

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:-

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Supratim Bhattacharya

W.P.C.T. 8 of 2018

Paresh Chandra Sarkar

Versus

Union of India and Others

For the Petitioner : Mr. Supriyo Chattopadhyay,
Mr. Sudip Kumar Maiti,
Ms. Debosri Chatterjee.

For the U.O.I. : Mr. Subrata Roy.

Judgment on : May 22, 2025

Madhuresh Prasad, J.:

1. The writ petitioner was the applicant before the Central Administrative Tribunal ("Tribunal" for short) in O.A. No. 1264 of 2013 praying for a direction upon the respondents to appoint the petitioner on the post of Parcel Porter or any other alternative post as per his medical category (C/1 and below). The Tribunal has dismissed the petitioner's O.A. on 03.03.2016. The order of the Tribunal is put to challenge in the present writ proceedings instituted in the year 2018. The learned Counsel for the respondent has thus raised a preliminary issue regarding the writ petition being barred by delay and laches.

2. Employment Notice No. 0106 (hereinafter referred to as “EN-0106”) was notified by the Railway Recruitment Cell, Eastern Railway (RRC) on 25.09.2006. The same invited applications from candidates desirous of appointment against Group-D category post/s of the Eastern Railway. The advertisement was for filling up 7 Group-D category posts.

3. The selection procedure comprised of written examination followed by Physical Efficiency Test (PET) and Original Document Verification. The candidates found eligible in the written examination and PET were provisionally empaneled for appointment in the various requisitioning units of the railways. The provisionally empaneled candidates were sent to the respective units for carrying out the further pre-appointment formalities, at their end.

4. In the present case, the panel was published on 22.01.2012 and 11.08.2012. It is the case of the respondents that most of the notified posts were safety category posts and, therefore, the provisionally empaneled candidates, were sent for pre-appointment medical examination (ME). In terms of Clause 16.3 of the EN-0106. The candidates found fit were absorbed.

5. It is not in dispute that the petitioner had given a preference for being appointed as a Trackman/ Engineering. Since he had emerged successful in the recruitment process provisional appointment was offered to him in the category of temporary Trackman in the

Engineering Department by an Offer Letter dated 27.08.2012. The nature of duties performed by a Trackman Engineering required a specified level of fitness as the discharge of duties had a direct bearing on safety of the commuting public and carriage of freight. The requisite medical category for the post was B-1. In the medical examination, the petitioner, however, was found to be unfit. He was assessed to be having a lower fitness category, C-1, he thus prayed for a direction upon the respondents to appoint him on the post of Parcel Porter, which can be filled up by a person having a medical fitness category of C-1. The claim of the petitioner has been rejected by the Tribunal.

6. The learned Counsel for the petitioner submits that Railway Board circular RBE No. 211/99 provided for appointing a candidate found medically unfit for a particular category, to an alternative category as per fitness of the candidate. Similar provision was contained in RBE No. 150 of 2000. He thus submits that it is clear from a plain reading of these three circulars that the petitioner ought to have been considered for appointment on an alternative post as per petitioner's fitness category, in this case being a Parcel Porter as many such posts are lying vacant.

7. Learned Counsel for the respondent on the other hand submits that the panel from which the petitioner was offered provisional appointment was valid only for 2 years. The same has lapsed, as far back as on 10.08.2014, during pendency of the case before the

Tribunal. There was no vacancy available against EN-0106 because the panel was published containing number of candidates equal to the number of total notified vacancies for all posts in all medical fitness category. The circulars relied upon by the learned Counsel for the petitioner does not help the case of the petitioner. He has made specific reference to letter No. 99/E(RRB)/25/12 dated 25.05.2009 whereby the scheme of alternative appointment to medically unfit candidates was abolished by the Railway Board. The present recruitment process was carried out for making recommendation to the indenting/ requisitioning units with respect to the various categories of posts based on merit/ preference of the candidates. Once the recommendations have been made, the merit list being final there is no scope for the petitioner to claim that the category against which he was provisionally recommended can be changed. If this was to be allowed the same would have a disastrous effect on the prospects of the other recommended candidates, which they had secured based on their merit preference.

8. We are in agreement with such submissions of the respondents. It is only after a final assessment of the *inter se* merit of the competing candidates that they including the petitioner were awarded the category of post as per their preference and recommended to the indenting units as per the vacancies available in the respective categories in the indenting units. The recommendation of the provisionally appointed candidates was a final result and if the

same were allowed to be altered, finalizing the recruitment process would become impossible. The medical examination of the candidates is after finalization of allocation of category of post based on merit preference. Once the allocation is finalized, the same cannot be changed as it would amount to upsetting the allotment of category of posts of other candidates based on their merit performance, which cannot be countenanced. In the current exercise, therefore, there is no scope whatsoever to keep the allotment of category of the individual candidates fluid till such time they are all medically examined.

9. The petitioner is aware that the panel was prepared only for a period of 2 years and expired on 10.08.2014. In such circumstance, the very fact that he has waited for nearly 2 years to challenge the order of the Tribunal dated 03.03.2016, rejecting his O.A. No. 1264 of 2013, by filing writ petition in the year 2018. In the meantime, substantial third party rights had accrued by virtue of the recommendations. The Tribunal has further taken note of the fact that in an earlier case arising out of one O.A. No. 369 of 2013, the Tribunal held that all the posts pertaining to the same E.N. 0106 of 2006 had been filled up and thereafter subsequent advertisements have also been issued. Therefore, there is also no scope to consider the petitioner against any remaining/ unfilled vacancy from E.N. 0106 of 2006.
10. While exercising discretionary writ jurisdiction under Article 226 of the Constitution of India delay and laches is a relevant factor

to be considered. In this connection, we may profitably refer to a recent decision of the Apex Court in the case of **Mrinmoy Maity vs. Chhanda Koley and Others** reported in **2024 SCC Online SC 551**. The Apex Court in the said report has highlighted the requirement of exercising such discretion with care and caution.

11. The law in this regard is settled that if the delay is explained and such explanation is acceptable to the conscience of the Court then there would be no fetter on the part of this Court in condoning the same. The same, however depends on the facts and circumstances of each case and no rigid formula can be laid down with mathematical precision in in this regard. The Apex Court has observed that though there is no fixed period of limitation prescribed for invoking writ jurisdiction, however, it has to be seen whether invocation of the discretionary writ jurisdiction was within a reasonable time. An applicant who sleeps over his rights for a considerable period of time, is not entitled to extraordinary relief by the writ Court.

12. In **Mrinmoy Maity** (supra) the Apex Court has taken note of the various earlier decisions in this regard, including earlier decision of the Apex Court in the case of **State of M.P. and Others vs. Nandlal Jaiswal and Others** reported in **(1986) 4 SCC 566** wherein it was held that the High Court does not ordinarily permit a belated resort to the extraordinary discretionary writ jurisdiction when “...**it is likely to cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene**

and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When the writ jurisdiction of the High Court is invoked, unexplained delay coupled with the creation of third party rights in the meanwhile is an important factor which always weighs with the High Court in deciding whether or not to exercise such jurisdiction. We do not think it necessary to burden this judgment with reference to various decisions of this Court where it has been emphasised time and again that where there is inordinate and unexplained delay and third party rights are created in the intervening period, the High Court would decline to interfere, even if the State action complained of is unconstitutional or illegal.”

13. Being guided by the above noted enunciation of law, we proceeded to consider the facts of the present case. The petitioner along with several other successful candidates who participated in the recruitment process was recommended for appointment subject to being found medically fit. The petitioner is aware that the panel so prepared was valid only for a period of 2 years, and expired on 10.08.2014, during pendency of the O.A. No. 1264 of 2016 before the Tribunal. The Tribunal finally rejected the petitioner's claim for being offered appointment as per his medical category on 03.03.2016. The recommendation of other successful candidates who had been found

medically fit, therefore, had attained finality. Still the writ petitioner waited for another 2 years after disposal of the O.A. and filed the present writ petition in the year 2018. In our considered opinion the writ petitioner has procrastinated in the matter. He has failed to take diligent steps to question the order of the Tribunal and in the meantime the rights of the other candidates, who were recommended for appointment being the third party rights have crystalized. We thus have no hesitation in concluding that the petitioner's claim suffers from the vice of delay and latches so as to disentitle him to any relief in exercise of extraordinary discretionary writ jurisdiction under Article 226 of the Constitution of India and the writ petition is fit to be dismissed on this score only.

14. The fact that all the vacancies from the employment notice in question has also been filled up and fresh advertisement issued thereafter also disentitles the petitioner to any relief.

15. We find that the recruitment procedure as per the employment notice contemplates finalization of the process of *inter se* assessment of merit of the competing candidates after which recommendation of the provisionally appointed candidates in respect of the various posts was made. The recommendations, therefore, was the final stage of the recruitment process wherein all the candidates were given provisional appointment against their preference based on their merit. Thereafter it was left for the indenting/ requisitioning unit to appoint them subject to assessment of their medical fitness. Once

the *inter se* assessment of merit of competing candidates crystalized and was settled by making of recommendations for various posts, it does not lie in the mouth of the petitioner to submit that his position, *vis-à-vis* the merit position of the other candidates can be modified/ altered. If the same were permitted to be done, the provisional appointment granted to the several competing candidates based on their merit/ reference stand unsettled. Such a situation cannot be countenanced.

16. It is trite that merit of the competing candidates must prevail. Therefore, in the instant case also a merit position earned by other candidates cannot be disturbed or altered, merely because the petitioner subsequently has been found to be medically unfit. Moreso since the appointments were being made to safety category posts.

17. We, therefore, find no reason to interfere with the decision of the Tribunal rejecting the petitioner's claim.

18. The writ petition is dismissed.

19. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Madhuresh Prasad, J.)

I agree.

(Supratim Bhattacharya, J.)

(A.D.)