

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OA/020/01468/2013

Date of CAV : 05.09.2018
Date of Order : -10-2018

Between :

S.Ramana Reddy S/o Chenna Reddy,
Age : 35 years, Occ : Asst. Personnel Officer,
O/o the Divisional Railway Manager,
Sanchalan Bhavan, South Central Railway,
4th floor, Secunderabad.
R/o Quarter No.32/E, Railway Officers' Colony,
New Bhoiguda, Secunderabad.Applicant

AND

1. The Union of India,
Rep. by its Secretary, Department of Personnel & Training,
Ministry of Personnel & Public Grievances, North Block,
New Delhi.
2. The Union Public Service Commissioner,
Rep by its Chairman, Dholpur House,
Shahjahan Road, New Delhi – 110069.
3. The Railway Board,
Rep by its Chairman,
Central Secretariat, Rail Bhavan,
New Delhi. ...Respondents

Counsel for the Applicant: Mr. Peeta Raman

Counsel for the Respondents : Mrs.K.Rajitha, Sr.CGSC for R-1
Mr.B.N.Sharma, SC for UPSC
Mr.S.M.Patnaik, SC for Rlys, for R-3

CORAM :

THE HON'BLE MR.B.V.SUDHAKAR, ADMINISTRATIVE MEMBER
THE HON'BLE MR.SWARUP KUMAR MISHRA, JUDICIAL MEMBER

(Order per Hon'ble Mr.Swarup Kumar Mishra, Judicial Member)

(Order per Hon'ble Mr.Swarup Kumar Mishra, Judicial Member)

This application is filed under section 19 of the Administrative Tribunals Act, 1985 to declare the action of the 1st Respondent in not selecting applicant to Indian Railway Accounts Service (IRAS) based on his rank, preference of service, availability of vacancy, his suitability etc., and choosing to select Mrs. Jagiriti Duggar by block one vacancy in IRAS by giving 3rd chance to her for conducting medical examination as illegal, arbitrary, unjust, discriminatory, without jurisdiction, malafide, abuse of process, constitutional fraud played against applicant, non application of mind, colourable exercise of powers, opposed to 'doctrine of legitimate expectation' and 'doctrine of promissory estoppel' besides violative of Arts. 14 & 16 of the Constitution of India and consequently direct the respondent to allocate Indian Railway Accounts service with all incidental and consequential benefits which includes even seniority, benefit of promotion/s, monetary benefits (notional pay fixation and pay arrears with interest) etc., on par with batch mates who joined regularly in August, 2007 and pass such other order or orders as this Hon'ble Tribunal may deem fit and proper in the interest of justice and to meet the ends of justice.

2. The brief facts of the case are that the applicant appeared for Civil Service Examination held in 2006 (CSE-2006) in pursuance of notification issued by 2nd respondent, qualified for appearing in mains and attended for interview. After interviews are over 2nd respondent released selection list in May, 2007 but was not selected due to pendency of court litigation and few

more were selected through 2nd merit list / supplementary list after verdict passed in pending litigation in UOI Vs. Ramesh Ram & Others in SLP (C) No.13571-72/2008 and services were allocated. Applicant secured 506th rank.

3. While the things stood thus, after said court proceedings were over – a supplementary list of selected candidates was announced by 2nd respondent in August / September 2010. After announcement of said results by 2nd respondent – it forwarded the list of selected candidate to the 1st respondent for allocation service. In turn, basing on his rank and other things; and also after conducting relevant medical tests – applicant was allocated Indian Railway Personnel Service and joined the said service in June, 2011.

4. The applicant contends that one Mrs. Jagriti Duggar got 493rd rank; factually, she also subjected herself for selection process in pursuance of 2nd respondent notification on par with the applicant. By the time of her selection itself she had been working for Indian Railways in Indian Railway Traffic Service.

5. The applicant states that, after receiving selection list from 2nd respondent, the 1st respondent constitutes Medical Board for conducting mandatory medical checkup prior to allocation of services. Those who found fit medically would be given appointments by allocating services and rest would be denied same. Call letters issued to all these speak that only

one opportunity would be given to selected candidates for attending medical test conducted by Medical Board and it should be attended without fail. Furthermore, besides sending call letters to selected candidates individually, their names even would be kept on official website of 1st respondent, in which all the details like date of present before Medical Board etc., are also available. As per rules, only one opportunity is given to aspirants; but, no rule enables the 1st respondent allowing the selected candidates to appear before medical test again in the event of their failure to appear before said board in pursuance of first call letter. Even Clause 2 and 2.4 of the medical call letter dt.06-10-2010 and Clause 2 of the Notice dt.27.08.2012 speak that only one chance would be given to aspirants; and it would not be extended to candidates unless recommended by the designated hospital where medical examination is held. It seems, in recent past, contrary to rules and regulations etc., the 1st respondent started new practice of giving 2nd opportunity to selected candidates to appear before Medical Board in the event of absent in pursuance of first opportunity. Unless one, who fails to attend before the Medical Board, satisfies the 1st respondent giving plausible reasons for his absence; he/she could not be given one more opportunity / 2nd opportunity for subjecting himself / herself for medical examination – that to, it would be done in extraordinary circumstances. Mrs. Jagiriti Duggar, whose rank was 493, was working very much for Indian Railways; as such she knew all these procedure; but, failed to appear before Medical Board constituted by the 1st respondent. Thereafter, arbitrarily saying that 2nd call letter was not sent to her changed address; 3rd chance was given to her for medical examination by blocking

one vacancy of IRAS, which was against the rules and DANIS (Delhi Andaman Nicobar Island Civil Services) was allotted to the applicant provisionally. Then after giving 3rd chance for medical and after receiving medical reports of Mrs.Jagiriti Duggar she was allotted IRAS; whereas, the applicant was allotted IRPS. Factually, the details of medical examination schedule for 2nd time was placed in official website of 1st respondent; the date of medical examination of Mrs.Jagiriti Duggar was 18.01.2011. The details of medical examination schedule to those who have not responded to 1st medical examination call letter was placed in official website of 1st respondent besides sending call letters to the address available. Arbitrarily she was given 3rd chance for conducting medical examination and after medical examination was conducted to her; she was allotted IRAS but she did not join service. Giving 3rd chance contrary to rule position itself is illegal and unconstitutional. Because of this, finally, after her medical report received, the applicant was allotted IRPS instead of IRAS. Factually, as per rank and service preference, in instant case, the applicant was next meritorious candidate to her; as such, in absence of Mrs.Jagiriti Duggar before Medical Board, I could have been allocated Indian Railway Accounts service. But, arbitrarily, the same was not done in instant case; as such, the applicant was only allocated Indian Railway Personnel service instead Indian Railway Accounts service.

6. The applicant made representation on 31-01-2012 to 1st respondent and the Ministry of Personnel, Public Grievances & Pensions, GoI, vide DO No.13015/16/2011-AIS(1), dt. 15-02-2012 informed as follows :-

“2. Service allocation is a process of allocating services to the recommended candidates. Services are allotted keeping in view parameters such as rank of the candidate, preference, medical status and availability of vacancies in his/her turn in his/her category. A small change in any parameter leads to chain reaction / cascading affect.

3. If someone resigns or does not join the service, the vacancy is carried forwarded to the next recruitment year by concerned CCAs because if this vacancy is utilized by upgrading service of the down below candidates, it will upset the whole chain of service of allocation of service against the vacancies unfilled due to non-joining of the candidates allotted to a service is sub-judice in the matter of Anshoo Pandey Vs. UOI & Others in SLP (C) No.2545/2011 and in the matter of Harvinder Kumar Vs. UOI & Others in SLP (C) No.17702/2011 before Hon’ble Supreme Court.

4. Since the matter is sub-judice, no action can be taken in matter of Shri Siddu Ramma Reddy for allocation him to IRAS in place of IRPS.

5. I hope this clarify the position.”

7. Reason given for giving one more opportunity to Ms. Jagriti Duggar by blocking one vacancy for her is not sustainable in the eye of law for the reason that the authority concerned lost sight of the fact that said schedule relating to medical examination was put in official website. As per rules, only one opportunity has to be given to aspirants; but no rule enables the 1st respondent allowing the selected candidates to appear before medical test again in the event of their failure to appear before said board in pursuance of 1st all letter. If 1st respondent says that due to non sending medical examination call letter to Mrs.Jagriti Duggar to her changed address; it was decided to give 3rd opportunity to her by blocking one vacancy; but the same is not permissible to one who absented either for prelims or mains or interview.

8. The applicant contends that the action of the 1st respondent in not selecting applicant to Indian Railway Accounts Service (IRAS) based on his rank, preference of service, availability of vacancy, his suitability etc., and choosing to select Mrs.Jagiriti Duggar by blocking one vacancy in IRAS after giving 3rd chance to her for conducting medical examination are neither sustainable in the eye of law nor facts of the case. Hence this OA.

9. The Respondents have filed reply statement stating that the UPSC released selection list in May, 2007, in which the candidate was not selected due to pendency of court litigation. Further, the said court proceedings were over and a supplementary list of selected candidates was announced by the 2nd Respondent in 2010. The applicant secured 506th rank. The above said supplementary list was forwarded by the UPSC to the Respondents for service allocation. Accordingly, medical examination of the applicant was conducted and based on rank, preference, medical status and availability of vacancies in his turn in his category he was first allocated to DANICS on provisional basis and later his allocated service was upgraded and confirmed to Indian Railway Personnel Service (IRPS).

10. The Respondents further states that, there was a candidate names Ms.Jagiriti Duggar (Rank-493) of CSE-2016 who was allocated to Indian Railway Account Services on the basis of CSE-2006 keeping in view rank, preference, medical status and availability of vacancies in her turn in her category.

11. The Respondents further state that Ms. Jagriti Duggar did not appear before CSMB, Sucheta Kriplani Hospital (SKH) on 11.11.2010 ie first chance scheduled vide letter dated 27.10.2010. Accordingly she was provided a second chance to appear before CSMB, SKH on 18.01.2011 with the approval of competent authority along with other candidates who were absent on the first chance provided to them to appear before concerned CSMB's for their medical examination. When Ms Duggar did not appear before CSMB, SKH on 18.01.2011 also her candidature for CSE-2006 was cancelled at first instance.

12. The Respondents further submit that later some papers relating to medical examination came to the notice of the 1st Respondent department that includes representation from Ms. Duggar regarding change of date of medical examination and change of correspondence address with respect to this departments first letter dated 27.10.2010 based on which it was decided by the competent authority to give second opportunity again to Ms Duggar as the letter to appear before CSMB, SKH on 18.01.2011 for second opportunity was not sent on her changed address. Accordingly, she was given one more chance and she got her medical examination completed. Further, based on the medical findings provided by the CSMB, SKH she was allocated to IRAS on the basis of CSE-2006. In this regard, it is stated that the candidate was not provided third opportunity. It was only second opportunity provided again as the letter for second opportunity was sent to her on initial address which was changed and the candidate had informed this department about the same earlier itself in response to this

Departments first letter dated 27.10.2010 itself.

13. The Respondents submit that the service allocation is a process of allocating service to the candidates keeping in view parameters such as rank of the candidates, preference, medical status and availability of vacancies in his/her turn in his/her category. A small change in any parameter leads to chain reaction/cascading affect. A vacancy is kept blocked for a candidate if any of the above mentioned parameter is ambiguous. If candidature of any such candidate, for whom a vacancy is blocked, is cancelled than the next eligible candidate's service is upgraded to that blocked vacancy along with up-gradation of service of all other candidates of below rank as a cascading effect and if someone reigns or does not join the service, the vacancy is carried forwarded to the next recruitment year by the concerned CCA's. Accordingly, a vacancy in IRAS was kept blocked for Ms Jagiriti Duggar as per her rank, preference, category and medical status at that time with the approval of competent authority and when she was declared fit by the CSMB she was allocated to IRAS on confirmed basis.

14. It is submitted that the candidates were provided two more chance to complete his/her medical examination besides the medical examination scheduled at the time of interview as per practice being followed at that point of time/CSE years. Further, for that particular CSE-2006 supplementary list, which came in 2010, it was assumed that since it took a lot of time the candidates might not be visiting the Department's website regularly and it would be appropriate to provide ample chance for medical

examination so that no candidate would be left without any communication or medical examination completed.

15. The Respondents further submit that both the candidates belong to general category. Ms.Duggar, being senior in rank, has claim for allocation prior to the applicant. She indicated IRAS at her 8th preference and IRPS at her 9th preference. Therefore she was considered first than the applicant for allocation to IRAS. It is submitted that the applicant indicated IRAS at his 8th preference and IRPS at his 9th preference. At the turn of the applicant , no vacancy was available in IRAS for allocation. Hence he was allocated to IRPS. With these submissions, Respondents pray for dismissal of the OA.

16. We have heard Mr.Peeta Raman, learned counsel for the applicant, Mrs.K.Rajitha, learned Sr Central Govt., Standing Counsel for Respondent No.1, Mr.M.C.Jacob representing Mr.B.N.Sharma, learned Standing Counsel appearing for Respondent No.2 and Mr.S.M.Patnaik, learned Standing Counsel for Respondent No.3. We have also gone through the written arguments filed by the learned counsel for the applicant.

17. In support of their contentions, applicant relied on the following decisions :

(i) OA No.2543/2012, decided on 25.02.2014 of CAT,Principal Bench ;

(ii) WP(C) No.5129/1999, decided on 11.07.2008 by the High Court of Delhi at New Delhi;

(iii) decision of the Hon'ble Apex Court in Prem Prakash Vs. UoI & Ors, dated 22.08.1984 [1984 AIR 1831: 1985 SCR (1) 564];

(iv) OA No.45/2012, decided on 18.04.2013 by CAT,Hyderabad Bench ;

(v) OA No. 1002/2009, decided on 1.4.2010 by CAT, Hyderabad Bench;

(vi) OA No.3866/2012 with OA No.3992/2012, decided on 24.2.2014 by CAT, Principal Bench;

(vii) OA No.216/2004 with OANo.1611/2004, decided on 2.3.2007 by CAT, Principal Bench ;

This Tribunal has gone through the said decisions but those decisions are not applicable to the facts and circumstances of the case.

18. In the above circumstances and in view of the discussions already made, this Tribunal find that the applicant had no right to claim for appointment to the post in question. The applicant has failed to prove that the Respondents have acted arbitrarily and no malafides have been proved by the applicant. This Tribunal does not find any Rules and Regulations have been violated by not giving the post in question to the applicant. Just because third letter was issued to Mrs. Jagrithi Duggar for her medical examination in the circumstances of the case does not confer any right to the applicant to claim the post in question. This Tribunal also finds that Mrs. Jagriti Duggar has not been given the scope for second medical examination alone but other candidates similarly placed were also granted with two chances for medical examination starting from the year 2006 to 2010 as seen from Page-17 of the OA, dated 21.03.2013. The Respondents have filed letter dated 13.03.2016 of the DoP&T which reveals that scope for second medical examination have been given. The name of the applicant was at Sl.No.21 and the name of Ms. Jagriti Duggar was at Sl.No.14. In this context it was submitted by the learned counsel for the

Respondents that there are other selected eligible candidates between Sl.No.14 to 21 and therefore it cannot be said with certainty that the applicant would have got the appointment to the post in question. Ofcourse in the absence of any pleadings regarding the preference of service given by the said candidates and their suitability etc., this Tribunal need not go into that aspect.

19. Accordingly the OA is dismissed as devoid of merits. No order as to costs.

(SWARUP KUMAR MISHRA) (B.V.SUDHAKAR)

JUDICIAL MEMBER

ADMINISTRATIVE MEMBER

Dated : October, 2018.

vi