

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA NO.2042/2015

NEW DELHI THIS THE 21ST DAY OF SEPTEMBER, 2016

HON'BLE SHRI P.K. BASU, MEMBER (A)
HON'BLE DR BRAHM AVTAR AGRAWAL, MEMBER (J)

Sunderpal Arya, aged 21 yrs.,
Roll No.40016419,
Control No.12182296,
Group D, Subject Appointment,
S/o Sh. Babulal Arya,
Village Mohammadpur,
PO – Duloth Jat,
Tehsil Narnaul, Dist. Mahendergarh,
Haryana – 123021.

...Applicant

(By Advocate: Shri Nitin Kr. Gupta)

VERSUS

1. Union of India
Through Secretary,
Ministry of Railways,
Rail Bhawan, New Delhi.
2. Railway Recruitment Cell,
Through Assistant Personnel Officer,
RRC, Northern Railway,
Lajpat Nagar –I,
New Delhi-110024.
3. General Manager,
Northern Railway
Head Quarter Office,
Baroda House,
New Delhi.

...Respondents

(By Advocate: Shri Kripa Shankar Prasad)

ORDER (Oral)**HON'BLE SHRI P.K. BASU, MEMBER (A):**

The applicant appeared in the examination for Group 'D' post against the advertisement dated 30.12.2013 published by the Railway Recruitment Cell. He was asked to appear for the Physical Efficiency Test (PET) on 25.03.2015 and he duly appeared. Unfortunately, that PET test was cancelled and the respondents fixed another date for the PET from 21.04.2015 to 25.04.2015, which was advertised on the RRC Website and the National/Regional newspapers and the applicant was called for the PET on 23.04.2015.

2. The learned counsel for the applicant states that the applicant could not appear for the PET on the date fixed for 23.04.2015 as he was sick. It is stated that he appeared for PET on 25.04.2015, which was the last date for PET but the respondents had not allowed him to appear in the PET on 25.04.2015. In this regard, he made a representation dated 28.04.2015 to the respondents. However till date, no action has been taken by the respondents.

3. Learned counsel for the respondents states that the information regarding change of date of PET was given to all concerned through RRC Website and Local News paper,

National/Regional newspapers and all the candidates were duly aware of the changed date but the applicant did not turn up for the PET on 23.04.2015. Since, it was not the fault of the respondents that the applicant did not turn up on 23.04.2015, hence they should not be responsible for that and, therefore, the applicant has no remedy and the OA deserves to be dismissed. Further, he pointed out clause-6 of the advertisement which provides as follows:

"6. No repeat/second chance/relaxation in standard for PET will be given under any circumstances. Similarly, there will be no adjustment of Venue or Date. Please reach venue of PET well in advance of given time/schedule."

It is thus argued that applicant being fully aware of the provisions contained in the re-advertisement cannot now claim for the second chance for conducting of the PET.

4. Learned counsel for the respondents further pointed out that even if the applicant had appeared in the PET he could not have been shortlisted for DV and ME as the cut off marks after PET was revised upward to 81.67 for the OBC candidates, to which category the applicant belongs. It is thus argued that no cause of action accrues in favor of the applicant and the OA deserves to be dismissed on this very ground.

5. We have heard the learned counsel for the parties, perused the pleadings and given our thoughtful consideration to the matter.

6. The first question in this case is did the applicant miss the PET fixed for him? The answer is in the negative. He did appear in the PET fixed by the respondents on 25.03.2015. The failure was of the respondents that they could not conduct the PET properly on the date fixed and had to cancel the same. The next question is can the candidate be penalised for not appearing on the second date i.e. on 23.04.2015. The applicant states that he could not appear on that date due to sickness. He, however, appeared immediately thereafter on 25.04.2015 but according to him he was not allowed to undertake the PET. He, therefore, made attempts to appear for the PET fixed on revised dates. Therefore, the applicant does deserve the second chance for appearing in the PET. However, it has been pointed out by the respondents that even if he cleared the PET, he cannot be considered for appointment due to the fact that he has not obtained the minimum cut off mark for OBC candidates. Therefore, the applicant has no cause of action.

7. In the light of facts, the OA has, in fact, become infructuous and is, therefore, dismissed. However, this OA was filed mainly on the question of PET to be held for the applicant and rejection

of his candidature due to lower marks was not the issue. Therefore, the applicant shall be at liberty to challenge the contention of the respondents that he obtained marks less than the cut-off marks for OBC candidates by filing a fresh OA if he is so advised. No costs.

(DR BRAHM AVTAR AGRAWAL)
MEMBER (J)

(P.K. BASU)
MEMBER (A)

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