2013. Referring to the stipulations contained in the advertisement dated 21.07.2010 issued by the respondent No.3/DMRC and observing that the said condition had not been challenged by the petitioner and further, taking note of the pleas taken by the respondents in their counter affidavit to the effect that as per the extant rules, the panel can operate only for two years, the Tribunal concluded that the selection panel had lapsed on the expiry of two years.

11. On the question of whether the respondents were empowered to extend the validity period of the panel by one year, the Tribunal opined that even if it is assumed that the Competent Authority was empowered to do so, the question

that arose was whether such powers must be exercised before expiry of the validity period or after about nine months from the date of lapsing of the panel, when the petitioner had approached the respondent No.3/DMRC. The Tribunal expressed an opinion that if the validity period of the panel was to be extended, a decision had to be taken by the Competent Authority before the panel would have expired, but the petitioner did not take any steps to approach the respondent No.3/DMRC seeking extension of the selection panel. Once the panel had expired, the vacancies to the subject post were filled up by the respondent No.3/DMRC. Thus, there was no question of extending the panel after a period of nine months from its expiry, by offering an appointment to the petitioner.

12. The third plea taken by the petitioner before the Tribunal was that the initial decision of the respondent No.3/DMRC not to appoint him to the post of CRA only because a criminal case was pending against him, is not legally tenable. The said plea was however turned down by the Tribunal by distinguishing the case law cited by learned counsel for the petitioner and observing that the petitioner had not brought out any corresponding provision in the DMRC Rules that provides for taking into consideration the redeeming aspect of a candidate with a criminal past.

13. Before us, learned counsel for the petitioner has urged that the petitioner could not be denied appointment to the subject post merely because a criminal case was pending against him and that once the petitioner had been honourably acquitted in the said case on 17.10.2013, the respondent No.3/DMRC ought to have followed its own Rules by extending the validity period of the panel by

another year.

14. The records reveal that the O.A. filed by the petitioner originally in the year 2010, was withdrawn by him with liberty granted to him to file a fresh petition on the same cause of action which he elected to do, for reasons best known to him, only in January, 2015. By then the claim of the petitioner had become stale as admittedly, the respondent no.3/DMRC had filled up the subject vacancies after the selection panel for the post of CRA had lapsed on 06.02.2013.

15. There is no explanation of any nature in the subsequent O.A. filed by the petitioner before the Tribunal to explain the inordinate delay in approaching the Tribunal for relief that related back to the year 2011, more so when it pertains to filling up a vacancy for which an advertisement was issued in the year 2010. Had the petitioner pursued his remedy vigorously in the year 2010 itself, when the panel was to remain in operation till February, 2013, then perhaps the respondent No.3/DMRC could have been directed to examine the facts of his case. But that did not happen. The petitioner elected to withdraw his first petition and did not take any legal steps for almost two years thereafter. By that time, much water had flown under the bridge and steps that were taken by the respondent No.3/DMRC to fill up the said vacancy, could not have been undone later on.

16. In any case, Rule 13(iv) of the DMRC Rules prescribes that the validity period of a panel for direct recruitment shall be for two years and it is in the discretion of the Competent Authority to extend the said panel for a further period of one year, failing which the said panel would automatically cease to

operate. It is not disputed that the Competent Authority had not extended the validity period of the panel for the subject post before the same could lapse on 06.02.2013. The panel having lapsed on 06.02.2013, the petitioner was not entitled to any relief thereafter.

17. In the above facts and circumstances, we do not see any justification for interfering in the impugned judgment. Accordingly, the present petition is dismissed in *limine* as meritless.

HIMA KOHLI, J

PRATIBHA RANI, J

FEBRUARY 27, 2018

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