

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTCK BENCH**

OA No. 238 of 2015

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)

Harinandan Paswan, aged about 39 years, S/o Chandradip Paswan, Vill/PO-Sakari Chouki, PS-Arwal, Dist.-Arwal, Bihar-804401.

.....Applicant

VERSUS

1. Union of India, represented through its General Manager, East Coast Railway, Samant Vihar, PO – Mancheswar, Bhubaneswar, Dist.-Khurda.
2. The Chief Personnel Officer, East Coast Railway, Samant Vihar, PO-Mancheswar, Bhubaneswar, Dist.-Khurda.
3. The Sr. Divisional Personnel Officer, East Coast Railway, Khurda Road, Jatni, Khurda.
4. Dy. Chief Personnel Officer, Recruitment, East Coast Railway, Railway Recruitment Cell, 2nd Floor, South Block, ECoR Sadan, Samant Vihar, PO – Mancheswar, Bhubaneswar, Dist.-Khurda.

.....Respondents.

For the applicant : Mr.D.K.Mohanty, counsel

For the respondents: Mr.S.K.Nayak, counsel

Heard & reserved on : 04.02.2020 Order on : 16.3.2020

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

The applicant had applied for the Group 'D' post advertised on 28.10.2006 (Annexure-A/1 of the OA) by the East Coast Railways (in short ECR). He was called for the written examination on 19.9.2007 followed by the physical efficiency test (in short PET). But the applicant's result was not declared. Due to delay in completion of the recruitment in question, some of the candidates similarly placed as the applicant, had approached the Tribunal in OA No. 531/2009 which was disposed of by the order dated 12.3.2010 (Annexure-A/3) directing the respondents to complete the process. The said order was unsuccessfully challenged by the respondents before Hon'ble High Court and then before Hon'ble Apex Court. Thereafter, the respondents started calling the candidates who had qualified, for document verification and medical examination in batches. The applicant received a letter dated 20.1.2012 (Annexure-A/7) to inform the reasons as to why his candidature will not be cancelled on the ground that his application was without a proper Caste Certificate in the manner as stipulated in the advertisement.

2. The applicant contends in the OA that he submitted a reply on 21.2.2012 enclosing an attested copy of the Caste Certificate issued by the competent

authority and sent to the concerned authority by speed post vide the postal receipt enclosed at Annexure-A/8 of the OA. The applicant, thereafter, followed up with a number of representations (Annexure-A/9 series) and the case was rejected by the respondents vide order dated 26.5.2015 (Annexure-A/10) which has been impugned in this OA which is filed seeking the reliefs as under:-

“Under these circumstances, it is humbly prayed that this Hon’ble Tribunal may be graciously pleased to admit the present Original Application and issue notice to the Respondents to show cause as to why the Original Application shall not be allowed and in the event if the Respondents not filed any show cause or show insufficient cause, this Hon’ble Tribunal may kindly be pleased to quash order dated 20.1.2012 & 26.6.2015 under Annexure A/7 & Annexure A/10 and allow the applicant to be considered and be called for document verification and medical examination. And further direct the Respondent No.4 if otherwise the applicant is found eligible to hold the post he shall be given appointment as per advertisement under **Annexure A/1**.

And pass such other order/orders as deemed fit and proper.”

3. The case of the applicant is that he fulfills the educational and other criteria for the post as per para 3 & 4 of the advertisement and for non-fulfillment of these substantial requirements, the candidature can be cancelled. The applicant belonged to the reserved category and he had submitted the certificate issued by the competent authority with his reply on 21.2.2012 which was not accepted by the authorities and hence, the action to reject his candidature was illegal. It is further averred that after a candidate qualifies in the written test and PET/medical examination, his candidature cannot be rejected for the reason cited by the respondents in his case. It is also averred that “non-fulfilling of formal process of applying should not be a ground to reject the applicant who is otherwise qualified to hold the posts.” It is also stated that for non-submission of the caste certificate issued by competent authority in a different format should not lead to rejection of candidature and he may not be allowed the benefit of reservation.

4. Counter filed by the respondents stated that the candidature of the applicant was rejected when after second round of the scrutiny as per the outcome of vigilance investigation, it was found that he had submitted the Caste Certificate issued by an authority not empowered to issue such certificate and the format of the certificate was also different from the format specified in the Annexure II of the advertisement. It is stated that though the applicant had submitted his reply on 21.2.2012, but his reply was not found satisfactory. It is stated that the applicant had submitted a fresh Caste Certificate dated 26.1.2012 issued by the competent authority and such a certificate was issued after receipt of the show cause notice dated 20.1.2012 (A/7) and hence, it was not accepted. The decision to reject the candidature of

the applicant has been justified in the Counter in view of the conditions stipulated in the advertisement, citing the following judgments:-

- i) UOI & Ors. -vs- Shri Sarwan Ram & Ors. [SLP No. 706/2014]
- ii) Rajendra Kumar -vs- UOI [OA No. 353/2013, CAT, Cuttack Bench]
- iii) Yashin -vs- Chairman [CAT, Jabalpur Bench]

5. Rejoinder has been filed by the applicant stating that the applicant did not receive any decision of the respondents to his reply/representations in response to the show cause notice dated 20.1.2012 (A/7) till the order was passed by the Tribunal on 7.5.2015 to obtain instructions. It is stated that the power to reject the candidature at later stage related to non-fulfillment of essential qualification or age and not to the modus operandi of applying. The applicant has averred that his candidature has been rejected for a reason which is non-substantial. It is also stated that the cases cited in para 12 of the Counter are not applicable to the present case.

6. Heard learned counsel for the applicant who also filed a copy of the judgment dated 26.8.2019 of this Tribunal in OA No. 594/2016 (Dungar Singh Meena vs. Union of India & others). He urged that the candidature of the applicant has been rejected for a non-substantial reason as he had submitted his Caste Certificate in a different format and issued by a different authority with the application and submitted such Caste Certificate in proper format and issued by the competent authority subsequently. It was argued that the respondents cannot reject the applicant's candidature for such a reason as per the terms of the advertisement.

7. Learned counsel for the respondents was also heard. He defended the action of the respondents on the ground that as per the instructions specified in the advertisement, submission of incorrect certificate will attract rejection of candidature. It was further submitted that the applicant did not furnish the Caste Certificate in the manner as stipulated in the advertisement. Learned counsel for the respondents also filed five judgments in support of his arguments.

8. It is undisputed that the applicant did not submit his Caste Certificate alongwith his application for the post in question before the cut off date to substantiate his claim to be considered as a reserved category candidate as per the stipulations made in the advertisement and he submitted the certificate in the stipulated manner only on 21.2.2012 after receipt of the show cause notice dated 20.1.2012 (A/7). Learned counsel for the applicant has cited the order of this Tribunal in the case of Dungar Singh Meena (supra) in OA No. 594/16 and other two OAs in which the dispute related to the putting the signature in the

designated box below the photograph on the application form. It was held that the ratio of the judgment of Hon'ble High Court in the case of Narendra Gopichand Desharbharater vs. UOI & Others in W.P. (C) No. 25372/2017 is applicable to that OA. The ratio of the judgment of Hon'ble Apex Court in the case of UOI & Others vs. Miss Pritilata Nanda, reported in 2010 (II) OLR (SC) 636 was followed in the case of Narendra Gopichand Desharbharater (*supra*). But in the instant OA, the dispute pertained to non-submission of the certificate in the stipulated format and manner within the cut off date to avail the benefit of recruitment against reserved category of posts. Hence, the judgment cited by learned counsel for the applicant is distinguishable.

9. Learned counsel for the respondents has cited the order dated 6.7.2015 of the Tribunal in OA No. 353/2013 in which the applicant was also a candidate in response to the advertisement dated 28.10.2006 (same as in the instant OA) and his certificate for OBC was issued by BDO who is not the competent authority to issue the certificate as per the stipulations of the advertisement. In that OA, the applicant had claimed that the BDO is competent to issue such a certificate as per State Government notification. The facts in that OA were different from the present OA in which the applicant has furnished correct Caste Certificate for SC/ST reservation after receipt of the show cause notice. Hence, the findings in OA No. 353/2012 will not be applicable to the instant OA.

10. In the case of Bedanga Talukdar vs. Saifullah Khan & Ors. in Civil Appeal No. 8343-8344 of 2011, Hon'ble Apex Court, while considering the consequences of non-submission of the documents supporting the claim for reservation for the category of physically handicapped persons within the stipulated time, held as under:-

“28. We have considered the entire matter in detail. In our opinion, it is too well settled to need any further reiteration that all appointments to public office have to be made in conformity with Article 14 of the Constitution of India. In other words, there must be no arbitrariness resulting from any undue favour being shown to any candidate. Therefore, the selection process has to be conducted strictly in accordance with the stipulated selection procedure.

Consequently, when a particular schedule is mentioned in an advertisement, the same has to be scrupulously maintained. There can not be any relaxation in the terms and conditions of the advertisement unless such a power is specifically reserved. Such a power could be reserved in the relevant Statutory Rules. Even if power of relaxation is provided in the rules, it must still be mentioned in the advertisement. In the absence of such power in the Rules, it could still be provided in the advertisement. However, the power of relaxation, if exercised has to be given due publicity. This would be necessary to ensure that those candidates who become eligible due to the relaxation, are afforded an equal opportunity to apply and compete.

Relaxation of any condition in advertisement without due publication would be contrary to the mandate of quality contained in Articles 14 and 16 of the Constitution of India.”

11. Learned counsel for the respondents has also cited the judgment of this Tribunal in the case of Narendra Gopichand Deshbharkar vs. Union of India represented through General Manager, East Coast Railway & Others in OA No. 14/2014. This order cannot be followed in view of the fact that the said order has been modified by Hon'ble High Court in W.P. (C) No. 25372/2017 following the judgment in the case of Pritilata Nanda (supra) as discussed in paragraph 8 of this order. In the case of Savita Manohar Wankhede vs Union of India and Ors in Writ Petition No. 24168/2017 before Hon'ble Rajasthan High Court, the judgment in the case of Bedanga Talukdar (supra) was followed and it was held that the conditions stipulated in the advertisement are binding on all concerned.

12. On a similar dispute relating to the validity of OBC Caste Certificate submitted after the date stipulated in the advertisement, Hon'ble Allahabad High Court in the case of Gaurav Sharma vs State Of U.P. and others in Special Appeal No. 156 of 2017, held as under:-

"The second aspect which must necessarily be noted is the significance of a last date prescribed in an advertisement and its impact. A last date comes to be prescribed in an advertisement or recruitment notice to seek certain well established objectives. It firstly puts all prospective candidates on notice with regard to the eligibility qualifications that the employer desires a particular candidate to hold. The prescription of the last date also acts as information to the prospective candidates to test and ascertain whether they are eligible to participate in the selection process. There are therefore, upon the prescription of such a last date in the advertisement no shifting timelines or uncertainty. The prescription of such a condition in the advertisement also eschews any arbitrary action and denudes the authority from wielding a discretion which may be abused. One may in this connection usefully refer to the judgment of the Supreme Court in Rakesh Kumar Sharma Vs. State (NCT of Delhi) and others 7 which noticed the earlier precedents on the subject and observed as follows:

"12. In U.P. Public Service Commission, U.P., Allahabad & Anr. v. Alpana, (1994) 2 SCC 723, this Court, after considering a large number of its earlier judgments, held that eligibility conditions should be examined as on last date for receipt of applications by the Commission. That too was a case where the result of a candidate was declared subsequent to the last date of submission of the applications. This Court held that as the result does not relate back to the date of examination and eligibility of the candidate is to be considered on the last date of submission of applications, therefore, a candidate, whose result has not been declared upto the last date of submission of applications, would not be eligible.

13. A three Judge Bench of this Court, in Dr. M.V. Nair v. Union of India & Ors., (1993) 2 SCC 429, held as under:-

"9.....It is well settled that suitability and eligibility have to be considered with reference to the last date for receiving the applications, unless, of course, the notification calling for applications itself specifies such a date." (Emphasis supplied)

.....

We then proceed to address the second question framed for our consideration and which pertains to the correctness or otherwise of the judgment of the Division Bench in Arvind Kumar Yadav. As noted above, the sheet anchor of the case of the appellant and the writ petitioners was the judgment of the Supreme Court in Ram Kumar Gijroya. It becomes relevant to note that in the said case,

the Supreme Court was called upon to consider the correctness of a judgment rendered by the Delhi High Court which had overturned a judgment rendered by a learned Single Judge of the said Court who had followed two earlier precedents to hold that the candidature of a Scheduled Castes/Scheduled Tribes candidate could not be turned down only on the ground that the caste certificate was submitted after the last date prescribed in the advertisement. The two prior precedents which the Delhi High Court considered were Pushpa Vs. Govt. (NCT of Delhi)⁹ and Tej Pal Singh V. Govt. (NCT of Delhi)¹⁰. In the appeal of Ram Kumar Gijroya, the learned Single Judge of the Delhi High Court following the two precedents referred to above had directed the respondents therein to accept the OBC certificate of the appellant. One of the significant and distinguishing features of Ram Kumar Gijroya, which immediately springs to light is that the advertisement did not prescribe a cut off date at all. The requirement of submitting the OBC certificate was introduced only by a notice issued by the Delhi Subordinate Services Selection Board while declaring the final results.”

In the above judgment in the case of Gaurav Sharma (supra), Hn’ble Allahabad High Court held that the cut off date stipulated in the advertisement will be binding on the candidates who claim the benefits of reservation.

13. Keeping the above legal principles in mind, we proceed to examine the terms and conditions of the advertisement dated 28.10.2006 at Annexure A/1 of the OA and at Annexure R/1 of the Counter. It is seen that the paragraph 13 (vi) of the advertisement stated as under:-

“(a) Caste certificate from competent authority for SC/ST and OBC candidates in the prescribed format as given at Annexures-I and II have to be submitted. (b) If the candidates wish to be considered against a specific community quota and tick the community column in the Application form/Personal Data Sheet accordingly, their application will be rejected unless proof of community in the prescribed format is enclosed. (c) Any subsequent representation for change of community status will not be entertained under any circumstances.”

Further, the paragraph 15 of the advertisement stipulated as under:-

“15. INVALID APPLICATIONS: Applications found to be having any of the following deficiencies, discrepancies or irregularities will be summarily rejected:.....

(xvii) Applications without proper certificates obtained from the competent authority in the prescribed format in respect of SC/ST/OBC candidates, Ex-Servicemen, judicially separated divorced women and widows.”

14. It is clear from the above terms and conditions in the advertisement, failure to enclose the Caste Certificate in the manner as specified in the advertisement would render the application liable to be rejected summarily as per the paragraph 15(xvii) of the advertisement. There is nothing on record furnished by the applicant to refute the contentions of the respondents that the applicant has not submitted the Caste Certificate in the prescribed format issued by the authority as specified in the advertisement in support of his claim as a SC category candidate along with his application form as revealed from the copy of his application form at Annexure-R/2 of the Counter. It is seen from Annexure-R/2 that the applicant had submitted a Caste Certificate issued by the Block Development Officer, who is not the competent authority to issue such certificate as stipulated in paragraph 11 of the advertisement. The

applicant has also stated that he had submitted proper certificate from the competent authority with his reply dated 21.2.2012 after receipt of the notice dated 20.1.2012 (Annexure-A/7) from the respondents. But there is no stipulation in the advertisement for submission of the Caste Certificate in support of the claim to be considered as a SC/ST category candidate separately after last date of submission of the application as stipulated in the advertisement.

15. In view of the facts as discussed above and applying the ratio of the judgment of Hon'ble Apex Court in the case of Bedanga Talukdar (*supra*) and the judgment of Hon'ble Allahabad High Court in the case of Gaurav Sharma (*supra*), we do not find any infirmity in the decision taken by the respondents in this matter. The OA, therefore, lacks merit and hence, it is dismissed. No order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath