

Reserved
(On 20.08.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the **04th** day of **September** 2018

Original Application No. 330/00228 of 2017

Hon'ble Mr. Gokul Chandra Pati, Member – A
Hon'ble Mr. Rakesh Sagar Jain, Member – J

Anil Kumar Singh, S/o Late Ramji Singh, R/o House No. 1982
Indraprastpur, Padari Bazar, District Gorakhpur.

. . . Applicant

By Adv: Shri Rajesh Tripathi

V E R S U S

1. Union of India through General Manager, Northern Eastern Railway, Gorakhpur.
2. General Manager / Mechanical Northern Eastern Railway, Gorakhpur.
3. The Chief Personnel Officer, North Eastern Railway, Gorakhpur.
4. The Chief Workshop Engineer, North Eastern Railway, Gorakhpur.
5. The Chief Workshop Manager / Personnel North Eastern Railway Gorakhpur.

. . . Respondents

By Adv: Ms. Shruti Malviya

ORDER

By Hon'ble Mr. Gokul Chandra Pati, Member – A

The applicant seeks the following relief in the OA:-

- A. issue an order or direction in the nature of certiorari quashing the impugned order dated 11.02.2017 passed by Chief Workshop Manager / Personnel North Eastern Railway, Gorakhpur.***
- B. Issue an order or direction in the nature of mandamus commanding the respondents to permit the applicant to appear in the selection (written test) according to the notification no. E/227/4/1/Inter Apprentice (General Selection) Mechanical / Part II / dated 13.05.2016 which was circulated for departmental selection under 25% quota of junior engineer in pay band (9300 – 34800) grade pay 4200/***
- C. Issue an order or direction in the nature of Certiorari quashing the impugned correction slip dated 30.05.2016 and***

consequent thereof the impugned select list dated 25.02.2017.

- D. Issue an order or direction in the nature of mandamus commanding the respondents to recast the select list by substituting the name of the applicant in select list and permit the applicant to appear in the selection (written test) according to the notification no. E/227/4/1/Inter Apprentice (General Selection) Mechanical/Part II / dated 13.05.2016 which was circulated for departmental selection under 25% quota of junior engineer in pay band (9300-34800) grade pay 4200.**
- E. Issue any, order or direction which the Hon'ble Court deem fit and proper in view of the facts and circumstances of the case.**
- F. To award costs of the application in fav our of the applicant."**

2. Although this OA was heard alongwith the OA No. 423/2017, the orders are passed separately for both the OAs, as in both the OAs the reliefs prayed for are different. The facts in brief for the OA No. 228/2017 are that the applicant alongwith others had applied to be a candidate for the written examination held on 10.3.2017 in pursuance to the notification or advertisement dated 13.5.2016 to fill up 29 posts of Junior Engineer Mechanical under 25% quota for the inter-apprentices, who are the employees under the respondents. The notification mentioned the selection criteria based on 85 marks of the written examination and 15 marks on the confidential report. The applicant is aggrieved because of the fact that just one day before the last date, the maximum age for the OBC candidate was reduced from 50 years originally notified in the order dated 13.5.2016 to 47 years for appearing in the written examination for 25% promotion quota for inter-apprentices. He had filed OA No. 1412/2016 in which direction was given to the respondents to dispose of the representation dated 17.8.2016, which was considered and rejected vide the order dated 11.2.2017 (Annexure 1 to the OA), which is impugned in this OA.

3. The OA was filed by the applicant on following main grounds:-

- The impugned order dated 11.2.2017 does not disclose any precise reason for rejecting the representation of the applicant dated 17.8.2016 (Annexure 3 to the OA) to allow age relaxation for OBC candidates as per the Railway Board letter dated 21.1.2002.

- The grounds mentioned in the impugned order are vague and are not in accordance with any instructions of the Railway Board and the impugned order is in violation of the Railway Board letters.
 - No opportunity of hearing was given to the applicant before passing the impugned order, which has been passed in a mechanical manner.
4. The counter reply was filed by the respondents stating the following:-
- Due to clerical mistake, the maximum age has been mentioned to be 50 years for OBC candidates. It was subsequently found that the Railway Board vide letter dated 11.12.2008 had informed that there will be no reservation for OBC for selection of inter-apprentices against 25% quota.
 - Accordingly, the respondents issued a correction letter dated 30.5.2016 stating that no age relaxation is to be allowed for the OBC candidates.
 - When the applicant moved the Tribunal in OA No. 1412/2016 against this decision not to allow the benefit of age relaxation to OBC candidates, this Tribunal disposed of the OA directing the respondents to dispose of the representation dated 17.8.2016 and accordingly, the impugned order has been passed rejecting the said representation of the applicant.
 - Vide order dated 8.3.2017 of this Tribunal in the present OA, the applicant was permitted to appear in the written examination, but his result was kept in abeyance.
5. The matter was heard on 20.8.2018. Learned counsel for the applicant submitted that the applicant is an OBC candidate who was eligible to apply for the selection as per the advertisement dated 13.5.2016, which had specified the maximum age for an OBC candidate to be 50 years. The last date for submission of the application was 31.5.2016. But just before one day, a corrigendum was issued reducing the maximum age for the OBC candidate from 50 to 47 vide order dated 30.5.2016 (Annexure CA-2

to the counter reply). It was submitted that the last minute change in the maximum age, cannot be done after the selection process has commenced. For such an action, the applicant will now be ineligible for the said selection.

6. Ms. Shruti Malviya, learned counsel for the respondents vehemently argued that as per the railway Board letter dated 11.12.2008 (Annexure CA-1 to the counter reply), there is no reservation for the OBC candidates for the selection of intermediate apprentices and this letter dated 11.12.2008 has not been challenged in the OA. As per this letter, there is no reservation for the OBC candidates, hence, no relaxation in maximum age for the OBC will be permissible. Accordingly, the corrigendum dated 30.5.2016 was issued for the examination and as per the corrected advertisement, the applicant is not eligible to participate in the selection process.

7. We have considered the submissions and gone through the pleadings on record. The only issue to be resolved in this case is whether the action of the respondents to issue the corrigendum dated 30.5.2016 reducing the maximum age for the OBC candidates from 50 to 47 is in accordance with the Railway Board letter dated 11.12.2008. The said letter dated 11.12.2008 states as under:-

**“GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)**

No. 2007-E(SCT)1/25/6

New Delhi dated 11.12.2008

**The General Manager (P),
North Eastern Railways,
Gorakhpur**

Sub:- Selection of Intermediate Apprentices in the pay scale of Rs. 5000-8000 against 25% quota-clarification regarding 27% reservation for OBCs thereof

Ref:- N.E. Railway's letter No. E/50/1/Part-VI/IV dated 10.8.2007

With reference to your Railway's letter on the subject quoted above, it is clarified that reservation for OBCs in the selection of Intermediate Apprentices is not applicable.

.....”

From above, it is clear that the OBC reservation is not applicable for the selection of inter-apprentices for the post of the scale Rs. 5000-8000, which corresponds to revised scale of Rs. 9300-34800 with grade pay of

Rs. 4200, i.e. for the post advertised vide notification dated 13.5.2016. The said letter/notification/advertisement dated 13.5.2016 does not mention about applicability of 27% reservation for the OBC for the advertised post. Clearly, the OBC reservation for the said post is not applicable as per the letter dated 13.5.2016. On the other hand, it is seen that the Railway Board letter dated 11.12.2008, referred by the respondents, does not mention anything about the relaxation for the maximum age for the OBC candidates for the said selection of inter-apprentices.

8. It is possible to have a situation where no reservation for OBC would be available, but the relaxation in the maximum age can be allowed, provided there is no relaxation in the standard for the test/examination for such candidates. In the case of Jitendra Kumar Singh & Anr vs. State of U.P. & Ors in Civil Appeal No. 74 of 2010 (<https://indiankanoon.org/doc/1393954/>), the issue was whether the OBC candidate being allowed age and fee relaxation to appear in an examination to compete for unreserved post, is treated to be a reserved category or not. The issue was decided by Hon'ble Apex Court by observing that in such a case, the OBC candidate will not be considered to have availed reservation facility, since he competed on merit with general candidates after availing the age and fee concessions. It was held by Hon'ble Apex Court in that case as under:-

“37. It is in this context, we have to examine the issue as to whether the relaxation in fee and upper age limit of five years in the category of OBC candidates would fall within the definition of "reservation" to exclude the candidates from open competition on the seats meant for the General Category Candidates. Taking note of the submissions, the Division Bench has concluded by considering questions 1, 2 and 3 that concession in respect of age, fee etc. are provisions pertaining to eligibility of a candidate to find out as to whether he can appear in the competitive test or not and by itself do not provide any indicia of open competition. According to the Division Bench, the competition would start only at the stage when all the persons who fulfill the requisite eligibility conditions, namely, qualification, age etc. are short-listed. We are of the opinion that the conclusion reached by the Division Bench on the issue of concessions and relaxations cannot be said to be erroneous.

.....

39. In view of the aforesaid facts, we are of the considered opinion that the submissions of the appellants that relaxation in fee or age would deprive the candidates belonging to the reserved category of an opportunity to compete against the General Category Candidates is without any foundation. It is to be noticed that the reserved category candidates have not been given any advantage in the selection process. All the candidates had to appear in the same written test and face the

same interview. It is therefore quite apparent that the concession in fee and age relaxation only enabled certain candidates belonging to the reserved category to fall within the zone of consideration. The concession in age did not in any manner tilt the balance in favour of the reserved category candidates, in the preparation of final merit/select list. It is permissible for the State in view of Articles 14, 15, 16 and 38 of the Constitution of India to make suitable provisions in law to eradicate the disadvantages of candidates belonging to socially and educationally backward classes. Reservations are a mode to achieve the equality of opportunity guaranteed under Article 16 (1) of the Constitution of India. Concessions and relaxations in fee or age provided to the reserved category candidates to enable them to compete and seek benefit of reservation, is merely an aid to reservation. The concessions and relaxations place the candidates at par with General Category candidates. It is only thereafter the merit of the candidates is to be determined without any further concessions in favour of the reserved category candidates. It has been recognized by this Court in the case of *Indra Sawhney (supra)* that larger concept of reservation would include incidental and ancillary provisions with a view to make the main provision of reservation effective. In the case of *Indra Sawhney (supra)*, it has been observed as under:-

"743. The question then arises whether clause (4) of Article 16 is exhaustive of the topic of reservations in favour of backward classes. Before we answer this question, it is well to examine the meaning and content of the expression "reservation". Its meaning has to be ascertained having regard to the context in which it occurs.

The relevant words are "any provision for the reservation of appointments or posts". The question is whether the said words contemplate only one form of provision namely reservation simplicitor, or do they take in other forms of special provisions like preferences, concessions and exemptions. In our opinion, reservation is the highest form of special provision, while preference, concession and exemption are lesser forms. The constitutional scheme and context of Article 16 (4) induces us to take the view that larger concept of reservations takes within its sweep all supplemental and ancillary provisions and relaxations, consistent no doubt with the requirement of maintenance of efficiency of administration--the admonition of Article 335. The several concessions, exemptions and other measures issued by the Railway Administration and noticed in *Karamchari Sangh* are instances of supplementary, incidental and ancillary provisions made with a view to make the main provision of reservation effective i.e., to ensure that the members of the reserved class fully avail of the provision for reservation in their favour....."

40. In our opinion, these observations are a complete answer to the submissions made by Mr. L.N. Rao and Dr. Rajiv Dhawan on behalf of the petitioners.

41. We are further of the considered opinion that the reliance placed by Mr. Rao and Dr. Dhawan on the case of *K.L. Narsimhan (supra)* is misplaced. Learned Sr. Counsel had relied on the following observations:-

"5.....Only one who does get admission or appointment by virtue of relaxation of eligibility criteria should be treated as reserved candidate."

41. The aforesaid lines cannot be read divorced from the entire paragraph which is as under:-

"5. It was decided that no relaxation in respect of qualifications or experience would be recommended by Scrutiny Committee for any of the applicants including candidates belonging to Dalits and

Tribes. In furtherance thereof, the faculty posts would be reserved without mentioning the specialty; if the Dalit and Tribe candidates were available and found suitable, they would be treated as reserved candidates. If no Dalit and Tribe candidate was found available, the post would be filled from general candidates; otherwise the reserved post would be carried forward to the next year/advertisement. It is settled law that if a Dalit or Tribe candidate gets selected for admission to a course or appointment to a post on the basis of merit as general candidate, he should not be treated as reserved candidate. Only one who does get admission or appointment by virtue of relaxation of eligibility criteria should be treated as reserved candidate."

42. These observations make it clear that if a reserved category candidate gets selected on the basis of merit, he cannot be treated as a reserved candidate. In the present case, the concessions availed of by the reserved category candidates in age relaxation and fee concession had no relevance to the determination of the inter se merit on the basis of the final written test and interview. The ratio of the aforesaid judgment in fact permits reserved category candidates to be included in the General Category Candidates on the basis of merit."

9. In the instant OA, the railway Board letter dated 11.12.2008, cited by the respondents in support of their action to cancel the candidature of the applicant, does not say anything about relaxation in maximum age for the OBC candidate, where as the notification dated 13.5.2016 for the post of Junior Engineer Mechanical, there was relaxation for OBC candidate for maximum age upto 50 years, but no reservation for the OBC was specified in the said notification dated 13.5.2016. As per the ratio of the judgment of Hon'ble Apex Court, allowing relaxation in maximum age and giving no other concession in the selection process will not be construed as reservation for OBC. Even if the age relaxation for the OBC is there in the notification, there will be no violation of the instructions of the Railway Board letter dated 11.12.2008. The respondents have not furnished any other justification like the previous notification for selection of same post or any other guidelines of Railway Board. Hence, we are of the considered opinion that there was no justification to issue the correction notification dated 30.5.2016 after commencement of the selection process.

10. Learned counsel for the respondents has submitted copy of the judgment in four cases with the written submissions. In the case of Stae of Haryana vs. Ram Kumar Mann (1997)3 SCC 321, Hon'ble Apex Court has held that there is no protection with the help of a wrong order. But in this OA, as discussed in para 9 above, Railway Board letter dated 11.12.2008 does not bar age relaxation to OBC while stipulating no reservation for OBC and there is nothing else on record to show that the age relaxation

given to OBC was a wrong order. Hence, the ratio in Ram Kumar Mann (supra) is inapplicable.

11. In the case of State of Bihar Vs. Upendra Narayan Singh & ors (2009)5 SCC 65, some ad-hoc appointments were done in violation to the rules and instructions, for which the Government cancelled the ad-hoc appointments, which was challenged. Hon'ble High Court had held the cancellation of appointment to be not sustainable and such decision was held to be erroneous by Hon'ble Apex Court since the initial appointment was found to be illegal. This case is distinguishable in terms of facts from the present OA. In the case of Sada Nand Sharma and others vs. State of U.P. and others in writ petition No. 43118 of 2000, the dispute related to non-extension of service of the petitioners even after regularization of their services. The employees took help of other similar cases, where employees were allowed to continue in service. Hon'ble Allahabad High Court did not accept the petitions on the ground that there is no protection with the help of a wrong order and the Article 14 cannot be enforced in a negative manner. In the present OA, as discussed above, there is nothing on record to show that the original notification dated 13.5.2016 specifying relaxation in maximum age for OBC candidate without any reservation of post for OBC was wrong or illegal. In the OA No. 3896/2012, the dispute before the Principal Bench of this Tribunal was related to the eligibility of the experience certificate of the petitioner and that OA is distinguishable factually.

12. From above discussions, it is clear that the cases cited by the respondents will not be helpful for their case. There is nothing on record to show that as per the instructions of the Railway Board, no relaxation for the maximum age of an OBC candidate is permissible for the selection for the post of Junior Engineer Mechanical under 25% quota for inter-apprentices. Hence, the impugned order dated 11.2.2017 to reject the candidature of the applicant on the basis of the corrigendum dated 30.5.2016, is not sustainable in law.

13. In the circumstances, the OA is allowed in part and the impugned order dated 11.2.2017 is set aside and quashed and it is directed that the

notification dated 30.5.2016 will have no effect on the candidature of the applicant, who is a candidate belonging to OBC category, who was eligible to apply as per the original notification dated 13.5.2016 and since there is no reservation for the OBC category in the said notification dated 13.5.2016 and as per the Railway Board letter dated 11.12.2008, the applicant has to compete with the candidates in general category without any other relaxation in the selection process. The respondents are, therefore, directed to declare the result of the applicant and if he passes the examination competing in the general category, then subsequent steps shall be taken by the respondents in respect of the applicant as per the rules.

14. The OA is allowed in terms of paragraphs 8 and 9 above. No costs.

(Rakesh Sagar Jain)
Member – J

(Gokul Chandra Pati)
Member – A

/pc/