

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR

Original Application No.494/2012

Jodhpur, this the 12th day of November, 2013

CORAM

HON'BLE MR. JUSTICE KAILASH CHANDRA JOSHI, MEMBER (J)
HON'BLE MS. MEENAKSHI HOOJA, MEMBER (A)

Imran Khan s/o Niyaz Mohammed, aged 20 years r/o House Number
10, Jogiyon Ki Gali, Near Ten Taps, Bamba Mohalla, Jodhpur

.....Applicant

Mr. K.K.Shah, counsel for applicant

Vs.

1. Union of India through the General Manager, Railway
Headquarter, North Western Railway, Jaipur.
2. The Assistant Personnel Officer (Recruitment and Training),
Railway Recruitment Cell, North Western Railway, Durgapura
Railway Station, Jaipur

...Respondents

Mr. Manoj Bhandari, counsel for respondents

ORDER (ORAL)

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

The present OA has been filed against the action of the respondents whereby the applicant has been deprived from right of consideration for appointment, more so, when the he has secured more than the cut off marks in the category of OBC and, therefore, he has prayed for the following reliefs :-

- (i) It, is therefore, most respectfully prayed that the respondents may kindly be directed to decide the representation of the applicant and further direction may kindly be issued to consider the candidature of the applicant for further phase/step of selection and he may be allowed for physical efficiency test in



pursuant to the advertisement dated 16.12.2010. It is further prayed that if the applicant qualify the physical efficiency test he may be offered appointment accordingly in pursuant to the advertisement dated 6.12.2010.

- (ii) That any other direction or orders may be passed in favour of the applicant, which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
- (iii) That the cost of this application may also be awarded to the applicant.

2. The relevant facts, as stated by the applicant, are that pursuant to an advertisement dated 16.12.2010 for filling up Group-D posts in the respondent-department, the applicant applied under the OBC category. The applicant was issued admission card for written examination which was to be held on 10.6.2012. When the applicant did not receive any intimation regarding physical efficiency test, he applied for information under the RTI Act and vide communication dated 26.9.2012 the applicant was informed that the cut off marks in OBC category is 55.63%. As per the OMR sheet and answer key as provided under the RTI Act, the applicant obtained 60.66% marks i.e. more than the cut off marks for the OBC category candidate. Thereafter the applicant submitted representation on 20.11.2012 requesting the respondents to consider his candidature for further step/phase of selection, but to no effect.

The applicant has challenged the action of the respondents on the ground that he had obtained 60.66% marks which are more than the cut off marks for OBC category, but he has been deprived from his right of consideration for selection in pursuance to the advertisement

dated 16.12.2012. It has been further averred that before approaching the Tribunal, the applicant made representation but the same was of no avail. Therefore, the applicant has filed the present OA praying for the reliefs as stated in para-1 above.

3. The respondents have contested this applicant by way of filing reply denying the right of the applicant submitting that on the basis of application form the applicant was registered at Control No.33100049. It has been denied by the respondents that the applicant has opted for OBC category in the application and stated that the applicant in his application form at Column No.11 has written his caste as 'Minority (अल्पसंख्यक)' and has also not annexed his caste certificate alongwith the form. The applicant in the call letter was shown as OBC candidate but after the written examination, on scrutiny of the application form, it came to the notice that the applicant has himself written as Minority Class without enclosing any caste certificate. Therefore, after inquiry, the name of the applicant was put in the unreserved category. It has been further averred that the applicant secured 63.09% in the written examination but the cut off marks for the unreserved category was 67.56 % and hence the applicant was not found fit for the appointment due to physical inability. It has been further averred that on the basis of para 8.10(2) of the Employment Notice dated 16.12.2010, the candidate belonging to OBC category were required to annex Caste Certificate issued to them by the competent officer. The format of the same was given in Annexure II of the employment notice. Therefore, in accordance with the rules, the applicant was taken in unreserved category and it is settled law that as on the date of filing the

application, the application form should be absolutely complete. The applicant did not submit his caste certificate along with the application form, therefore, he cannot be treated as OBC candidate.

4. The applicant has filed rejoinder to the reply filed by the respondents reiterating the submissions made in the OA.

5. Heard both the parties and perused the material available on record.

6. Counsel for the applicant contended that while applying for Group-D post, the applicant filled his form showing himself as person belonging to minority community enclosing OBC certificate and after scrutinization of the form, the respondent-department called him for written examination treating him as OBC candidate and when the applicant obtained higher position, then the respondent department rejected candidature of the applicant on the ground that he has not submitted the certificate of OBC category with the application form whereas the applicant submitted OBC certificate with the application form and it was detached from the application form during the process of recruitment. In the OMR sheet also the applicant has filled his category as OBC. He further contended that there is no fault on the part of the applicant which may deprive him for the benefit of consideration for selection. Therefore, the OA is required to be allowed. Counsel for the applicant further contended that even if the OBC certificate is submitted by the applicant at a later stage, then also he is entitled to be considered for the post of Group-D and in support of his arguments, he relied upon the judgment of the Hon'ble Rajasthan High Court passed in SB Civil Writ Petition No.9170/2012,

Datar Singh vs. State of Rajasthan and Anr. and other identical matters on 11th September, 2012. Counsel for the applicant also contended that human error can be corrected at any stage and it is not such an error on the basis of which, the applicant can be deprived from consideration of his candidature as an OBC candidate.

7. Per contra, the counsel for the respondents contended that the applicant did not submit his OBC certificate with the application form. He has been erroneously issued the call letter for written examination and when the error came to the knowledge of the respondent-department, the same was corrected. Since the applicant failed to submit the OBC certificate alongwith the application form, therefore, he cannot be considered to be eligible as per the last date prescribed for filing the application enclosing all the necessary documents. In support of his arguments, he relied upon the judgment of the Hon'ble Apex Court passed in the case of Utkal University vs. Dr. Nrusingha Charan Sarangi and others, reported in (1999) 2 SCC 193.

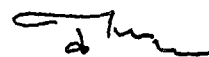
8. We have considered the rival contentions of both the parties. So far as contention of the applicant that the respondent department has removed his OBC certificate duly submitted by him with the application form is concerned, the same cannot be accepted because it has not been averred in the OA itself. Now coming to the second argument that human error can be corrected at any stage, in our considered view, when the applicant failed to file OBC certificate, because the photocopy of the original file has been placed before us for perusal in which the applicant has filled his form showing himself as a candidate belonging to minority community, in such situation, on

the basis of minority community, he is not entitled to get the benefit of OBC category without enclosing the OBC certificate. On the last date of submissions of the application form, the applicant ought to have acquired the minimum qualification for appointment and in this case when the applicant failed to file the OBC certificate alongwith the application form, he is not entitled to be considered as an OBC candidate for appointment on the post of Group-D. It is evident from the record that call letter was issued to the applicant as an OBC candidate and error has been committed by the respondent-department but the same was later on rectified by the respondent department.

9. The facts of the judgment of the Hon'ble High Court referred by the counsel for the applicant are different from the present case because in the present case when the applicant himself failed to file OBC certificate, it cannot be said to be a human error and accordingly, the OA lacks merit and the same is therefore, dismissed with no order as to costs.



(MEENAKSHI HOOJA)
Administrative Member



(JUSTICE K.C. JOSHI)
Judicial Member

R/