

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
Original Application No.455/2017
With
MA No.148/2018
Dated this the 25th February, 2021.**

CORAM :

**Hon'ble Sh. Jayesh V. Bhairavia, Member (J)
Hon'ble Sh. Dr. A.K. Dubey, Member (A)**

Shri Sandeep,
Son of Shri Narinder Pal Saini,
Age: 32 years,
Yet to be appointed in the Railways,
Residing at H.No. 592, Ward No. 4,
Moh Dolichi Sirhind City,
Punjab – 140 406. ...Applicant

(By Advocate: Shri M. S. Trivedi)

Versus

1. The General Manager,
Western Railway,
Churchgate, Mumbai – 400 020.

2. The Chairman,
Railway Recruitment Board,
O/o. RRB, 1st Floor,
M. G. Railway station Building,
Ahmedabad – 380 002. ...Respondents

(By Advocate: Shri M. J. Patel)

ORDER (ORAL)

Per Dr. A. K. Dubey, Member (A)

1. The applicant in the OA has approached this Tribunal seeking following reliefs:-

- “(A) *That, the Hon’ble Tribunal be pleased to allow this petition.*
- “(B) *That the Hon’ble Tribunal further be pleased to quash and set aside the impugned ex-facie illegal, arbitrary and unconstitutional action on the part of the respondent No.2 deny/depriving an appointment in the office of the respondent No.1 as ALP in pursuant to E/Notice No.1/2014 issued by the respondent No.2, despite the fact that the applicant have obtained 47.91% marks whereas who secured less than the applicant i.e., 44.93% in General and 33.28% in OBC are appointed by the respondent No.1 as was inaction on the part of the respondent No.2 not considering the request of the applicant dated 9.9.2016 (Annexure A/1) to this petition.*
- “(C) *That the Hon’ble Tribunal further be pleased to hold/declare that in action on the part of the respondent No.2 not considering the request of the applicant dated 9.9.2016 as illegal, arbitrary and non est in the eyes of law.*
- “(D) *That, the Hon’ble Tribunal further be pleased to direct the respondents to consider the claim of the applicant for the post of ALP against enhanced/revised vacancies of ALP on the basis of his merit in the written test.*
- “(E) *Such other and further relief/s as may be deemed just and proper in view of the facts and circumstances of the case may be granted.”*

2. The contentions of the applicant are briefly mentioned as under:-

- 2.1 In response to the advertisement dated 18.01.2014 of the respondent No.2 inviting application for the post of Assistant Loco Pilot (ALP) and Technicians, the applicant had also applied. A common/general written test was conducted on 20.07.2014 and as per the common letter dated 02.02.2015, (Annex.A/3) the successful candidates (6456 candidates) were called for the Aptitude Test and verification of records. (The copy of the common letter calling for the Aptitude Test is not address to the applicant individually).
- 2.2 The applicant’s case is that after the written test, he was not offered any appointment. He made a request to the Railway Recruitment Board (RRB) vide representation dated 09.09.2016 claiming that he had achieved 47.91% marks in the written test and even if he did not

qualify for Category No.51 (Turner Post) for which the cut off marks were 66.32%, he should have got the post of ALP because in the OBC category, the minimum cut off marks was 33.28%.

- 2.3 The applicant contends that there was single application for ALP and the Technician grades and therefore, his candidature should have been considered for ALP in which he had achieved more than the prescribed cut off marks in OBC Category, even though he could not qualify for the Category No.51:Turner Post.
- 2.4 The applicant's averment is that the vacancies for ALP were 255 at the time of notification which came to be revised as 912 during the process of selection. He also submits that he was not called for the Aptitude Test. Since he was unable to ascertain the result of the test, the applicant applied under RTI for information. In response, the respondent vide letter dated 16.10.2015 (Annex.A/4) intimated the applicant that cut off marks and reasons for non selection would be given only after completion of the selection process. Subsequently, vide letter dated 16.06.2016 the respondent intimated the applicant that he had obtained 47.91% marks in the category No.51: Turner post only, for which he had applied. The cut off marks for the post of Turner for OBC category which the candidate belonged, was 66.32%. The reply under RTI Act dated 16.06.2016 (Annex.A/5) also intimated the cut off marks for the post of ALP was 33.28% in OBC category. The applicant's contention is that if he had achieved more than 33.28% in the Turner category, he should have been offered the post of ALP since his marks were 47.91%.
3. Respondents, represented by their Standing Counsel Shri Manish J. Patel, filed the reply which mainly has the following contentions:-
 - 3.1 The candidate had applied only for the post in Category No.51. The respondents have produced a copy of the original application form (Annex.R/1). In this category No.51 i.e., Technician Grade III (Turner), the applicant had obtained 47.91% marks whereas the cut off marks for OBC category candidates was 66.32%.
 - 3.2 Refuting the contentions of the applicant that he had not been offered the ALP post, the respondents have averred that the applicant did not

apply for any other category and hence there was no question of considering him in any other category. Because he had not applied for ALP post, he was not called for the Aptitude Test for it. Aptitude Test contains 30% weightage in the overall marks vis-à-vis 70% weightage of written examination marks in order to qualify for the ALP post.

- 3.3 The respondents have clarified that a common written examination was conducted for all candidates who had applied for different posts as per their eligibility and preferences. The call letter of course indicated the category name as ALP and Technicians, which was exactly what the advertisement was issued for.
4. The applicant had filed rejoinder reiterating most of the points made in the original application. Evidently, in his rejoinder the applicant argues that apart from the common call letter which was for the ALP/Technician, the candidate had also marked the name of ALP category in the OMR Sheet given to the candidate in the written test.
5. The applicant also filed MA No.85/2018 for orders and direction to the respondents. This was disposed of on 20.08.2019 as 'not pressed'. Earlier the respondents had filed MA No.148/2017 for deleting the General Manager, Western Railway, the 2nd respondent as he had no role in this matter. However, the applicant contended that the relief sought by him in this OA concerned only the 2nd respondent. The applicant filed yet another MA No.316/2018 for production of documents along with a copy of the general instruction, the candidate should note which read as under:-

“...RRB reserving the right to allot even non preferred posts and or Railway/Unit subject to merit and vacancy position.”

This MA was allowed on 20.08.2019.

6. Heard the counsel for the parties. The counsel for the applicant Shri M.S.Trivedi argued that since the marks achieved in the written test was more than the cut off marks for OBC category required for ALP post, the candidate should rightly have been offered that post. He submitted that the candidate has marked ALP category in his OMR sheet and the general instructions to the candidates made it very clear that the Railway Recruitment Board could allot any other non preferred post or Railway/Unit

subject to merit and vacancy position. Per contra, the Standing Counsel for the respondents Shri M.J.Patel submitted that if the candidate had applied only for one category and left all other options blank, there was no case to consider him in any other category. A plain perusal of the application form makes it clear that the candidates had 10 options to fill up but here the candidate filled up only one option. Referring to the general instructions quoted by the applicant, he argued that RRB had powers to allot non preferred posts but were no preference was expressed, this would not apply. Moreover, for the post of ALP an aptitude test had to be given to which the applicant was not called since he did not qualify in the written test for the category. He averred that RRB's discretion to allot non-preferred trades too was subject to merit which was not determined for ALP's post as far as the applicant was concerned. Therefore, the request of the applicant was contrary to the rules and regulations whereas the conduct of the respondents had been only in accordance with the rules and going by the preference of the candidate himself.

7. After hearing both sides and perusing the records and documents produced before us, we find that the candidate had not applied for the post of ALP and instead of 10 options, he had exercised only one option i.e., category No.51. Therefore, if the respondents examined him only for that category, there seems to be no valid ground to find fault with the conduct of the respondents. Records before us establish that for category No.51 post, the applicant did not qualify that he got less percentage of marks in written than the cut off marks for the OBC category. That his percentage of marks in written test was more than the cut off marks for the post of ALP is of no consequence because he had not applied for that post. And for this very reason, he was not called for Aptitude Test for ALP post. We are therefore constrained to observe that the applicant has not been able to make out a case for himself and respondents cannot be held responsible for not exercising relevant or requisite option by the applicant. Accordingly, OA is dismissed. Pending MA No.148/2018 is also dismissed. No order as to Cost.

(A.K.Dubey)
Administrative Member

SKV

(Jayesh V. Bhairavia)
Judicial Member