

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. 145/1997

THIS THE 30TH DAY OF MARCH, 2005

HON'BLE MRS. MEERA CHHIBBER, MEMBER (JUDL.)
HON'BLE MR. K.V. PRAHALADAN, MEMBER (ADMN.)

Sri Biswajit Mahata,
son of Sri Janaki Mahata,
residing at Village - Patashimul,
PO - Joranada, PS - Jhargram,
District : Midnapore,
PIN - 721 507.

... Applicant.

(By Advocate Mr. S. K. Dutta)

Versus

1. Union of India, service through the General Manager, South Eastern Railway, 11, Garden Reach Road, Calcutta - 700 043.
2. Chief Project Manager, South Eastern Railway, Kharagpur Workshop, District: Midnapore.
3. Assistant Personnel Officer, South Eastern Railway, Kharagpur Workshop, District: Midnapore.
4. Workshop Personnel Officer, South Eastern Railway, Kharagpur Workshop, District : Midnapore.
5. Sub-Divisional Officer, Kharagpur, District - Midnapore, Pin-721 302.

(By Advocate Mr. S. Choudhury)

O R D E R (ORAL)

Hon'ble Mrs. Meera Chhibber, Member (Judl.)

By this O.A., applicant has sought the following reliefs:

"(a) An order commanding the concerned respondent authorities of South Eastern Railway, Kharagpur Division to include the name of the applicant



in the panel of successful candidates under other Backward Classes category, published on 10.1.97, for recruitment of Group 'D' staff in various units of Kharagpur Division and Workshop of South Eastern Railway in pursuance of Employment Notice dated 27.03.96 (Annexure 'D' herein) forthwith;

- (b) An order commanding the respondent authorities of South Eastern Railway, Kharagpur Division, to forthwith issue appointment letter in favour of the applicant as Group 'D' staff in Kharagpur Division and Workshop of South Eastern Railway;
- (c) to pass such other order or orders and/or further order or directions as to Your Lordships may deem fit and proper".

2. It is submitted by the applicant that a Notification was issued on 27.03.1996 for the post of Group 'D' pursuant to which he applied but his name was not included in the final panel dated 10.1.1997 even though he had passed the written examination and did fairly well in the interview as well. On inquiry, he came to know that his name has not been included in the panel of successful candidates because he had not given the OBC certificate along with his application form.

3. It is in these circumstances that applicant has filed the present O.A. He has submitted that he belongs to Kurmi community which is recognised as a backward class and he had been issued a certificate as well on 2.12.1996 to this effect by the Sub-Divisional Officer, Kharagpur, District-Midnapore, which is annexed as Annexure 'C'. Since this certificate was produced by the applicant at the time of interview, therefore, he could not have been denied appointment because the status of OBC is attained by the person concerned on the date he takes birth in the OBC community and it is not dependent on the issuance of certificate.



Counsel for the applicant, therefore, submitted that simply because he submitted the OBC certificate at the time of interview cannot deprive the applicant from getting appointment as Group 'D' with the respondents. He submitted that since admittedly applicant belongs to the OBC community, the relief as prayed for may be granted to him.

4. Respondents on the other hand have opposed this O.A. They have submitted that the application of the applicant was sponsored by the District Employment Exchange, Kharagpur vide their letter dated 30.4.1996 and the name of applicant appeared at Serial No. 70 as an unreserved candidate which can be seen from the letter enclosed as Annexure 'R-1'. Accordingly, he was considered as an unreserved candidate by the Railway Administration. His name was not included in the panel because he was not found suitable according to the merit order. Otherwise, a good number of OBC candidates (15 Nos.) excluding the applicant submitted their OBC certificates during the interview held from 26.11.1996 to 30.11.1996 with the request to consider the same as they could not submit the certificates along with their application forms for which the last date was 30.4.1996 as they did not have the said certificates. However, when the matter was examined at higher levels, it was informed that since in the employment notice, candidates were asked to submit SC, ST and OBC certificates, it would not be correct to accept such certificates at a later stage. They have thus submitted that since applicant did not submit the certificate within the stipulated time, he was rightly not considered for appointment. In any case, all the OBC vacancies have already been filled in as per the directives from the higher authorities, including



the OBC short fall vacancies by dereservation. Accordingly, offer of appointment was issued to selected candidates, who have already joined. They have further explained that only 10 vacancies of SC and 9 vacancies of ST remain to be filled in Electrical Wing, Kharagpur Division and can be filled only from the SC/ST candidates as per the constitutional provision. They have thus prayed that the O.A. may be dismissed. Counsel for the respondents also relied on judgment dated 26.06.2001 given in identical matter bearing O.A. No.548/1999.

5. We have heard both the counsel and perused the pleadings as well. Perusal of the Notification dated 27.3.1996 shows that in Para 5, it was specifically mentioned that the application duly filled in by the candidates along with the attested copies of testimonials (including caste certificate in case of SC, ST and OBC candidates) should be submitted to the Assistant Welfare Officer, S.E. Railway, Kharagpur Workshop, Kharagpur by 30.4.1996. The applications received after the due date will not be entertained. Para 6 further made it clear that the applications which are not found in order will stand rejected. In Para 9, the Employment Exchanges of the geographical jurisdiction of Kharagpur Division were requested to sponsor the candidates as per the ratio of 1:3 of the proposed vacancies. The last date of receipt of the applications was declared to be 30.4.1996 (Annexure R-2). It is thus clear that the application form was to be sent along with the attested copies of testimonials including caste certificate in case of SC, ST and OBC candidates, that too latest by 30.4.1996. Admittedly, along with the application, applicant had not sent his caste



certificate of OBC. Not only this, since his name was sponsored by the Employment Exchange and while sponsoring his name, the Employment Exchange had shown his candidature to be as unreserved, therefore, naturally his case had to be seen or considered as against unreserved candidates.

6. It is correct that the status of OBC is attained by a person by birth and is not dependent on the issuance of the certificate but none the less if a person applies for appointment by seeking reservation against OBC category, the least that is expected is to at least apply in the category of OBC and annex the required certificate along with the application form especially when it is so advertised in the Notification itself. In the instant case, admittedly both these conditions were not fulfilled by the applicant. Moreover, no interim order was given to the applicant by this court even though he had prayed for keeping one post vacant and from the reply filed by the respondents, we find that all the posts meant for OBC candidates have already been filled. None of those candidates who have been selected and offered appointment have been arrayed as respondents in the present O.A. In case the relief as prayed by the applicant was to be granted, naturally it would affect the rights of those persons who have already been given appointment in the meantime because persons cannot be given appointment over and above the vacancies advertised for being filled. Moreover, in identical matter bearing No. 548/99, this court has already taken a view that since applicant therein had not submitted the required certificate at the time of filing the application, the candidate cannot claim

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appointment on the basis of certificate obtained afterwards. We are bound by the said judgment as well keeping in view the judicial discipline.

7. In view of the above discussion, we find no merit in the present O.A. The same is accordingly dismissed. No order as to costs.

K.V. PRAHALADAN
30/3/05

(K.V. PRAHALADAN)
MEMBER (A)

M. CHHIBBER
30/3/05

(MRS. MEERA CHHIBBER)
MEMBER (J)

'SRD'