

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

O.A. No.60/343/2016

Date of decision: 30.08.2018

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**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J).
HON'BLE MRS. P. GOPINATH, MEMBER (A).**

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Gourav Parshant, aged 27 years, S/o Sh. Parveen Kumar, R/o 64-A, Burt Road, Ferozepur, Punjab. Group-D.

... APPLICANT

VERSUS

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Railway Board, Rail Bhawan, Raisina Road, New Delhi through its Secretary.
3. Chairman, Railway Recruitment Cell, Northern Railway, Lajpat Nagar-I, New Delhi-110024.

... RESPONDENTS

PRESENT: Sh. R. K. Sharma, counsel for the applicant.
Sh. Lakhinder Bir Singh, counsel for the respondents.

ORDER (Oral)

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SANJEEV KAUSHIK, MEMBER (J):-

1. Present O.A. has been filed by the applicant seeking following relief:

"8(i) Quash the decision of the respondent No.3 as placed on its official website in the month of June, 2015 (Annexure A-1) qua the applicant whereby his status has been shown (PET) qualified. Could not short listed for DV (Document Verification/Medical) due to low in merit in respective category and quashing thereof as the merit list has not been prepared after complying with the instructions of the Railway Board i.e. respondent No.2 as contained in RBE No.73/2008 circulated vide letter No.E(NG-II/96/RR-I/62/Bol.II dated 17.06.2008 inter alia laying down that the number of candidates called for document verification shall be

20% over and above the number of vacancies, thus restricting the consideration even for document verification equivalent to number of vacancies whereas in other zones like RRC Madras, Secunderabad, Bhubaneswar, Patna, Bilaspur, Guwahati and Jabalpur candidates to the extent of 20% over and above the number of vacancies were called for similar recruitment against ground 'D' vacancies thus violating the provisions of Article 14 and 16 of the Constitution of India and quashing thereof.

- ii) Direct the respondents to follow the instructions of the Railway Board dated 17.06.2008 and to determine the merits of the candidates after document verification as 998 vacancies out of total 5679 including the category of OBC have remained unfilled due to restricting the zone of consideration without complying with the Railway Board instructions with further directions to the respondents to consider the candidates including the applicant to the extent of 20% over and above the declared number of vacancies and offer them appointment in case they fall within the zone of vacancies, which remained unfilled w.e.f. the date of appointment of other candidates with all consequential benefits."
2. Facts which led to filing of this O.A. are that respondent no.3 issued advertisement notifying 5679 vacancies of Group 'D' under the Northern Railway out of which 1490 were reserved for OBC category. The applicant who belongs to OBC category applied under his category and was subjected to selection process and based on written and physical efficiency test, final result was declared in June 2015. The applicant was informed that he does not fall within the notified vacancies as he has secured less marks than the cut-off marks which led to filing of the present O.A.
 3. Solitary ground taken by the applicant is that in terms of RBE No.73/2008 circulated vide letter No.E(NG-II/96/RR-I/62/Bol.II dated 17.06.2008, respondents are under obligation to call candidates, 20% over and above the notified vacancies. He submitted that if respondents follow mandate of the letter dated 17.06.2008, then

they have to call 298 more candidates and total would come to 1778 and if they call candidates as per above noted figure, then the applicant would also come into zone of consideration and has to be offered appointment under his category.

4. The respondents have resisted the claim of the applicant by submitting that this RBE circular is directory in nature and it is for department to consider whether it is to be taken into account or not.
5. As per the direction of this Court contained in order dated 22.09.2017, the respondents have filed additional affidavit indicating as to how many candidates have been called for document verification pursuant to the advertisement. Learned counsel for the respondents submitted that even if they had called candidates, 20% over and above the notified vacancies in OBC category, then also applicant would not have come in zone of consideration as there are many other candidates over and above him in merit as his name is placed at serial no.361 of the list, therefore, he will not be benefited.
6. We have given our thoughtful consideration to the entire matter with able assistance of learned counsel for the parties.
7. Controversy involved in the present case revolves around RBE No.73/2008 dated 17.06.2008, therefore, it would be relevant to reproduce it:-

"1. As per the instructions circulated vide letters quoted above, presently the procedure for recruitment of Group 'D' posts on the railways consists of a Physical Efficiency Test (PET) followed by written test of PET qualified candidates.

2. A clarification has been sought by one of the zonal railways regarding the ratio in which the candidates are to be called for document verification after written examination vis-à-vis number of vacancies to be filled up.

3. The issue has been examined and it has now been decided by the Board that the number of candidates called for document verification shall be 20% over & above the number of vacancies.

4. This shall, however, be done with the following proviso:

(i) It has to be brought out clearly in the Call Letter to the candidate that the purpose of calling 20% candidates over and above the number of vacancies at the time of document verification is primarily to avoid shortfall in the panel and that merely calling a candidate for document verification does not, in any way, entitle him/her to an appointment in the railways;

(ii) Even where the number of candidates available after document verification exceeds the number of vacancies, the panel finalized by RRC [Railway Recruitment Cell] shall be equal to number of vacancies only. In case, the Railway administration after giving stipulated joining time to the selected candidates, certifies that certain number of candidates have not turned up within the specified period, another panel equal to the number of candidates finally not turning up for taking appointment will be supplied by RRC. Before calling for replacement in-lieu of the candidates finally not turning up for taking appointment, CPO shall personally satisfy himself that the procedure for cancellation of the offer of appointment to the originally empanelled candidates has been strictly followed. Under no circumstances, the number of candidates covered in the original as well as replacement panels shall exceed the number of the vacancies indented by the railway; and

(iii) Replacement panels shall include only such number of reserved /un-reserved candidates as have not turned up as per original panel.

5. These instructions will be applicable to the selections wherever Call Letters to the candidates for document verification are yet to be issued."

Perusal of the above makes it clear that that to save time and money, Railway Board has taken a conscious decision to call 20% more candidates than the notified vacancies. As per clause 2, if a candidate in merit does not join, then they have a list of waiting list candidates for adjustment without going in for fresh recruitment. Therefore, plea raised by the respondents that this letter is directory in nature only, cannot be said to be a good ground. As noticed above, out of 5679

notified vacancies, 1490 were reserved for OBC category and as per RBE circular respondents have to call 20% more candidates than 1490 vacancies. Hence they have to call 298 more candidates and total figure would come to 1788. The respondents have not called 20% more candidates for physical and document verification. Accordingly, we are of the view that in terms of circular dated 17.06.2008, respondents are under obligation to call 20% more candidates for physical and document verification and if a candidate does not join then they should offer appointment to next candidate within 20% quota.

8. Accordingly, the O.A. stands disposed of with a direction that if the applicant falls within 20% quota, then he be called for document verification and offered appointment. Otherwise, if a candidate from main list does not join then who so ever comes under 20% quota, he/she be also called for documents verification and offered appointment.
9. The O.A. stands disposed of accordingly. Parties are left to bear their own costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Date: 31.08.2018.
Place: Chandigarh.

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