

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 350/00704/2016

Date of order : 10.6.2016

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

MAHESH KUMAR

VS

RRC (S.E.RLY.)

For the applicant : Mr.S.K.Dutta, counsel

For the respondents : Mr.A.K.Banerjee, counsel

O . R . D . E . RMs.Bidisha Banerjee, J.M.

Heard both the ld. Counsels.

2. This is the second journey of the applicant before this Tribunal. In the present OA the applicant has assailed a speaking order dated 29.1.16 issued pursuant to the direction of this Tribunal dated 21.9.15 passed in OA 1433/15 whereby and whereunder the respondents have intimated to the applicant that his candidature has been rejected on the ground that the IPO affixed with the Application Form was issued prior to the date of publication of the Employment Notice dated 29.9.12 and as per para 7.4 of the Employment Notice Bank Draft/IPO issued before the date of issue of Employment Notice and after closing date will not be accepted and such application form will be rejected and amount forfeited. Also as per para 8.8.5 of the notification dated 29.9.12, RRC/SER would be free to reject any application not fulfilling the requisite criteria, at any stage of recruitment, and if erroneously appointed, such candidates shall be liable for termination from service without notice.

3. Ld. Counsel for the applicant strongly relied upon the decision rendered by this Tribunal in **OA 1792/15 in Giani Prasad -vs- UOI & Ors.** where on an identical premise this Tribunal had opined that the candidature was rejected on flimsy ground by invoking para 7.4. It was not the case of the Railway

Authorities that there was any fraud committed by the applicant. Had they thought of rejecting his candidature by invoking para 7.4, they ought to have done it at the earliest point of time. It became fait accompli that the applicant was allowed to participate in all the Railway tests and examinations and it is too late in the date on the part of the Railways to reject his candidature on a flimsy ground. The Tribunal also held

"The ratio scientiae behind the respondent authority's order in rejecting the candidature cannot be countenanced legally. The fact alleged in the speaking order is not capable of cutting at the root of the very candidature of the applicant. In such a case, we are of the view, that the speaking order has to be set aside and a positive order has to be given for appointment the applicant to the Group 'D' post by the respondent concerned, if he is otherwise eligible, within a period of three months from the date of receipt of a copy of this order and accordingly it is ordered."

For parity of reasons the present applicant being identically circumstanced deserves the same relief from this Tribunal.

4. Accordingly the speaking order dated 29.1.16 is quashed and the respondents are directed to consider the case in the light of OA 1792/15 for issuance of positive order for appointment to Group 'D' post within three months from the date of receipt of the copy of this order.

5. The OA therefore stands disposed of. No order is passed as to costs.

(JAYA DAS GUPTA)
MEMBER (A)

(BIDISHA BANERJEE)
MEMBER (J)

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