

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No. 313/2020

Reserved on :22.09.2020
Pronounced on :28.09.2020

**Hon'ble Mr. Dinesh Sharma, Member (A)
Hon'ble Mrs. Hina P. Shah, Member (J)**

Priyanka Malhotra D/o Shri Anshu Kumar Malhotra, aged about 31 years, R/o 445/3, Rani Sati Nagar, Nirman Nagar, Jaipur-302019 (Rajasthan), working as Sr. Commercial Clerk, Mob.-9116034941 (Group 'C' post) DRM Office Jaipur.
...Applicant.

(By Advocate: Shri Kapil Sharma)

Versus

1. Union of India through General Manager, North Western Railway, H.Q. Office, Jawahar Circle, Jagatpura, Jaipur 302017.
2. Divisional Railway Manager, Jaipur Division of North Western Railway, D.R.M. Office, Power House Road, Jaipur 302006.
3. Sr. DPO, Jaipur Division of North Western Railway, D.R.M. Office, Power House Road, Jaipur 302006.
...Official respondents.
4. Vinay Kumar Kumawat S/o Shri RamlalKumawat, Sr.Commercial Clerk at AsalpurJobner Railway Station, Boraj Rd, Asalpur, Rajasthan 303338.
5. Rameshchand Gurjar S/o Shri Jagdish Gurjar, Sr. Booking Clerk at Bandikui Railway Station, Bandikui, Rajasthan 303313.

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6. Ramveer S/o Shri Bhoop Singh, Sr. Goods Clerk at Kathuwas Railway Station, Kathuwas, Tehsil Behror, District Alwar, Rajasthan 301703.
7. Shiv Dayal Singh S/o Shri Shivratan Singh, Sr. Goods Clerk at Pali Railway Station, Sardar Patel Nagar, Pali, Rajasthan 306401.
8. Prem Raj Dayma S/o Shri Suraj Narayan Dayma, Sr. Booking Clerk at Kolvagram Railway Station, Kolwa, Rajasthan 303325.

...Private Respondents.

(By Advocate: Shri P.K.Sharma)

ORDER

Per: Dinesh Sharma, Member (A):

In this OA, the applicant has prayed for declaring the selection procedure mentioned in the notification dated 10.07.2019 (Ann. A/1) as void and bad in law, for quashing the notification dated 20.04.2020 (Ann. A/2), and for publishing a revised panel of selection on the basis of seniority of candidates selected vide order dated 03.01.2020 (Ann. A/ 7).

2. Briefly put, the applicant has questioned the determination of vacancies (says it should have been 4 instead of 5) and adoption of the merit system of promotion (on the basis of marks secured in a written examination). The applicant was appointed as Commercial Clerk in the year 2012 and promoted as Sr. Booking Clerk in the year

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2015 and has been working as such since then. A notification dated 21.05.2019 (Ann. A/5) was issued for selection to the post of Commercial Inspector in 75% ranker quota against 5 vacancies for which personnel currently holding posts of Sr. Booking Clerk/Sr. Parcel Clerk/Sr. Goods Clerk in grade pay of Rs.2800 were eligible. She applied for the said post and was found eligible vide notification dated 10.07.2019. She appeared in the written examination held on 07.09.2019. She made representation about the correctness of some questions/answers, which were unheeded. However, she was declared qualified in the written examination by office order dated 03.01.2020 (Ann. A/7). She has been making representations about wrong assessment of vacancies to give benefit to some persons, these were not responded to and the respondent department has published a panel of selected candidates on 20.04.2020 in which the name of the applicant does not appear despite her being the senior most eligible candidate. She has also complained to the Vigilance about this but that complaint has also not been acted upon and hence this OA.

3. The respondents (official) have filed a reply denying the allegations made in the OA. It is stated that according to the notification dated 10.07.2019, the selection was purely on merit basis. The applicant was fully aware of the fact that

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the selection will be made only on the basis of merit. The applicant appeared in the examination and qualified but she could not come in the merit list. The answer keys were uploaded on the FTP portal and after receiving representations from candidates, revised Answer Key was uploaded and the result of the written test was declared. The respondents have stated that the vacancies were determined correctly on the basis of records. They have questioned the propriety of raising this issue, of determination of vacancy, after appearing in the examination.

4. We have gone through the pleadings and have heard the arguments of the learned counsels of both the parties. During the course of the arguments, the learned counsel for the applicant reiterated the wrong determination of vacancies and the adoption of a selection process that was not even mentioned in the first notification (dated 21.05.2019, Ann. A/5). He questioned the appropriateness of doing selection on the basis of RBE 17/2014 (mentioned in the notification dated 10.07.2019) since this (RBE 17/2014 at Ann. A/10) did not provide for the selection criteria for 75% ranker quota. The learned counsel for the respondents, who, incidentally also represented the private respondents, justified the determination of vacancies and the selection process. He drew the attention of the Tribunal

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to paragraphs 3 and 4 of the notification dated 10.07.2019, which should have left no doubt in the applicant's mind that the selection was to be based on merit and not seniority. He also pointed out that all these selections are subject to the final pronouncement of the Apex Court in related matters on such selection.

5. After going through the pleadings and hearing the arguments, it is clear that the applicant did participate in an examination process which was conducted after clearly declaring that the result will be based on the merit (paragraph 3 of notification dated 10.07.2019). Paragraph 3 of said notification is reproduced here:-

चयन में कर्मचारियों की नामिका आरबीई सं. 17/14 के अनुसार लिखित परीक्षा एवं सर्विस रिकार्ड के आधार पर प्राप्त अंको की मेरिट के अनुसार जारी की जायेगी एवं जिन कर्मचारियों के व्यवसायिक योग्यता में 60 प्रतिशत एवं सर्विस रिकॉर्ड के अंको सहित कुल अंको का 60 प्रतिशत या अधिक अंक होगे उनके नाम मेरिट के आधार पर नामिका पर रखे जायेगे।

6. The applicant has prayed for quashing this notification, *inter alia*, on ground that on *earlier occasions*, the post of commercial Inspector has been filled up based on seniority and the change in the procedure has been done without informing and avoiding the senior personnel. The other ground is that the RBE 17/2014 does not provide for selection criteria for 75% ranker quota. The applicant does

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not deny that she was aware of the change in procedure. Though she questions the adoption of this process on grounds of it being incorrect, she agreed to abide by it by appearing in the examination. Her questioning the answer sheets and the determination of vacancies are totally unconnected and inconsistent with questioning the process of selection itself. Though there is no specific mention of selection for 75% ranker quota, the RBE 17/2014 (Ann. 10), which is couched in general terms, does not specifically exclude such selection. Similarly, even if, for the sake of arguments, it were to be accepted that the determination of vacancies was not correct (and it should have been 4 instead of 5), this would have only reduced the chance of applicant's selection, on the basis of the marks obtained by her in the selection process. The applicant has not even claimed that her position in the merit list should have been higher because of her performance in the examination/service record. She wants the process to be quashed since she alleges wrong determination of vacancies and wrong adoption of a selection process, which she has, by going through the examination process, consented to be assessed under. Her complaints before the vigilance authorities, about any favouritism, etc. in the selection process, have to be dealt by those authorities and this Tribunal is not the right forum to deal with them.

7. To summarise, the OA is an attempt to get selected on the basis of seniority (or, more correctly, to kill the selection process which does not do this) after voluntarily going through a process of selection which had made it clear that the selection would be purely based on merit (marks and not seniority). We are unable to grant such request, unsupported by any rule or judicial precedent, and are unable to quash a selection process, which has apparently followed all the current rules, and is subject to the outcome of the currently pending litigations before the Apex Court. The OA is, therefore, dismissed. No costs.

(Hina P. Shah)
Member (J)

(Dinesh Sharma)
Member (A)

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