CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. O.A. 350/02015/2015 Date of order : 23.12.2015

Present : Hon'ble Mr. Justice G. Rajasuria, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

LAKSHINDRA KUMAR

VS.

UNION OF INDIA & ORS. [RRC (S.E. Railway)]

For the Applicant : Mr. S.K. Dutta, Counsel

For the Respondents : Mr. B.L. Gangopadhyay, Counsel

**O R D E R (Oral)**

**Per Mr. Justice G. Rajasuria, Judicial Member:**

Heard both.

2. This O.A. has been filed seeking the following reliefs:-

"i) An order holding that the Note below the advertisement/employment Notice dated 29.9.2012 at Annexure A-1 is neither bonafide nor justified and cannot be sustained.

ii) An order directing the respondents to cancel, rescind, withdraw, quash and set aside the order dated 7.12.2015 issued by Chairman/RRC/S.E. Railway is bad in law and cannot be sustained.

iii) An order holding that the rejection of candidature of the applicant dated 7.12.2015 on the ground that the IPO date is before the date of publication of Employment Notice dated 29.9.2012 is bad in law and arbitrary and cannot be sustained;

iv) An order directing the respondents to recall the decision regarding rejection of candidature of the applicant and further directing them to give appointment to the applicant as per his merit position with all consequential benefits within period as to this Hon'ble Tribunal may seem fit and proper.

v) An order directing the respondents to produce entire records of the case at the time of adjudication for conscionable justice;

vi) Any other order or further order/orders as to this Hon'ble Tribunal may seem fit and proper."

3. The Ld. Counsel for the applicant placing reliance on the averments in the O.A. as well as the annexures attached thereto would pyramid his argument which could succinctly and precisely be set out thus:-

The applicant applied for the post of Gr. 'D' in response to the Employment Notice No. SER/RRC/02/2012 dated 29.9.2012. While so applying, he enclosed along with it, the IPO purchased before the date of issuance of Employment Notice. However, on that ground at the earliest point of time, his candidature was not rejected, but he was allowed to appear in the written test as well as PET and he came out successful. Thereafter document verification was done and with that also, he came out successful. Whereupon he was subjected to medical examination and he was declared fit. Consequently, he was waiting for his appointment letter. In as much as, he did not receive any appointment letter, he filed earlier the O.A. No. 350/01433/2015, wherein the order dated 21.9.2015, was passed by the CAT directing the respondents concerned to pass a speaking order. Annexure A-4 the speaking order emerged, and the operative portion of it would run thus:-

> " As per Para 7.4 of our Employment Notice No. SER/RRC/02/2012 dated 29.9.2012-"**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 this notification dated 29.9.2012, 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 form service without notice."

4. Challenging and impugning the said Annexure A-4, this O.A. has been

filed.

5. The Ld. Counsel for the applicant would submit that on flimsy grounds the candidature of the applicant was rejected and suitable direction might be given.

6. Per contra, the Ld. Counsel for the respondents would vehemently oppose the O.A. on the ground that appropriately and appositely, correctly and legally, and that too adhering to para 7.4 of the Employment Notice concerned, the rejection of the candidature was made, warranting no interference at the hands of CAT.

7. The point for consideration is as to whether the rejection of the candidature of the applicant invoking para 7.4 of the employment notice at the belated stage is justified and that too when the applicant having participated in the written test and PET, and came out successful

8. The perusal of the records would unambiguously and unequivocally highlight and spotlight the fact that the applicant passed the written test and the PET and he also successfully underwent the document verification and after the medical examination, he was declared fit. Thereafter only his candidature was rejected on the flimsy ground by invoking the said para 7.4. It is not the case of the Railway authorities that there was any fraud committed by the applicant. Had the Railway authorities thought of rejecting his candidature by invoking the 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 day on the part of the Railways to reject his candidature on flimsy grounds.

9. 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 appointing 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.

10. On balance, the O.A. is disposed of. No costs.

(Jaya Das Gupta)
MEMBER(A)

(G. Rajasuria)
MEMBER(J)

SP