

(Reserved on 30.10.2018)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

This the **13th** day of **November, 2018**

Present:

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER-A.

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER-J.

C.C.P NO. 330/00073/2017

IN

O.A No. 330/213/2014

Lal Bahadur, Aged about 42 years, S/o Sri Mohan Lal, R/o Vill. Kahragapur, Post – Atrampur, Allahabad.

.....Applicant.

V E R S U S

1. Shri M.C. Chauhan, General Manager, North Central Railway, Allahabad.
2. Vivek Prakash, Chairman, Railway Recruitment Cell, North Central Railway, Allahabad.

. Opposite Parties

Present for the Applicant : Shri Anil Kumar Singh

Present for Opposite Parties : Shri M.K. Singh

ORDER

(Delivered by Hon'ble Mr. Gokul Chandra Pati, Member-A)

The Civil Contempt Petition (in short CCP) arises out of non-compliance of the order dated 9.8.2016 of this Tribunal in the OA No. 213/2014. The applicant of the CCP was a candidate in pursuance to the notice No. 1/2010 advertised by the respondents to fill up 4692 vacancies of Group D posts under the Railways and he belonged to the category of persons with disability (in short PWD) against 3% quota.

2. The facts in brief are that the applicant was an orthopedically handicapped (in short OH) candidate, for whom a sub-quota of 1% was earmarked out of total 3% quota for PWD category of candidates and the applicant was included in the provisional selection list and was called for document verification by the respondents. But he was not finally selected under the OH category for whom 48 vacancies were notified. For other sub-categories under PWD, i.e. visually handicapped (in short VH) and hearing handicapped (in short HH), for which 49 vacancy for each of these sub-category was notified, less

number of candidates were selected finally as per the final result. The applicant claimed that he should be adjusted against the unfilled post under VH and HH sub-categories, for which he had filed the OA No. 213/2014, which as disposed of by the Tribunal vide order dated 9.8.2016 (Annexure No. 1 of the CCP).

3. In the order dated 9.8.2016, the ratio of the judgment of Hon'ble Allahabad High Court in the case of Dr. Ravindra Kumar Pandey v. State of U.P. and others in Writ Petition No. 12603 of 2003 was followed to direct the respondents as under:-

“7. In view of the above facts and circumstances, we direct the respondents to examine the matter afresh in the light of aberration, discrepancies, pointed out above in this Order and also the precedents followed by the Railways in other region. The respondents shall consider the case of applicant as he has successfully completed all the process of selection and also consider the case of applicant for appointment accommodating him under the disabled quota in the light of afore cited judgment of the Hon'ble High Court, Allahabad. The aforesaid exercise shall be completed by the respondents within a period of two months from the date of receipt of a certified copy of this order”

4. The grievance of the applicant in the CCP is that the respondents have not complied with the order of the Tribunal because of the following reasons:-

(i) The respondent no. 2, vide order dated 3.2.2017, has arbitrarily rejected the claim of the applicant for appointment to Group D post flouting the directions in the order dated 9.8.2016 and the judgment of Hon'ble High Court in the case of Dr. Ravindra Kumar Pandey (supra) has not been followed by the respondent no.2 while passing the order dated 3.2.2017.

(ii) The respondents were directed to examine the precedents followed by other Railways, which has not been followed by the respondents. It has been mentioned by the applicant that other Railways have filled up the vacancies of PWD on the basis of inter-se-exchange as stated in the OA.

(iii) The respondents have not followed the direction of the Tribunal to fill up the vacancies of earlier advertisement on the basis of the list which will be prepared as per the directions of the OA.

5. Learned counsel for the applicant has submitted at the time of hearing that the respondents have not followed the ratio of the

judgment of Hon'ble Allahabad High Court in the case of Dr. Ravindra Kumar Pandey (supra) while disposing of their case as per the order dated 9.8.2016 of this Tribunal in OA No. 213/2014 and the benefit of the vacant post under VH and HH category was not extended to the applicant who belonged to OH sub-category under the vacancy quota for the PWD category.

6. Learned counsel for the respondents, on the other hand, pointed out to the contentions in the Compliance affidavit to emphasize that since it was clearly mentioned in the advertisement that 48 post are to be filled up by the candidates of OH sub-category and the candidates securing higher marks than the applicant have been finally selected, the applicant is not eligible to be considered for the un-filled posts under VH and HH sub-category. It was further submitted that the judgment of Hon'ble High Court referred to the case where there is one vacancy and it will not be applicable to the present case since more meritorious candidates belonging to OH sub-category than the applicant have been selected for the notified 48 vacancies.

7. As discussed in para 3 above, the order dated 9.8.2016 of this Tribunal directed the respondents to examine the matter afresh in the light of the aberration and discrepancies pointed out in the order and precedents followed in other railways. Accordingly, the respondents have re-examined the case and come to a conclusion that the applicant will not be entitled to the benefit as claimed by the applicant and the order dated 3.2.2017 has accordingly been passed by the respondent no. 2, explaining the reasons for the same. This order has not been passed within the time stipulated in the order dated 9.8.2016 and it is delayed by about one year and four months as pointed out in the Reply filed by the applicant to the Compliance affidavit. But that will not amount to a deliberate violation of the order dated 9.8.2016, since the case of the applicant has been re-examined and the loss to the applicant, if any, due to delay in passing of the order dated 3.2.2017 has not been specifically mentioned in the CCP.

8. One of the point mentioned by the applicant in the CCP is that the respondents have not examined the precedents followed in other Railways as directed in order dated 9.8.2016. The last para of the order dated 3.2.2017 states as under:-

“ In compliance of Hon’ble CAT/ALD’s judgment of dated 09/08/2016 with above facts and circumstances, it is to informed that the competent authority of RRC/NCR/ALD thoroughly examined your candidature as well as precedents followed by other railways under existing rules and found your candidature for the appointment on Group ‘D’ posts against EN No. 01/2010 is not feasible as per CMWP No. 12603/03 filed by Dr. Ravindra Kumar Pandey and as well as existing rules therein it was vividly mentioned that 3% PWD candidates equal to 146 vacancies split in three parts would be within the permissible limit of 1% reservation for each category of disability to ensure that the benefit of reservation is not confined to only one category where as 48 vacancies of OH category equal to 1% out of 3% as 146 PWD of 4692 total vacancies has already been filled by such eligible candidates who were secured higher marks to the petitioners so your candidature for the appointment on Group ‘D’ posts against En no. 01/2010 for earmarked 48 OH vacancies equal to 1% out of 146 PWD vacancies as 3% of total 4692 vacancies, is not considered under existing rules, hence rejected.”

9. In view of above order of the respondents, it cannot be said that the precedents followed in other Railways have not been examined. Hence, the objection raised by the applicant on this count is not tenable. The ground that the respondents have not followed the order dated 9.8.2016 to fill up the vacancies as per the list to be prepared as per the direction of the Tribunal is also not tenable in view of the decision of the respondents that as per the order dated 9.8.2016 passed by the Tribunal in OA No. 213/2014, the case of the applicant cannot be considered and hence, the question of revising the final selection list will not arise.

10. In view of above discussions, we are of the considered opinion that the order dated 9.8.2016 in the OA No. 213/2014 has been substantially complied with and there is no deliberate violation of the said order by the respondents. Hence, the CCP No. 73/2017 is dismissed and notices issued to the respondents are discharged.

Member-J

Member-A

Anand...