

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

Original Application No.330/00807 of 2014.

This is the 31st day of October 2018.

**HON'BLE MR. GOKUL CHANDRA PATI, ADMINISTRATIVE MEMBER
HON'BLE MR. RAKESH SAGAR JAIN, JUDICIAL MEMBER**

1. Bhupendra Kumar Yadav, son of Chandrama Yadav, R/o Village Bulaki Das Ki Mathiya (Bhilai) Post Athilapura, District Ballia.
2. Anil Kumar Gond, son of late Satya Narayan Prasad Gond, Resident of Q. No. L-3/EF, Plant Depot Colony Mughalsarai City & District Chandauli.
3. Rajesh Kumar son of Rampyare Resident of Village & Post Mangakadar (Rudrapur) District Deoria.
4. Shivdayal son of Ramanand Resident of Village Jhuriya, Post Murdeva, District Gorakhpur.
5. Vijay Shankar Verma, son of Kashi Nath Verma, Resident of Village Kapuri, Post Phephana, District Ballia.

-Applicants

(By Advocate – Mr. A.K. Singh)

V e r s u s

1. Union of India, through its Secretary, Ministry of Railway, Government of India, New Delhi.
2. Railway Recruitment Cell, North Eastern Railway, CCM Annexe Building Railway Road No.14, Gorakhpur through Deputy Chief Personnel Officer.

-Respondents

(By Advocate – Shri Avnish Tripathi)

ORDER

BY HON'BLE MR. RAKESH SAGAR JAIN, JUDICIAL MEMBER

1. This Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking following reliefs:-

“(i) Issue necessary direction to the opposite parties to forthwith complete the exercise of appointment of applicants as Group ‘D’ employee pursuant to the advertisement No. NER/RRC/D/2007 (contained in Annexure A-1) within a reasonable period as this Hon’ble Tribunal may specify and to accord all consequential benefit to the applicants accordingly admissible under law.

(ii) and/or to pass such other and further order which this Hon’ble Tribunal deem fit and proper in the circumstances of the case.

(iii) Award the cost of this original application to the applicants”.

2. Case of the applicants Bhupendra Kumar Yadav and other applicants is that they are physically handicapped persons and in pursuance to advertisement issued by respondent No. 2 for recruitment to various posts in Group – D being 4549 posts which included 84 posts of ‘safiwala’ meant for differently able category. For the other posts, there exists 3% horizontal reservation for differently able candidates. Being successful, applicants were called for counselling/verification of certificates and medical verification. A waiting list was also prepared. The applicants did not get the appointment letters.

3. It is the further case of applicants that as per Information under RTI Act, it came out that 22 out of 84 advertised vacancies for PH category are still to be filled up. The applicants fulfilled the criteria for appointment in all respect. Respondent No. 2 issued

a notice dated 16.9.2013 that steps are being taken to complete the process but inspite of waiting for more than 7 months, appointment letters are yet to be issued. Hence the present O.A. for the relief that direction be issued to the respondents to complete the exercise of appointment of the applicants as Group – D pursuant to the advertisement No. NER/RRC/D/2007 (Annexure-A1).

4. In the counter affidavit filed by respondents, they have averred that applicants were called as 20 % extra candidates in terms of Railway Board Letter No. E(NG)II/RR-I/62/Vol - II dated 17.6.2008 which are called primarily to avoid short fall in the panel and merely calling a candidate for document verification does not entitle him to an appointment in Railways. As per the List, the applicants rank was very low and therefore they were not selected for the PH posts. It is further averred that as per Railway Board Letter No. . E(NG)II/2008/RR-I dated 10.1.2014, no replacement panel are to be given against non joining of candidates. As per the record, 55 OH candidates were selected in OH category against employment notice of 2007 and there being no further vacancies in OH category against which 20 % extra candidates can be selected. As per the rules, the currency of 2007 panel lapsed on 15.2.2013 with the publication of 2010 exam result. The panel of 2012 advertisement has also been published on 23.7.2014, as such, the claim of applicants for appointment against 2007 advertisement is not tenable as per rules.
5. In the rejoinder affidavit, applicants have transverse the pleas raised by the respondents in their counter affidavit and placed reliance upon O.A. 330/00213/2014 titled Lal Bahadur v/s Union of India decided on 9.8.2016 and O.A. 1235/2013 titled Mohd Ishrar and others v/s Union of India decided on 19.2.2016 by

Central Administrative Tribunal, Allahabad to submit that similar directions be given in their case also.

6. We have heard and considered the arguments of the learned counsels for the parties and gone through the material on record.
7. We have perused the Orders relied upon by the applicants in the previous O.A.s. The pleas raised in the said litigations were different from those raised in the present litigation by the respondents.
8. The respondents have taken the plea for non-appointment of applicants due to: (1) Applicant securing low rank and being below the cut off rank; (2) No vacancies in OH category of advertisement of 2007 against which 20 % extra candidates can be selected (2) the panel of 2007 lapsed on 15.2.2013 with the publication of 2010 exam result and also the panel of 2012 advertisement has also been published on 23.7.2014, as such, the claim of applicants for appointment against 2007 advertisement is not tenable as per rules.
9. Looking to the pleas raised in the counter affidavit which have not been effectively rebutted in the rejoinder affidavit, we are of the opinion that the contentions raised by the respondents as per aforementioned Para No. 8, are a complete answer to the pleas of applicants. Accordingly, we are of the opinion, that the O.A. has no merit and is accordingly dismissed. No order as to costs.

(Rakesh Sagar Jain)
Member (J)

(Gokul Chandra Pati)
Member (A)

Manish/-