

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.446/2012

Jodhpur this the 30th day of July, 2013

CORAM

Hon'ble Mr. Justice Kailash Chandra Joshi, Member (J),

Hon'ble Ms. Meenakshi Hooja, Member (A)

Umar Dan Charan S/o Shri Sanwal Dan, aged about 33 years, R/o
23/603, Chopasani Housing Board, Jodhpur, Rajasthan.

.....Applicant

Mr. Kuldeep Mathur, counsel for applicant.

Versus

1. Union of India, through the General Manager, North-Western Railway, Head Quarter, Jaipur.
2. The Deputy Chief Personal Officer, North-Western Railway, Head Office, Jaipur.
3. The Deputy Chief Personal Officer (Recruitment), North-Western Railway, Railway Recruitment Office, Durgapura Station, Jaipur. .

.....Respondents

Ms. Anjana Jawa, counsel for respondents.

ORDER (Oral)

Per Justice K.C. Joshi, Member (J)

By way of this application, the applicant has sought the following reliefs:-

- “(i) *Declare the physical test held by the respondent bad in the eye of law and same may be quashed and set aside.*
- “(ii) *The respondents may kindly be directed to consider the candidature of the applicant on the basis of the marks obtained by him in the written examination, if he fall in the merit then may be granted appointment on the post of Group “D” with all consequential benefits.*

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- (iii) *In alternative the respondents may be directed to consider the representation made by the applicant and time may be granted to participate in the physical examination after recovering from the injury.*
- (iv) *That the cost of the application be quantified to the applicant from the respondents.*

2. The short facts of the case are that the applicant is having BA degree from J.N.V.U., Jodhpur. The respondent department issued an advertisement dated 16.12.2010 inviting applications for the Group "D" post and the last date for submitting the application was fixed as 15.02.2011. The selection process was based on two examinations, first physical examination and thereafter written examination. The respondents published a news article in daily newspaper on 08.05.2012 in which it was stated that the physical test as prescribed for the Group 'D' category would be cancelled, which was scheduled to take place prior to written examination. The applicant appeared in the written examination on 24.06.2012. The respondent cleared the written examination in the month of September, 2012. The applicant was hopeful that he will be recruited on the post of Group "D" on the basis of written examination, but the applicant was surprised by receiving the information/admission card for appearing in the physical examination which was scheduled to be held on 16.10.2012. While preparing for the physical test, the applicant was unfortunately injured on 13.10.2012 and he was advised to take complete bed rest. The applicant submitted a detail representation along with the

medical documents to the respondents and requested them to consider his candidature only on the basis of written examination, and further also requested that he may be granted appropriate time to participate in the physical examination after recovering from the injury. But the respondents rejected the above representation and, therefore, the applicant has filed the present application before this Tribunal.

3. The respondents by way of reply averred that the applicant is trying to challenge the selection process after he participated in the selection process and could not succeed, thus it is crystal clear that the applicant is trying approbate and reprobate, which cannot be permitted in the eye of law. The applicant ought to have approached this Tribunal before participating in the selection process. It has been averred in the reply that candidature of the applicant was never refused whereas the applicant participated in the selection process and was not found suitable. A photocopy of the result of the physical efficiency test is annexed as Annexure-R/4. As per the revised criteria, the selection process involved three stages namely written examination, a candidate successful at written examination was to appear in the Physical Efficiency Test and it is after the Physical Efficiency Test, the candidate was to appear for the purpose of verification of documents. The applicant faced the selection process, but he was not found fit for

the said post, and the Physical Efficiency Test was an integral part of the procedure of the selection and as he could not clear the same, therefore he was not found fit for the Group 'D' post.

4. By way of rejoinder, the applicant while reiterating the same facts has averred that he took part of the Physical Efficiency Test, but at the time of Physical Efficiency Test, he filed the medical certificates showing injury, therefore, he should have been allowed to get one more chance to qualify the Physical Efficiency Test.

5. Heard both the parties. Counsel for the applicant contended that the applicant cleared the written examination but could not qualify the Physical Efficiency Test due to the injury which was sustained during the course of practice of the Physical Efficiency Test, and he submitted his documents before the Board requesting therein to give him some time to qualify in the Physical Efficiency Test. But in spite of his representation and injury report, no time was granted to him, therefore, he is entitled to get one more chance or he is entitled to get the appointment on the basis of the written examination.

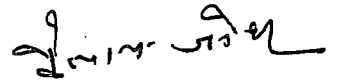
6. Per contra, counsel for the respondents contended that when the applicant participated in the physical efficiency test, now he cannot challenge the process of Physical Efficiency Test, because he participated in it and could not qualify the same, therefore he

has got no right to have one more chance for the physical examination or to be appointed on the basis of the written examination.

7. We have considered the rival contentions of both the parties and also perused record. It is an admitted fact that the applicant participated in the Physical Efficiency Test and therefore, in our considered view now he cannot challenge the process of selection simply on the ground that due to injury sustained during the course of practice for Physical Efficiency Test, he could not qualify in the Physical Efficiency Test. Accordingly, no case is made out in favour of the applicant and the OA lacks merit and therefore the same is dismissed with no order as to costs.



(Meenakshi Hooja)
Administrative Member



(Justice K.C. Joshi)
Judicial Member