

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

OA No.1238/2016

**Reserved on :11.09.2017
Pronounced on:04.10.2017**

Hon'ble Ms. Praveen Mahajan, Member (A)

Shri Nilesh Kumar Ram
S/o Shri Ramayan Ram
R/o Village – Basdila
Distt. Saran, Chhapra
Bihar – 841412. Applicant

(By Advocate:Shri Krishna Kumar)

VERSUS

1. Union of India
Through the Secretary
Ministry of Railways
Railway Board
New Delhi – 110 001.
2. The Chairman
Ministry of Railways
Railway Board
New Delhi – 110 001.
3. The Chairman
Railway Recruitment Cell
Parcel Depot
Alibhai Premji Marg
Grant Road (E)
Mumbai – 400 007.
4. Ministry of Social Justice & Empowerment
The Secretary
Department of Empowerment of Persons with Disabilities
Sarojini House, 6 Bhagwan Dass Road
New Delhi – 110 001. Respondents.

(By Advocate:Shri R.N.Singh and Shri N.D.Kaushik)

ORDER

The current OA has been filed against the impugned order dated 26.02.2015 of Respondent No.3 (Chairman, Railway Recruitment Cell)

communicating to the applicant that since there is no vacancy of helper for one arm one leg category, the applicant cannot be given appointment to the post of 'Helper' as applied for by him, (pursuant to the Employment Notice No.2/2012 dated 27.09.2012) in the category of Scheduled Caste cum handicapped candidate. The OA has also challenged the order dated 06.10.2015 of Ministry of Justice and Empowerment (Respondent No.4) holding that the applicant's appointment is not possible under the rules.

2. The brief facts of the case are that the applicant applied for the post of Helper in pursuance to the Employment Notice No.2/2012 dated 27.09.2012 for the post of 'Helper' in the category of physically handicapped person, as per the advertisement by Railway Recruitment Cell, Mumbai. He applied for the post on 07.11.2012 and appeared for the examination on 08.12.2013. The applicant was declared provisionally qualified for document verification. On 22.03.2014, the applicant was issued a call letter by Respondent No.3 for document verification on 26.03.2014 against his Roll No.5313505544 and Control No.9202060868 alongwith the official E-Ticket. On 28.03.2014, the applicant was examined by the Medical Board in the office of DRM (P) Office, Western Railway, Ratlam, MP and found fit in the category of physically handicapped. He was issued medical fitness certificate on 01.04.2014 from the Respondent No.3 certifying that "fit for OH/OL/OA". However, to the surprise of the applicant, he was informed vide letter dated 02.07.2014 (Annexure A-11) from Railway Recruitment Cell communicating rejection of his appointment.

3. It has been averred that this is against the statutory provisions of Section 33 of the Disability Act. It is alleged, that the ground of rejection, that there is no vacancy in the category of "one arm leg" is neither valid nor legally tenable. The respondents were legally bound to give

appointment to the applicant, who is eligible for the handicapped category. Since the word "loco motor" disability covers multiple disabilities also, the ground of rejection by the respondents is not justifiable. Especially, in view of the Medical Board Certificate dated 01.04.2014 by which, the applicant has been found 'fit' for appointment.

4. The applicants complaint dated 22.12.2014, before the court of Chief Commissioner for Persons with Disabilities was rejected vide order dated 06.10.2015 of Dy. Chief Commissioner. Being aggrieved, the applicant has filed the current OA praying that -

- "a. this Hon'ble Court may kindly set aside the impugned orders dated 26.02.2015 and 06.10.2015;**
- b. that this Hon'ble Court may kindly direct the Respondents to appoint him in the Post of 'Helper' as applied for in the category of Schedule Caste and Physically Handicapped;**
- c. that this Hon'ble Court may kindly pass such other and further order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."**

Subsequently, the applicant has filed an amended OA containing the same set of facts.

5. In the counter, the respondents have justified their action stating that no enforceable right of the applicant has been infringed by the impugned action of the respondents. At the outset, it is stated that the OA is barred by limitation in view of the provisions of Section 21 of the C.A.T. Act, 1985. Repeated representations or subsequent information sought and gathered under RTI Act does not give fresh cause of action to the applicant. It is submitted that vacancies were notified for physically handicapped persons, specifically having disability of one arm(OA), one leg (OL) and both legs (BL). These vacancies did not stipulate disability of "one arm one leg".

Since the applicant does not come under any of the three specified categories, he was not found eligible for the posts advertised in the Employment Notice No.2/12 dated 02.07.2014, by the Railway Recruitment Cell.

6. The applicant preferred an appeal to the Chief Medical Director for considering his case for re-medical which was not considered. The latter however, accepted applicant's own certificate, from a private doctor, dated 12.07.2014, attached with the appeal, stating that he had "post polio palsy of left upper and left lower limb."

7. In the counter, it is further stated, that the applicant was advised of the decision of Chief Medical Director vide office letter dated 22.08.2014. The information sought by him under RTI Act, 2005 pertaining to RRC WR's E.N.No.2/12 has been provided to him from time to time.

8. The complaint of the applicant dated 22.12.2014 to the Hon'ble Court for Chief Commissioner for Persons with Disability, was also turned down with the observation that the respondents have not violated any rules/instructions/directives issued in favour of physically handicapped persons. His case was, accordingly, closed by them. The respondents pray that the OA being devoid of any merit may be dismissed with cost against the applicant and in favour of the respondents.

9. Heard both the counsels and perused the available record carefully.

10. The learned counsel for the applicant, Shri Krishna Kumar took the bench through the facts of the case, laboriously. He emphasised that the Medical Board Certificate categorically states that the applicant is "fit" for OH/OL/OA category on the basis of the examination of the documents supplied by the applicant. He stated that letter of the Railway Recruitment Cell, Mumbai Western Railway, to the applicant, stating that

"Congratulations you have provisionally qualified for document verification, your document verification details will be updated shortly" is a testimony to this fact. Surprisingly, however vide letter dated 02.07.2014 he was informed that there was no vacancy for OH/OAL category and he has not been found suitable for any post.

11. He emphasized that the applicant was fully eligible to be considered for the post of Helper as applied for by him in the category of Scheduled Caste/Physically Handicapped, as stipulated in the Employment Notice 2/2012 of 27.09.2012. He also placed reliance of judgment of this Tribunal in OA No.2383/2010 holding that opinion given by a medical board is binding.

(a) The learned counsel relied upon the judgment of the Hon'ble Apex Court in the case of namely, **Basavaiah Vs. H.L.Ramesh & Ors.** Civil Appeal Nos.6057 of 2010 with C.A. No.6058 of 2010 (Supreme Court of India) wherein it is held that :-

"9. Role of Experts – Appellants were appointed a Reader in Sericulture, which was quashed by High Court on ground that they did not have qualification in Sericulture – Advertisement provided qualification as Doctorate or equivalent published work – Experts body appointed who evaluated the whole matter and recommended the appointment of appellants – Court shall not go into evaluation of experts."

(b) He argued that the opinion/certificate of medical board, who are the experts in this field has been erroneously overlooked by the respondents – which is not only arbitrary but also illegal.

12. Refuting these arguments, the learned counsel for the respondents, Shri R.N.Singh submitted that at the outset the case of the applicant is barred by limitation. No application for condonation of delay has been filed

by the applicant giving sufficient cause to the Tribunal for waiving the same, to grant the relief claimed by the applicant.

13. Going through the contents & conditions of the Employment Notification No.2/12 he stated that 963 posts were to be filled up for the post of Helper (Engg., S&T, Mech., Elect) out of which, suitability of persons with disability, having OA/BL/OL was to be considered. In other words, people with one leg affected, one arm affected or both legs affected only, were to be considered against the vacancies of persons with disability. However, while going through the documents, the respondents found that the applicant had OA and OL disability, which category, was not notified in the Employment Notice No.2/2012 dated 27.9.2012. Accordingly, he was found ineligible & his candidature was rejected by the respondents.

14. The communication received by the applicant at Annexure A-7, having qualified the exam provisionally, also mentioned at the bottom of the page, that "**this is only for information to the candidates. The candidate is not permitted to appear in the PET based on the print out of above information**". Hence, this intimation to the applicant was merely preliminary in nature, while proper verification was still underway.

15. It was pointed out by the learned counsel that the applicant had also taken his grievance to the Court of Chief Commissioner for Persons with Disabilities, Ministry of Social Justice and Empowerment, Department of Empowerment of Persons with Disabilities by filing complaint dated 22.12.2014. The case was examined thoroughly and vide order dated 06.10.2015 (Annexure-3), it was decided that "**the respondents have not violated the government rules and guidelines provided in Persons with Disabilities Act, 1995**". The matter was disposed of

accordingly. Driving home the point, Shri Singh emphasized that the respondents have relied upon the applicant's own certification given by a private doctor dated 12.07.2014 (Annexure R-2) which clearly mentions that he had "post polio residual Palsy (Lt.) upper and lower limb". Commenting on the judgments cited by the learned counsel for the applicant, he stated that facts and circumstances of the judgments cited by the applicant are distinguishable and hence not relevant to the present case. In support of his contentions, he cited the judgment of the Hon'ble Apex Court in the case of **Bedanga Talukdar Vs. Saifudaullah Khan & Ors.** (Civil Appeal Nos.8343-8344 of 2011) wherein it has been categorically laid down that "**It is settled law that there can be no relaxation in the terms and conditions contained in the advertisement unless the power of relaxation is duly reserved in the relevant rules and/or in the advertisement. Even if there is a power of relaxation in the rules, the same would still have to be specifically indicated in the advertisement. In the present case, no such rule has been brought to our notice.**" Finally, he concluded that the respondents have rightly rejected the case of the applicant who was not eligible for the posts identified in the Notification dated 27.09.2012 i.e OA/BL/OL, since, he came under an altogether separate category of OL/OA.

16. On carefully going through the facts of the case, I find that Employment Notification No.2/2012 dated 27.09.2012 is specific about the category against which vacancies of people with disability are to be filled up i.e. persons with OA/BL/OL. I am in agreement with the contention of the respondents that the medical certificate of fitness does not endow the applicant with any kind of a right to be considered for these vacancies, since his disability would seem to fall under a fourth category of one arm &

one leg. The decision of Hon'ble Apex Court in the case of **Bedanga Talukdar Vs. Saifudaullah Khan & Ors.** (supra) clearly lays down that no benefit, outside the conditions contained in the relevant notification can either be claimed or granted.

17. The notification of the respondents specifies the Helpers in OA/OL/BL, in the handicapped category. Shri Nilesh Kumar does not fall in any of the aforementioned. It is the domain of the Respondents to prescribe eligibility conditions as per the administrative requirements. Nobody has a vested right to be appointed to any particular post. I also find that the appointment procedure has been followed in toto by the respondents and no rules or guidelines seem to have been violated.

18. In view of the facts and circumstances of the case, I find no reason to interfere with the selection made by the respondents. The OA lacks merit and is accordingly dismissed. No costs.

(Praveen Mahajan)
Member (A)

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