

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

**O. A. No. 260/503 OF 2015**  
Cuttack, this the 08<sup>th</sup> day of December, 2017

CORAM  
**HON'BLE MR. S. K. PATTNAIK, MEMBER(J)**  
**HON'BLE DR. M. SARANGI, MEMBER (A)**

.....  
Mukesh Sharma,  
aged about 25 years,  
S/o-Ram Sevak Sharma,  
R/o-3/1 Gopal Mukharjee Road,  
PO-Cossipore, PS-Chitpur,  
Kolkata-700002, West Bengal.

...Applicant

(By the Advocate-M/s. R. K. Dash, K. C. Dash)

-VERSUS-

**Union of India Represented through**

1. Chairman, Railway Board & Ex- Officio principal Secretary, Govt. of India, Ministry of Railay, Rail Bhawan, New Delhi-110001.
2. Chairman, Railway Recruitment Cell, East Coast Railway, Rail Sadan, Mancheswar, Bhubaneswar.
3. Divisional railway Manager( P) , East Coast Railway, Sambalpur, At/PO/PS/Dist- Sambalpur.
4. Asst. Personnel Officer( Recruitment Cell), East Coast Railway, Rail Sadan, Mancheswar, Bhubaneswar.

...Respondents

(By the Advocate- Mr. R. S. Behera)

....

**O R D E R**

**S.K.PATTNAIK, MEMBER (JUDL.):**

The applicant, in this present O.A., has prayed for quashing of impugned order dated 29.04.2015 (Annexure-A/7) issued by the Asst. Personnel Officer, O/o Divisional Railway Manager (P), by which his

candidature for the post of Track Maintainer-IV has been cancelled. He has further prayed to issue fresh letter of appointment in favour of the applicant for the post of Helper-II by taking into account his position in the OBC category.

2. The case of the applicant in a nutshell runs as follows:

Pursuant to Employment Notice dated 31.07.2012 issued by the Dy. Chief Personnel Officer, Railway Recruitment Cell, E.Co.Railways, applicant applied for the post of Helper-II under OBC category. On coming out successful in the examination and as he obtained more marks than the cut-off marks for unreserved candidates in the 1<sup>st</sup> provisional panel of provisionally empanelled candidates, he was empanelled as a General Candidate in order of merit and his rank was 678 (Annexure-3). The grievance of the applicant is that he had specifically applied for the post of Helper-II and his choice of posting was also for Helper-II but vide letter dated 15.09.2014 (Annexure-4), he has been given appointment to the post of Track Maintainer-IV. It is the case of the applicant that since his candidature was considered from General Category ignoring his higher rank in OBC Category, the candidates securing lower rank than the applicant in the OBC Category have been given appointment in Helper-II post but he was offered letter of appointment for the post of Track Maintainer-IV. Giving the instance of one Sri Tanmoy Ghosh, who was at Sl.No. 270 in the first merit list of OBC, it has been submitted that even if the applicant was at Sl. No. 264 in the said list, he was not offered the post of Helper-II whereas the said

Sri Tanmoy Ghosh was appointed as Helper-II, which is discriminatory, malafide and illegal.

3. The applicant filed a representation on 26.09.2014 to withdraw letter of appointment dated 15.09.2014 and to issue fresh appointment letter in his favour for the post of Helper-II but instead of considering his representation, the Assistant Personnel Officer vide letter dated 22.10.2014 intimated the applicant as under:

*“You were issued provisional offer of appointment for temporary appointment as Track Maintainer IV vide letter under reference. You were advised to report on or before 28.10.2014 failing which the offer would lapse. However, you are yet to report for further recruitment formalities.*

*You are given further time of 15 (fifteen) more days to report this office after complying with the instructions in the letter under reference failing which the offer of appointment will be terminated.”*

The applicant, being aggrieved by the above development, sent representations to the authorities through his Advocate on 14.11.2014 and 20.01.2015. Respondent No.5 vide letter dated 08.12.2014 intimated the applicant that the matter was forwarded to the office of Respondent No.3 for perusal and for taking further action. While the matter stood thus, the Assistant Personnel Officer for Divisional Railway Manager (P) issued impugned order dated 29.04.2015 (Annexure-7), which reads as under:

*“In view of your lack of response to offer of appointment & reminder vide letters under reference, your candidature for the above said post is hereby cancelled.”*

4. Respondents have filed their counter denying the submissions made by the applicant in the O.A. The main plank of argument of the Respondents is that Recruitment Notification dated 31.07.2012 (Annexure-R/2) was issued for filling up of 2085 vacancies for both the post of Track maintainers and Helpers and since no option, either in the OMR or in the Verification Sheet (Annexure-R/1) as submitted by the applicant, was called for from the candidates for the post of Track Maintainer and Helpers, there is no right of any of the candidates over choice of post. As per the norms of verification, the applicant had to write the name of the post only, which is a part of documents verification. A common merit list was published for both the posts and allotments of post were arranged by following a common uniform procedure. Respondents have submitted that the appointments are made in an unbiased and impartial manner depending upon the vacancies available at the material time. Both the posts of Helper-II and Track Maintainer carry the equal pay scale and require similar medical fitness of B-1. They have submitted that Para-18 of the Notification (Annexure-R/2) clearly mentions that the decision of the Railway Recruitment Cell, Bhubaneswar, will be final and binding on the candidates and no enquiry or correspondence will be entertained in this connection. All the candidates were issued with offer letter of appointment following a common and uniform procedure and not a single candidate was allowed to change his category from Track Maintainer to Helper and if the applicant is allowed to change his

category, it would cause serious procedural lapse and the mode of allotment would be in a mess. Basing upon the performance both in the written examination and physical efficiency test and being found fit in B-1 category, the applicant was empanelled against the said notification and was allotted to Sambalpur Division as Track Maintainer-IV. Accordingly, offer of appointment was issued with advice to report on or before 13.10.2014 and as the applicant did not report, to give him further opportunity, a reminder was also issued on 22.10.2014 to report within 15 days for his posting. Since the applicant failed to report to the Railway administration for his posting even after issuance of reminder letter and thus violated the terms mentioned in Para-18 of the Notification, his candidature against the Employment Notice (Annexure-R/2) was cancelled vide letter dated 29.04.2015 (Annexure-7).

5.           Applicant has filed rejoinder to the counter almost reiterating the facts stated in the O.A. However, the applicant in his rejoinder has brought to the notice of this Tribunal that he applied for the post of Helper-II pursuant to the notification dated 31.07.2012, which was notified only for the 400 vacancies of Helper-II post, but, subsequently, by issuing corrigendum vacancy of Helper-II was increased from 400 to 629 and another category of post, i.e. Trackman, was added showing vacancies 571. By another corrigendum, the vacancies of Helper-II and Trackman were further enhanced from 629 to 714 and from 571 to 1371 respectively. The submission of the applicant is that when there are two categories of posts and he had applied for the

post of Helper-II, he should have been given the offer of appointment for the post of Helper-II only. If as per the submission of the Respondents both the posts carry equal pay, there should not be any impediment for the Respondents to offer him the post of Helper-II especially when he had applied for Helper-II post and junior to him in the merit list has been given the same post. He has alleged that the Respondents have adopted pick and choose method to allot the post as per their choice and sweet will in an unfair manner. The applicant had no anxiety for the post of Trackman, which was subsequently added in the notification through corrigendum. The nature of work being different for both the posts, the applicant was interested for Helper-II post. As examined by the E.Co.Railway Hospital, since he had some eye sight problem he was prescribed and suggested to use spectacle and for which he is reluctant to accept the post of Track Maintainer. Applicant further pleaded that he never refused the offer but only represented for posting him in Helper-II grade.

6. The positive case of the applicant is that pursuant to the Recruitment Notification dated 31.07.2012, he had applied for the post of Helper-II but he has neither furnished copy of his application form nor copy of the Advertisement. However, in the rejoinder the applicant has pleaded that as per notification dated 31.07.2012, only 400 vacancies were notified for the post of Helper-II. The Respondents in their counter have enclosed corrigendum notification which speaks about enhancement of vacancies, i.e. 1371 posts of Trackman and 714 posts of

Helper-II. This 714 posts has a further break up of 361 UR category, 193 OBC category, 107 SC and 53 ST category, which also includes 130 vacancies to be earmarked for persons with disabilities. So, out of 714 posts in fact for common candidate, only 584 posts (714-130) were available in the category of Helper-II. Since in the UR category the total number of post was enhanced to 1053 including Trackman and Helper-II, the applicant even though belonging to OBC category was selected as a General Candidate as per Sl. No. 687 of the first provisional empanelled list (Annexure-3).

7. The entire gamut of argument of the Ld. Counsel for the applicant is that since the applicant had applied for the post of Helper-II, he should not have been offered the job of Trackman. Since as per the Corrigendum 3 (Annexure-R/2) the total number of post available in the category of Helper-II was 361 under UR category and 193 under OBC category, had the applicant come within 554 of the merit list certainly his case could have been considered but since the applicant was at Sl. No. 687, it may not be lost sight of the fact that had there been only one advertisement for Helper-II, he could not have been selected as the total number of post available for UR and OBC category was 554 (361+193). The ground reality is that as because category of Trackman was added to the advertisement, which includes 692 UR category and 370 OBC category, the applicant could find his place in the empanelled list. The ground taken by the applicant that since he had applied for Helper-II, he should have been appointed in that category does not hold any water because his serial number in the merit list is 687 and persons in the serial

list after 554 cannot claim the post of Helper-II because the total number of post reserved for Helper-II was only 554, i.e. 361 UR and 193 OBC category. The applicant, who could not have qualified for the Helper-II as per the original notification dated 31.07.2012 instead of showing gratitude to the Railways for enhancing the vacancy has dragged them to a fruitless litigation.

8. Going through the record, we are convinced that time and again the Respondents have given scope to the applicant to join the post of Trackman and even his date has been extended but since he did not join he is to blame himself and legally no direction can be given to absorb him in the post of Helper-II as both the Trackman and Helper-II carries the same grade and same scale of pay and the Respondents have taken a conscious decision to whom they want to engage as Trackman and Helper-II. Since there is nothing wrong in the impugned order, no interference is called for. Hence, the O.A. being devoid of merit is dismissed.

9. Before parting with this order, we would like to keep in record that since the applicant was selected in a recruitment process may be for the post of Trackman and as he did not join under a misconception, Respondents are directed to consider his joining as Trackman if he makes a representation within 15 days from the date of this order and if posts are still available and vacancy exists to adjust the applicant in the present scenario. No costs.

(M. SARANGI)  
Member (Admn.)

(S.K.PATTNAIK)  
Member (Judl.)

