

CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 493/2011
WITH
MISC. APPLICATION NO. 323/2011

ORDER RESERVED ON: 11.02.2015

DATE OF ORDER: 17.3.2015

CORAM

**HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER
HON'BLE MRS. CHAMELI MAJUMDAR, JUDICIAL MEMBER**

Rudra Kishore Saini S/o Shri Giriraj Kishore Saini, aged about 33 years, R/o Behind Atta Mandir, Alwar, Rajasthan

...Applicant

Mr. C.L Saini, counsel for applicant.

VERSUS

1. Union of India through Secretary, Ministry of Railway, Government of India, Rail Bhawan, New Delhi.
2. The Railway Recruitment Board, S.C.O. 78-79, Sector 8-C, Chandigarh – 160009 through its Chairman.

...Respondents

Mr. Anupam Agarwal, counsel for respondents

**ORDER
(per MR. ANIL KUMAR, ADMINISTRATIVE MEMBER)**

The brief facts of the case, as stated by the learned counsel for the applicant, are that an advertisement was issued by the respondent no. 2 in various News-Papers on 07.12.2002 and applications were invited for appointment

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on the post of Inspector (Prosecution) Gr. II in Railway Department. Total 25 provisional vacancies were advertised by the respondents and subsequently these vacancies were increased from 25 to 77 and the same were divided as SC-10, ST-6, General-41 and OBC-20. In pursuance of the aforesaid advertisement, the applicant who is having the requisite qualification and eligibility, applied for the same in OBC category along with the requisite documents within the time prescribed.

2. Earlier the applicant filed an OA No. 516/2003 before Central Administrative Tribunal, Jaipur Bench against inaction of the respondents by which the respondents deprived the applicant from his right to get appointment on the post of Inspector (Prosecution) in R.P.F. under the Railway Department. The OBC candidates those who stand in general merit as per their marks, were not considered in the general merit list by the respondents and they were considered only in the reserve category of OBC candidates. In this regard, it is submitted that in the reply filed by the respondents before the Tribunal, it was admitted by them that out of six OBC candidates those who stand in general merit, five candidates were over age and they got relaxation in the maximum age limit being OBC candidates and they were not considered in the general merit.

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3. The Central Administrative Tribunal, Jaipur Bench vide order dated 25th February, 2005 (Annexure A/4) dismissed the O.A. filed by the applicant. Being aggrieved by the order of the Tribunal, the applicant preferred a writ petition before the Hon'ble Rajasthan High Court, Jaipur Bench bearing No. 966/2006 and the same was disposed of vide order dated 12.05.2010 (Annexure A/7).

4. The Hon'ble Rajasthan High Court, Jaipur Bench directed the respondents to consider the case of the applicant in the light of the judgment of the Hon'ble Supreme Court in the case of **Jitendra Kumar Singh and Anr. Vs. State of Uttar Pradesh & Ors.**, Civil Appeal No. 74 of 2010, decided on 08.01.2010, reported in (2010) 1 SCC (L&S) 772: (2010) 3 SCC 119.

5. After the decision of the aforesaid writ petition, the applicant submitted an application (Annexure A/8) along with a copy of the judgment of the Hon'ble Rajasthan High Court, Jaipur Bench dated 12.05.2010 to the respondents and prayed for compliance of the judgment. When no action was taken by the respondents, the applicant served a notice to the respondents dated 10.09.2010 (Annexure A/9). After receiving the aforesaid notice, a non-speaking order was passed by the respondent no. 2 in arbitrary manner and rejected the candidature of the applicant

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without any justified reason vide order dated 22.10.2010 (Annexure A/1).

6. Prior to the aforesaid order, the Joint Director of the Railway Board, informed the Chairman, Railway Recruitment Board vide letter dated 12.10.2010 (Annexure A/10) and it was advised to pass an order for appointment of the applicant.

7. An identical controversy was decided by the Hon'ble Apex Court in the case of **Rajesh Kumar Daria vs. Rajasthan Public Service Commission and Others** (Civil Appeal No. 3132/2007) on 18th July, 2007 reported in (2007) 8 SCC 785 (Annexure A/11). This order of the Hon'ble Apex Court was further reviewed vide order dated 09.04.2008 (Annexure A/12) in Review Petition (C) Nos. 1323-1324 of 2007, which were dismissed.

8. The applicant stood at Sl. No. 43 in the merit list of OBC candidates. Five persons who got age relaxation stood in general merit list as per their merit but the respondent no. 2 did not consider their candidature in general merit list and considered their candidature in the merit list of OBC candidates. In view of the judgment of the Division Bench, their merit should be considered in the general merit and in case their candidature is considered by the respondents in

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general merit, then 5 seats of OBC category shall remain vacant.

9. Learned counsel for the applicant submitted that the higher meritorious persons of OBC category to the applicant did not approach the Court for adjudicating the matter, therefore, their rights are not surviving but the respondent no. 2 by ignoring such facts rejected the candidature of the applicant vide letter dated 22.10.2010 and issued a non-speaking order and such an act amounts to contempt of court but due to the procedure, the contempt petition is not being filed.

10. The applicant being aggrieved by the order dated 22.10.2010 (Annexure A/1) preferred a D.B. Civil Writ Petition No. 6516/2011 before the Hon'ble Rajasthan High Court, Jaipur Bench and the same was decided on 07.07.2011. The Hon'ble Rajasthan High Court, Jaipur Bench held that an alternative remedy is available to the applicant by way of filing OA before the Central Administrative Tribunal. Hence, the applicant has filed the present Original Application.

11. Learned counsel for the applicant prayed that the respondents be directed to give appointment to the applicant on the post of Inspector (Prosecution) R.P.F. in

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compliance of the judgment of the Hon'ble Rajasthan High Court, Jaipur Bench dated 12.05.2010 (Annexure A/7) with all consequential benefits and the order / letter dated 22.10.2010 (Annexure A/1) issued by the respondent no. 2 may be quashed and set aside.

12. On the other hand, the respondents have filed their written reply. They have stated that the applicant cannot challenge the selection after having participated in the same and have been unsuccessful. In support of their contention, they have relied upon the judgment of the Hon'ble Supreme Court in the case of **Om Prakash Shukla vs. Akhilesh Kumar Shukla**, 1986 Supp. SCC 285, at page 299 and **Suneeta Aggarwal vs. State of Haryana** (2000) 2 SCC 615 at page 616. Therefore, the Original Application merits rejection at the very threshold.

13. The respondents have also stated that the applicant has not impleaded the successful candidates as party respondents to the O.A. since they are necessary parties for the reason that any order in favour of the applicant will affect the rights of the candidates who have been selected and accorded appointment after conclusion of the selection process. In support of their contention, the respondents have relied upon the judgment of the Hon'ble Supreme

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Court in the case of **K.H. Siraj vs. High Court of Kerala**
(2006) 6 SCC 395 at page 427.

14. With regard to the merits of the case, the respondents have also stated that in the selection process conducted by the respondents, there were 42 OBC candidates, who were more meritorious than the applicant whereas there were only 20 OBC vacancies for this post. Hence, the applicant was clearly aware of his status in the selection process and has been trying to take undue advantage on some pretext or the other. It would be irrational if the applicant is considered for empanelment as requested by him in his OA, superseding all the other candidates who are better meritorious than the applicant.

15. With regard to the judgment of the Hon'ble Supreme Court in the case of **Rajesh Kumar Daria vs. Rajasthan Public Service Commission and Others** (supra), the respondents have stated that the applicant is illogically referring to this judgment. The Railway Recruitment Board does carry out the selection process in an objective manner and, accordingly, candidates are selected on merit basis.

16. By way of filing the present O.A. afresh, the applicant is trying to take undue advantage by making an attempt to march over the more meritorious candidates than him,

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which otherwise shall defeat the very basic spirit of competitive selection process. The applicant stands far below other candidates of the same OBC community in their respective merit. As per the cut off for OBC candidates in the original panel of selected candidates, the last OBC candidate is at sl. No. 22 of OBC list whereas the applicant stands at sl. No. 43 of OBC list. Hence, it would be irrational if the applicant is considered for empanelment as prayed for by him in the present O.A.

17. With regard to the judgment of the Hon'ble Supreme Court in the case of **Jitendra Kumar Singh and Anr. Vs. State of Uttar Pradesh & Ors.** (supra), the learned counsel for the respondents submitted that the case of the applicant are entirely different than that of the case of **Jitendra Kumar Singh and Anr.**, therefore, the ratio decided by the Hon'ble Supreme Court in the case of **Jitendra Kumar Singh and Anr. Vs. State of Uttar Pradesh & Ors.**, (supra) is not applicable under the facts and circumstances of the present O.A. Therefore, they have submitted that there is no merit in the present O.A. and it should be dismissed with costs.

18. Learned counsel for the respondents submitted that the respondents have followed the circular of the Railway Board RBE No. 266/98 [No. 98-E(SCT)I/25/8) dated

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23.11.1998. The relevant para of the Railway Board circular RBE No. 266/98 is quoted below: -

"It has been decided that those SCs/STs & OBCs candidates who secured the position on merit without availing relaxation such as – age limit, experience, qualification, permitted number of chances in written examination, extending the zone of consideration larger than what is provided for general category candidates and secured equal or more marks with general candidates will not be treated as reserved candidates and they will be adjusted at non reserved points."

The applicant has not challenged the constitutional validity of this circular; therefore, the action of the respondents is in accordance with the rules of the Railway Department.

19. The applicant has also filed a rejoinder.
20. Heard learned counsel for the parties, perused the documents available on record and the case law as referred to by the learned counsel for the parties.
21. Learned counsel for the respondents have raised a preliminary objection regarding the maintainability of the present O.A. on the ground that the applicant cannot challenge the selection once he has participated in the selection process. We are not inclined to agree with the contentions of the learned counsel for the respondents on this point. The grievance of the applicant is that the

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respondents should be directed to consider the candidature of the OBC candidates who attained the general merit standard and to adjust them against the vacancies for the general candidates and that the applicant should be considered for consequential available vacancy reserved for OBC category. The applicant could not have anticipated at the time of the examination as to whether the respondents would apply the policy of reservation as per the law in force. Therefore, the applicant raised the objection of the application of the policy of reservation after he has appeared in the examination and after the panel has been prepared on the basis of the said examination.

22. The respondents have raised another preliminary objection with regard to non-joinder of necessary parties.

The respondents have stated that the applicant should have made all those candidates who are above him in the OBC category because their rights would be adversely affected in case they are not heard. The applicant has not specifically given any reply to this objection even in the rejoinder nor during the time of the arguments. As per the respondents, the applicant stands at Sl. No. 43 of the merit list of the OBC category candidates and the respondents have issued appointment to 22 OBC category, therefore, there are 20 more meritorious candidates of the OBC category than the applicant. In our opinion, the applicant should have made

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party to all those candidates as party respondents because if any order is passed in favour of the applicant then the rights of those other candidates of the OBC category who are more meritorious than the applicant would be adversely affected.

23. Learned counsel for the applicant has referred to the judgment of the Hon'ble Supreme Court in the case of

Rajesh Kumar Daria vs. Rajasthan Public Service Commission and Others (supra) wherein the Hon'ble Supreme Court has held that those candidates who had not earlier approached the court but secured more marks than the appellants (whose appointments were directed) would not be entitled to relief because the relief granted by the Hon'ble Supreme Court has been moulded in exercise of power under Article 142 of the Constitution of India so that justice was done to the selected candidates as well as the appellants who had approached the court in 2002 itself.

The matter before the Hon'ble Supreme Court was related to a selection list dated 30.12.2001, which was already given effect to, therefore, the Review Petitions were dismissed.

However, in the present case, no such relief has been given to the applicant so far. Therefore, we are of the opinion that the ratio decided by the Hon'ble Supreme Court in the case of **Rajesh Kumar Daria vs. Rajasthan Public Service Commission and Others** (supra) would not be

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applicable under the facts and circumstances of the present case. Moreover, it was the duty of the applicant to implead all the candidates who were more meritorious in the select list of the OBC category and who have not been offered appointment. Those candidates who are more meritorious in the OBC category may not have raised their grievance knowing full well that they are low in merit and, therefore, there is no reason to agitate the matter either before the respondents or before the Tribunal. Thus, on the ground of non-joinder of the parties, the Original Application deserves to be dismissed.

24. Even on the merit, we do not find any force in the present Original Application and as such the applicant is not entitled for any relief.

25. The Hon'ble Rajasthan High Court, Jaipur Bench vide order dated 12.05.2010 (Annexure A/7) in DB Civil Writ Petition No. 966/2006 had directed the respondents to consider the case of the applicant in the light of the judgment of the Hon'ble Supreme Court in the case of **Jitendra Kumar Singh and Anr. Vs. State of Uttar Pradesh & Ors.** (supra). The respondents have rejected the claim of the applicant vide order dated 22.10.2010 (Annexure A/1). We have carefully perused the judgment of the Hon'ble Supreme Court in the case of **Jitendra**

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Kumar Singh and Anr. Vs. State of Uttar Pradesh & Ors. (supra). In the case of **Jitendra Kumar Singh and Anr.**, the Hon'ble Supreme Court examined the relevant provisions of the U.P. Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act 1994, with regard to the Reservations, Concessions and Relaxations. Para 72 of the order of the Hon'ble Supreme Court in the case of **Jitendra Kumar Singh and Anr. Vs. State of Uttar Pradesh & Ors.** (supra) is quoted below: -

"72. Soon after the enforcement of the 1994 Act the Government issued Instructions dated 25-3-1994 on the subject of reservation for Scheduled Castes, Scheduled Tribes and other backward groups in the Uttar Pradesh Public Services. These instructions, inter alia, provide as under: -

"4. If any person belonging to reserved categories is selected on the basis of the merits in open competition along with general category candidates, then he will not be adjusted towards reserved category, that is, he shall be deemed to have been adjusted against the unreserved vacancies. It shall be immaterial that he has availed any facility or relaxation (like relaxation in age-limit) available to reserved category."

From the above it becomes quite apparent that the relaxation in age-limit is merely to enable the reserved category candidate to compete with the general category candidate, all other things being equal. The State has not treated the relaxation in age and fee as relaxation in the standard for selection, based on the merit of the candidate in the selection test i.e. main written test followed by interview. Therefore, such relaxations cannot deprive a reserved category candidate of the right to be considered as a

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general category candidate on the basis of merit in the competitive examination. Sub-section (2) of Section 8 further provides that government orders in force on the commencement of the Act in respect of the concessions and relaxations including relaxation in upper age-limit which are not inconsistent with the Act continue to be applicable till they are modified or revoked."

26. From the perusal of this order, as quoted above, in the case of **Jitendra Kumar Singh and Anr. Vs. State of Uttar Pradesh & Ors.** (supra), it is clear that the State Government of U.P. soon after the enforcement of the 1994 Act issued instructions dated 25.03.1994 on the subject of reservation for Scheduled Castes, Scheduled Tribes and Other Backward Groups in the UP Public Services. There was a specific provision of the State Government in these instructions that if any person belonging to reserved categories is selected on the basis of merits in open competition along with general category candidates, then he will not be adjusted towards reserved category, that is, he shall be deemed to have been adjusted against the unreserved vacancies. It shall be immaterial that he has availed any facility or relaxation (like relaxation in age-limit) available to reserved category. But in the present case, the Railways have made selection and provided reservation on the basis of the Circular RBE No. 266/98 dated 23.11.1998. The constitutional validity of this circular is not under challenge before us. For the sake of

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convenience, the relevant portion of this circular RBE No. 266/98 dated 23.11.1998 is again quoted below: -

"It has been decided that those SCs/STs & OBCs candidates who secured the position on merit without availing relaxation such as – age limit, experience, qualification, permitted number of chances in written examination, extending the zone of consideration larger than what is provided for general category candidates and secured equal or more marks with general candidates will not be treated as reserved candidates and they will be adjusted at non reserved points."

27. This circular RBE No. 266/98 dated 23.11.1998 clearly provides that those SCs/STs & OBCs candidates who secured the position on merit without availing relaxation such as age limit, experience, qualification, permitted number of chances in written examination, extending the zone of consideration larger than what is provided for general category candidates and secured equal or more marks with general candidates will not be treated as reserved candidates and they will be adjusted at non reserved points. This clearly shows that those SCs/ STs & OBCs candidates who appeared in the written examination on the basis of relaxation such as age limit, experience, qualification, etc. then they would be considered against the reserved points. Thus, the ratio decided by the Hon'ble Supreme Court in the case of **Jitendra Kumar Singh and Anr. Vs. State of Uttar Pradesh & Ors.** (supra) would

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not be applicable under the facts and circumstances of the present case.

28. Therefore, as per the circular RBE No. 266/98 dated 23.11.1998, the respondents have provided the reservation to SCs/STs and OBCs candidates. These instructions have not been controverted on behalf of the applicant. The applicant has not been able to refute the facts and the procedure followed by the respondents and also the implementation of the instructions contained in the Railway Board circular RBE No. 266/98 dated 23.11.1998. The respondents claimed to have strictly followed the instructions on the subject particularly the instructions contained in the circular RBE No. 266/98 dated 23.11.1998, therefore, we do not find any illegality or irregularity in the order dated 22.10.2010 (Annexure A/1) passed by the respondent no. 2.

29. Moreover, it is also not disputed that the applicant is at Sl. No. 43 of the merit list of the OBC candidates whereas only 22 OBC candidates have been selected, therefore, there are about 20 more meritorious candidates of the OBC category than the applicant. We are fully inclined to agree with the contentions of the learned counsel for the respondents that the applicant cannot march over more meritorious candidates in OBC category. It would be unfair

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for those OBC category candidates who are more meritorious than the applicant in not considering them and offering appointment to the applicant who is admittedly less meritorious than them. Therefore, even on this ground the applicant is not entitled for relief in the present O.A.

30. Even for the sake of arguments if it is agreed that the ratio decided by the Hon'ble Supreme Court in the case of **Jitendra Kumar Singh and Anr. Vs. State of Uttar Pradesh & Ors.** (supra) would be applicable under the facts and circumstances of the present case, even then the applicant has no legal right to be offered appointment on the basis of the select list in which his merit is admittedly at Sl. No. 43. At best, 5 OBC candidates who were considered against the reserved category candidates on the basis of the relaxation in age would be adjusted against the unreserved category. This would mean that in all 27 OBC candidates would be offered appointment by the respondents in place of 22 OBC candidates who have already been offered appointment by the respondents then the candidates who has secured 28th position in the merit list and similarly other candidates who are above the applicant in the merit list of the OBC would be entitled for consideration for appointment and not the applicant being low in the merit. The respondents from their side have to act fairly and therefore if the contention of the applicant

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regarding the policy of reservation is accepted then the candidates from the merit list of 28 onwards will have to be accommodated first than the applicant. Therefore, even on this ground, the applicant is not entitled for any relief merely because he has approached the Tribunal.

31. Consequently, the present Original Application being devoid of merit is dismissed with no order as to costs.

32. In view of the order passed in the Original Application, the Misc. Application, for condonation of delay in the filing the Original Application, is disposed of accordingly.

Chameli Majumdar
(MRS. CHAMELI MAJUMDAR)
JUDICIAL MEMBER

Anil Kumar
(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Kumawat