

OA No. 291/409/2019

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 291/409/2019

Order reserved on 08.09.2021

DATE OF ORDER: 14.09.2021

CORAM

**HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER
HON'BLE MRS. HINA P. SHAH, JUDICIAL MEMBER**

Rinku Meena S/o Sulyaram, aged about 23 years, R/o Meena Mohalla, Dhanad, District Alwar (Raj.) applicant applied for Group-D post in pursuance of employment notice No. 220-E/open mkt/RR/2013 dated 30.12.2013 which was issued for open market recruitment in Railway Department. Pin code 302026. Mob. No. 8104365195.

....Applicant

Shri Darshan Shree Verma, proxy counsel for
Shri Bhanwar Bagri, counsel for applicant.

VERSUS

Union of India through the Assistant Personnel Officer (RR/), Railway Recruitment Cell, Lajpat Nagar-I, New Delhi- 110024.

.... Respondent

Shri Y.K. Sharma, counsel for respondent.

ORDER**Per: Hina P. Shah, Judicial Member**

The present Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 for the following reliefs:-

"It is, therefore, most humble respectfully prayed that this OA may kindly be accepted and allowed and inaction of on behalf of the respondents may be declared illegal and arbitrary and further respondents be directed to allow the applicant to participate in the PET Examination and consequently, he may be allowed to participate in further steps of the recruitment process in pursuance of the notice dated 30.12.2013 in the interest of justice.

Any other order or direction, which this Hon'ble Tribunal Deems fit and proper in the facts and circumstances of the case, may kindly be passed in favour of the applicants.

The cost of O.A. may kindly be awarded in favor of the applicant."

2. The brief facts of the case, as stated by the applicant, are that the respondents had notified various vacancies of Group "D" posts vide Employment Notice No. 220-E/open Mkt/RRC/2013 dated 30.12.2013 and the applicant being eligible had applied for the same in ST category. After scrutiny of his application form and documents, he was issued admit card to appear for written examination and he

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was shown unsuccessful in the said examination. Feeling aggrieved, the applicant submitted an RTI application to know about the continuity of the selection process, which was replied by the respondents vide letters dated 17.04.2015 (Annexure A/5). Along with letter dated 08.07.2015 about the cut-off marks, the applicant came to know that last cut off for the General category was 84.02% and for ST category it was 60.79%. Thereafter, he submitted several representations to know about his marks and demanded copy of OMR sheet but the applicant was neither supplied copy of OMR sheet nor was informed about the marks secured by him in the examination. Finally in the year 2019, he was supplied information that he secured 84.48% marks as ST candidate in the examination vide letter dated 24.04.2019 (Annexure A/8). Though, he secured more marks than the last cut off of the ST category, he was neither called for PET, nor for document verification. As the applicant did not get any information for his disqualification, he served a legal notice, but no reply was received, therefore, being aggrieved by the illegal and unjust action of the respondents, the applicant approached this Tribunal seeking a direction to the respondents to

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allow the applicant to participate in PET and consequently in further recruitment process.

3. The respondents filed their reply raising preliminary objection that the present Original Application is barred by limitation from the actual cause of action and the applicant has filed the present Original Application only in the year 2019 though his name appeared in the list of unsuccessful candidates in the year 2015 itself, therefore, the present Original Application is barred by limitation and the applicant has already withdrawn the application for condonation of delay in filing Original Application and, accordingly, the present Original Application deserves to be dismissed on this ground itself.

On merits, the respondents state that, it was clear that admission of a candidate at all stages will be purely provisional subject to satisfying prescribed conditions. All concerned were informed to be in touch with Railway Recruitment Cell (RRC) website for various information. Result of the examination was declared on RRC website in 2015 and status of each candidate would be shown in form of "Shortlisted" "Not Shortlisted" or "Withheld" by entering his roll

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number and control number in the given space on RRC website. The procedure adopted by RRC is fair and in public interest as thousands of candidates apply and in short passage of time, vacancies are to be filled. Therefore, as the applicant's name was not included in shortlisted candidates for PET, for the reason of rejection of candidature for violation of examination conditions which can be perused from letter dated 08.07.2015, which the applicant himself has annexed as Annexure A/6 with the Original Application vide candidate rejection status information by RRC/NR. Also PET was already concluded in 2015 using RFID based technology followed by short listing of candidates for document verification and medical examination. Merely making continuous representations does not accrue any right for the applicant to overcome law of limitation. Therefore, approaching this Tribunal also belatedly, the applicant has no right of challenge as the selection process is already concluded and selected candidates have already joined respective indenting Divisions/Units. Hence, action of respondents in pursuance of the notification cannot be said to be illegal or unwarranted.

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4. The applicant has filed rejoinder rebutting the submissions of the respondents. He further stated that no application for condonation of delay was necessary as the delay in filing the Original Application was explained to this Tribunal, hence, the application was withdrawn with liberty of this Tribunal. It is the case of the applicant that in spite of securing more marks than the last cut off in ST category, his candidature was not considered for PET. Therefore, denying justice to a right claimant merely stating that selection process is concluded cannot be a ground for his non selection. As the application of the applicant was in prescribed format and as he was eligible, he was issued an admit card, therefore, stating that the application of the applicant was in violation of instructions, cannot be accepted. Therefore, as the action of the respondents is arbitrary, the applicant has a legal right to claim relief before this Tribunal and his Original Application deserves to be allowed and the action of the respondents is liable to be set aside.

5. We have heard learned counsels for the parties at length and examined the pleadings minutely.

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6. The applicant and the respondents reiterated their submissions as stated earlier.

7. The question which requires our consideration is whether in selection process of the year 2015, the applicant has any right to be considered in absence of any vacancy and in absence of impleading necessary parties who are likely to be affected by his appointment and also when rules were clearly mentioned in the advertisement.

8. After hearing the parties and perusing the pleadings, the factual matrix of the case is that the applicant had filled the application form for the post of Group 'D' in accordance with the Employment Notice No. 220-E/open Mkt/RRC/2013 dated 30.12.2013 and on being found eligible appeared in written examination. His name was found in the list of unsuccessful candidates declared in the year 2015. He was thereafter not called for PET and other process of selection. Though the applicant has secured 84.48% marks, while the cut off marks in ST category was 60.79% and for General category, same was 84.02%, yet he was not declared qualified and so he

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is aggrieved due to his non selection. On the other hand, respondents have taken plea of limitation that though the applicant knew that he is shown in list of unsuccessful candidates in the year 2015 itself as per Annexure A/6 letter dated 08.07.2015, he has approached this Tribunal only in the year 2019 and the application for condonation of delay, in filing the Original Application, has already been withdrawn. On merits, it is stated that the important instructions mentioned in the advertisement below Note 3 deals with the various grounds of rejection of applications of the candidate and all stages of recruitment will be purely provisional subject to satisfying the prescribed condition. In Clause 15 of the advertisement, it was made clear that "the decision of RRC-NR 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 examination(s), allotment of examination centre, allotment of posts/places of selected candidates and all other matters related with conduct of recruitment process will be final and binding on the candidates, and no enquiry or correspondence will be entertained in this connection". It was also stated that PET has

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already been concluded in the year 2015 using RFID based technology by which candidates have been short listed for document verification as well as for medical examination. Subsequent panel of selected candidates has already been issued and most of the candidates have already joined the assigned places. The selection process was conducted in a fair and transparent manner and no illegality or discrimination can be seen in the selection process.

9. As observed by us, the candidates were given clear instructions in the notification about the procedure to apply, general conditions as well as important instructions under Note 3 also reveal the grounds of rejection of applications. It was made clear that admission of a candidate at all stages of recruitment will be purely provisional subject to satisfying the prescribed conditions. It was also informed to all concerned that candidates are advised to remain in touch with RRC website in the year 2015. It is also seen that RRC has adopted RFID based technology method of selection in shortlisting of candidates for safety purpose. Taking into consideration large number of vacancies and large number of candidates

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to be appointed in short passage of time, the procedure adopted by RRC cannot be faulted as the same is adopted in fair manner in the public interest. It is also seen that the applicant has never raised any objection regarding conditions of the Notification and as such he has no right to challenge his rejection. It is also to be noted that the selection process so initiated has already been concluded in the year 2015 itself by declaration of result of candidates and selected candidates have already joined the concerned Division/Units and the same was also uploaded on the website of RRC and, therefore, any challenge for the reliefs prayed by the applicant cannot be accepted. As such the action of the respondents is just and proper.

10. The applicant has also failed to make the affected persons as party respondents against whom he can seek appointment. Also in the case of the applicant as he has no protection from Hon'ble Court in absence of any vacancy, therefore, direction to the respondents for allowing a person at this stage and to accept the candidature of the applicant and allow him to appear for PET and thereafter for other process of selection, will cause serious prejudice to the person/persons

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whose appointments have to be disturbed. Though the present Original Application is barred by delay and laches, but in interest of justice, the said delay is condoned. Even if we go into merits of the case, it is clear that the applicant has no right for the said post in question when rules were clear and also in absence of any vacancy and absence of affected parties being made party respondents, without they being heard, no orders can be passed to that effect. Thus, in given circumstances, it cannot be said that the action of respondents is arbitrary or illegal.

11. In view of the observations made herein-above, the action of the respondents does not warrant any interference as the action of the respondents is just and proper and, accordingly, the present Original Application is dismissed. No order as to costs.

(HINA P. SHAH)
JUDICIAL MEMBER

(DINESH SHARMA)
ADMINISTRATIVE MEMBER