

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/020/256/2015

HYDERABAD, this the 24th day of March, 2021

Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member



1. Sri Ettilli Ramesh, S/o. Thavitaiah,
aged about 29 years,
R/o. Turakanaiduvalasa,
Ravivalasa Post Office,
Vizianagaram District - 535 525, AP.

2. Sri N. Gandhi, S/o. Subba Rao
Aged about 28 years,
Gunnepalle Agraharam,
Amalapuram Mandal,
East Godavari Dist., A.P -533 214.

...Applicants

(By Advocate : Sri Krishna Devan)

Vs.

1. Union of India rep. by
Principal Secretary, Ministry of Railways,
Railway Board, New Delhi.
2. The Member Secretary,
Ministry of Railways, Railway Recruitment Board,
South Lalaguda, Secunderabad.
3. The General Manager,
South Central Railway Zone,
Railnilayam, Secunderabad.
4. The General Manager,
East Coast Railway,
Bhubaneswar, Orissa – 751 023.
5. L. Srinivas, Roll No: 2810404 2200087,
C/o. Member Secretary,
Railway Recruitment Board,
Secunderabad.
6. The Chairman, Railway Recruitment Board, Secunderabad.

... Respondents

(By Advocate: Sri A.P. Lakshmi SC for Rlys.)

ORAL ORDER
(As per Hon'ble Mr. B.V. Sudhakar, Admn. Member)

2. The OA is filed in regard to non selection of the applicants as Junior Clerk cum Typist after completing the documents verification process.



3. Respondents issued notification dated 27.2.2010 for filling up the post of Junior Clerk cum Typist (for short “**JCT**”) and the applicants who belong to SC community applied for the said post. A corrigendum for the notification was published in the newspaper dated 1.9.2013 increasing the vacancies from 33 to 41 without indicating the break-up of vacancies. The applicants, after clearing the written exam held in two stages, were called for the type test on 27.7.2014 and on conclusion of the test, the Chairman of the RRB, Secunderabad, announced that 26 candidates were selected including the applicants. However, applicants were informed vide letter dated 09.12.2014, 15 candidates were selected and 4 candidates were kept in the waiting list and that all the 36 vacancies of SCR are meant for Persons with Disability (for short “**PWD**”) and the one vacancy of East Coast Railway (ECOR) is for SC quota. Aggrieved, OA No.9 of 2015 was filed, but withdrawn for lack of adequate pleadings. In the meanwhile, respondents released the list of 14 selected candidates for SCR and 1 for ECOR on 4.2.2015 wherein PWD candidates, who failed in Type Test were selected and some others’ selection was subject to passing the Type Test later. Aggrieved over non selection, the OA is filed.

4. The contentions of the applicants are that the respondents have acted against the provisions of the Constitution of India relating to reservations of vacancies. The candidates selected did not figure in the list of 26 candidates



announced to be selected on 27.7.2014 by the Chairman RRB. The applicants are meritorious and those selected, it is suspected, are not. The non selection is for extraneous considerations. Having allowed the candidature of the applicants to appear in the exams/type test, respondents are estopped from not selecting the applicants. Applying roster point only in case of ECOR and not for SCR is unconstitutional. Though there are 41 vacancies as per the corrigendum, only 36 vacancies were considered and hence, there are still 5 vacancies left to be filled up. Selection rules cannot be changed once the selection process has been set in motion. Qualified candidates were rejected and those unqualified were selected. There is no fairness in declaring the results and there is some mystery associated with the select list of 9.12.2014, since the marks obtained by the applicants and the selected candidates have not been made public. The action of the respondents in declaring the results on 9.12.2014/4.2.2015 is arbitrary, illegal and violative of Articles 14, 16 & 21 of the Constitution.

5. Respondents per contra state that a central notification 4/2010 was issued for selection to the post of JCT and the respondents have the power to increase/decrease the vacancies as per Railway Board letter dated 4.12.2001 and the change of vacancies in the case on hand was approved by the Railway Board on 23.1.2014 which was published on 31.1.2014 in the news papers (Annexure R-3). All the 36 vacancies of SCR were identified for PWD candidates of any community and that there was an inadvertent error in calculating the number of candidates to be called for type test, by not relating the same to the change in vacancies announced on 31.1.2014. Provision 13.07 of the notification cover such inadvertent error. The change

in vacancies is permitted as per the notification and the decision of the RRB is final. Applicants cannot demand selection on the basis of being qualified in the type test. The applicants could not be selected due to shortage of vacancies and a mistake occurred in calling for the 2nd stage of the exam.

Respondents express regrets for the mistake.



Applicant filed a rejoinder wherein it is stated that the number of vacancies shown in para 3 of the reply statement is different from the number of vacancies notified in 4/2010, since the number of SC vacancies have not undergone any change even by the corrigendum when the number of vacancies has been increased from 33 to 41. Allocating all the vacancies to PWD candidates is not a condition specified in the notification. The Annexures I & II are not applicable to the selection as per notification 04/2010. Declaring the mistake as inadvertent is not tenable since it is a self exclusion clause. The annexure R-3 & notification dt.31.1.2014 were not communicated to the applicants. Ministry of Railways has not issued the corrigendum but it was issued by R-6 who is not competent to do so. Reply statement does not bear any merit list and the selection is shrouded with mystery.

6. None for the applicant. Even earlier, there was no representation for the applicants on some occasions including the last occasion on 23.03.2021, on which day, final opportunity was given to the counsel for the applicants and adjourned the matter to today, with an observation that if the counsel for the applicants does not appear, the OA will be decided in accordance with law. Despite that, none appeared for the applicants. The OA is of the year 2015, pertaining to selection. Hence, matter was taken up for

adjudication. Heard the counsel for the respondents and perused the pleadings on record.

7. I. The dispute is about non selection of the applicants as JCT after being declared as selected. To resolve the dispute the relevant provisions of the notification 4/2010 issued by respondents have to be perused and hence the same are extracted hereunder:



“13.04. RRB reserves the right to conduct additional written examination/ Typing skill test/ document verification at any stage. RRBs also reserves the right to cancel part or whole of any recruitment process at any stage for any of the categories notified in this Employment Notice without assigning any reason thereof.

13.05. The decision of RRBs in all matters relating to eligibility, acceptance or rejection of the applications, issue of free Rail Passes, penalty for false information, mode of selection, conduct of written examination, skill test, allotment of examination centre, selection, allotment of posts to selected candidates etc. will be final and binding on the candidates and no enquiry or correspondence will be entertained by the Railway Recruitment Board in this regard.”

As per Para 1.10 of the Notification, the number of vacancies indicated in the Employment notice is provisions and may increase or decrease or even become nil depending upon the actual needs of the Railway Administration. The Administration also reserves the right to cancel the notified vacancies at its discretion and such decision will be final and binding on all. In the event of cancellation of notified vacancies, the examination fee paid by the candidates will not be refunded.

Thus as per the notification respondents can increase or decrease the number of vacancies and the decision of RRB is final. Applicants accepted the conditions and participated in the exam process. Hence, they are estopped to question the selection process after accepting the conditions laid in the notification. Respondents have acted as per the notification and with the language of the advertisement having been clear, it is not for the Tribunal to sit in judgment over the notification issued. It is the respondents as the employer to decide as to what is best for the organisation and not for the Tribunal to interpret the provisions of the notification contrary to the language of the advertisement. Our remarks are based on the observations

of the Hon'ble Apex Court in **Supreme Court of India, Maharashtra Public Service Commission through its Secretary vs Sandeep Shriram Warade on 3 May, 2019**, CIVIL APPEAL NO(s). 4597 OF 2019 (arising out of SLP (Civil) No(s). 8494 of 2018), as under:



If the language of the advertisement and the rules are clear, the Court cannot sit in judgment over the same. If there is an ambiguity in the advertisement or it is contrary to any rules or law the matter has to go back to the appointing authority after appropriate orders, to proceed in accordance with law. In no case can the Court, in the garb of judicial review, sit in the chair of the appointing authority to decide what is best for the employer and interpret the conditions of the advertisement contrary to the plain language of the same.

II. Further the applicants who have passed the written exam/ type test have only a legitimate expectation to be considered of their claims as per rules and the applicants have not acquired a vested right against the respondents. The respondents have the right to even withdraw the notification if the situation warrants after the selection process is over. We rely on the observation of the Hon'ble Apex Court in ***State of M.P. v. Raghuveer Singh Yadav***, (1994) 6 SCC 151, extracted hereunder, in making the above remarks.

“It is settled law that the State has got power to prescribe qualifications for recruitment. Here is a case that pursuant to amended Rules, the Government has withdrawn the earlier notification and wants to proceed with the recruitment afresh. It is not a case of any accrued right. The candidates who had appeared for the examination and passed the written examination had only legitimate expectation to be considered of their claims according to the rules then in vogue. The amended Rules have only prospective operation. The Government is entitled to conduct selection in accordance with the changed rules and make final recruitment. Obviously no candidate acquired any vested right against the State. Therefore, the State is entitled to withdraw the notification by which it had previously notified recruitment and to issue fresh notification in that regard on the basis of the amended Rules.”

In the instant case respondents have issued the corrigendum on 31.1.2014 with the approval of the Railway Board dt. 23.1.2014, before the selection process was complete by increasing the vacancies to 41. Therefore, the contention of the applicants that the Railway Board approval was not taken in causing the change in vacancies is incorrect. When the respondents have the power to withdraw even after selection, it goes without saying that the changes in the notification in respect of the number of vacancies as per the terms and conditions of the notification can be done.



III. Till the appointment letter is issued, the applicants have no indefeasible right for appointment as has been held by the Constitution Bench in the case of *Shankarsan Dash v. Union of India*, (1991) 3 SCC 47 as under, followed by many judgments referred to herein below.

7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons.

ii) Earlier too, the above decision was relied upon in a number of cases, vide **State of U.P. v. Rajkumar Sharma**, (2006) 3 SCC 330 wherein the Apex Court has observed as under:-

*14. Selectees cannot claim the appointment as a matter of right. Mere inclusion of candidate's name in the list does not confer any right to be selected, even if some of the vacancies remained unfilled and the candidates concerned cannot claim that they have been given a hostile discrimination. (See **Shankarsan Dash v. Union of India** (1991) 3 sCC 47 **Asha Kaul v. State of J & K** (1993) 2 SCC 573 ; **Union of India v. S.S. Uppal** (1996) 2 SCC 168 **Hanuman Prasad v. Union of India** (1996) 10 SCC 742 ; **Bihar Public Service Commission v. State of Bihar** 1997) 3 SCC 198 **Syndicate Bank v. Shankar Paul** (1997) 6 SCC 584 ; **Vice-Chancellor, University of Allahabad v. Dr. Anand Prakash***

Mishra (1997) 10 SCC 264 Punjab SEB v. Seema 1999 SCC (L&S) 629 ; All India SC & ST Employees' Assn. v. A. Arthur Jeen (2001) 6 SCC 380 ; Vinodan T. v. University of Calicut (2002) 4 SCC 726 ; S. Renuka v. State of A.P.(2002) 5 SCC 195 and Batiarani Gramiya Bank v. Pallab Kumar (2004) 9 SCC 100)

iii) The above decision has been reiterated in a recent judgment of

Girdhar Kumar Dadhich v. State of Rajasthan, (2009) 2 SCC 706,



wherein it has been held as under:-

11. *It is well-settled principle of law that even selected candidates do not have legal right in this behalf. (See Shankarsan Dash v. Union of India)*

iv) Again, in the case of ***Rakhi Ray v. High Court of Delhi, (2010) 2***

SCC 637, the Apex Court has held as under:

24. A person whose name appears in the select list does not acquire any indefeasible right of appointment. Empanelment at the best is a condition of eligibility for the purpose of appointment and by itself does not amount to selection or create a vested right to be appointed. The vacancies have to be filled up as per the statutory rules and in conformity with the constitutional mandate.

The respondents have admitted that they have committed an error in calling the applicants for the type test without keeping the corrigendum in view. It is a bonafide mistake and it does not confer any right on the candidates. It can be corrected as held by the Hon'ble Supreme Court in ***VSNL v. Ajit Kumar Kar, (2008) 11 SCC 591***, as under:

46. It is well settled that a bona fide mistake does not confer any right on any party and it can be corrected.

IV. Further, the applicants have contended that there are vacancies available after selecting the 19 (15 +4) candidates. It is the discretion of the respondents to fill up the vacancies since they are the best judges to decide as to whether the vacancies are to be filled up. The applicants have no right to be appointed just because vacancies existed. We take support of the

observation of the Hon'ble Apex Court in **Mohd Rashid vs. The Director Local Bodies New Secretariat & Ors**, on 15 January, 2020 in Civil Appeal No. 136 of 2020 (Arising out of SLP (CIVIL) No. 7243 of 2017)

as under:



12. The appellants who are aspirants for direct recruitment have no right for appointment merely because at one point of time the vacancies were advertised. The candidates such as the appellants cannot claim any right of appointment merely for the reason that they responded to an advertisement published on 12 th September, 2013. Even after completion of the selection process, the candidates even on the merit list do not have any vested right to seek appointment only for the reason that their names appear on the merit list. In [Shankarsan Dash v. Union of India](#)⁶, a Constitution Bench of this Court held that a candidate seeking appointment to a civil post cannot be regarded to have acquired an indefeasible right to appointment in such post merely because of the appearance of his name in the merit list.

V. The applicants have also stated that the qualified were not selected and those not qualified in the type test have been selected. This is incorrect since as per the policy of the respondents organisation, PWD candidates are exempted from type test and some relaxations are granted to them as per respondents letter dated 25.9.2012 (Annexure R-6). Further, the respondents are empowered to modify/cancel the indents made depending on the stage of the selection and by a designated authority, as circulated vide letter dated 4.12.2001 (Annexure R-5) of the respondents. Hence, it is the prerogative of the respondents to modify the selection to PWD candidates and the applicants cannot question the same, since it is a matter of policy laid down by the Railway Board. Thus, it is seen that the selection was effected as per the policy and rules of the respondents organisation. Only when there is an infringement of the policy or the rules/law, would the Tribunal intervene. We find no such grounds.

VI. Therefore, in view of the legal principles laid down by the Hon'ble Apex Court as at above relating to the issue under dispute as well as the policy/ rules of the respondents organisation, there is no scope for the Tribunal to intervene on behalf of the applicants. Therefore, the OA being devoid of merit, merits dismissal and hence, dismissed with no order as to costs.



(B.V. SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

/evr/