



**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH**

Original Application No.350/00132/2016

THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER

THE HON'BLE DR (SMT) NANDITA CHATTERJEE, ADMINISTRATIVE MEMBER

Bikash Mitra

Son of Subrata Mitra

Aged about 31years

By profession Unemployed

At present residing at

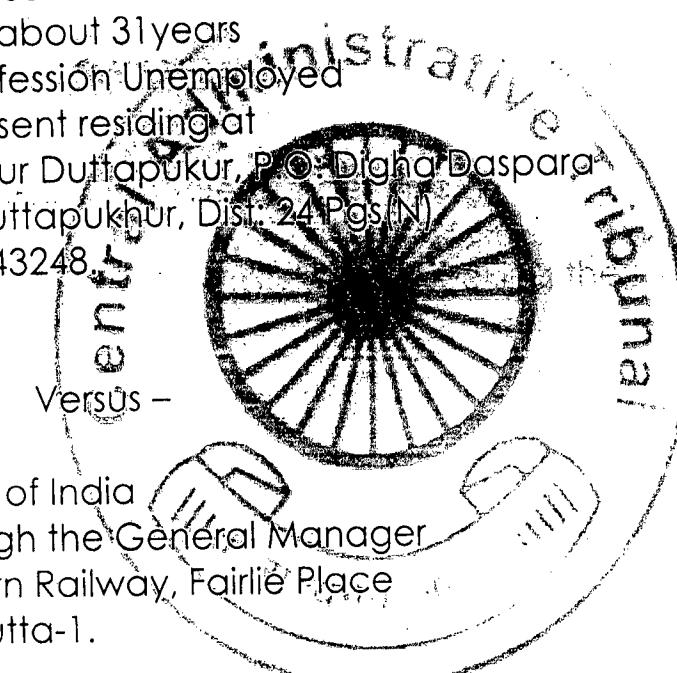
Debipur Duttapukur, P.O: Digha Daspara

P.S: Duttapukur, Dist: 24 Pgs(N)

PIN: 743248

... Applicant

- Versus -



1. Union of India
Through the General Manager
Eastern Railway, Fairlie Place
Calcutta-1.
2. Chief Personnel Officer
Eastern Railway, Fairlie Place
Calcutta-1.
3. Chairman
Railway Recruitment Board/Kolkata
Metro Railway A.V. Complex, Chitpur
Opp. To R.G.Kar Medical College & Hospital
Kolkata-700 037.
4. Secretary
Railway Recruitment Board/Kolkata
Metro Railway A.V. Complex, Chitpur

To R.G.Kar Medical College & Hospital
Kolkata-700 037.

.. Respondents

For applicant (Adv): Mr.C.Sinha

For respondents (Adv): Mr.M.K.Bandyopadhyay

Heard on: 21.03.2018

Date or Order: 19.9.2018

ORDER

MANJULA DAS, MEMBER (J)

In this OA, filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant is seeking the following relief(s):-

"a) To direct the respondents to consider the candidature of the applicant in order of marks/merit in the main // (2nd stage) examination as per CEN No.03/2012 coupled with the choice/option of posts as submitted by the applicant.

b). To direct respondent no.3 to forward/recommend the name of the applicant to the Eastern Railway in accordance marks/merit in the main (2nd stage) examination coupled with the choice/options of posts as submitted by the applicant for appointment.

c) Any other order or order(s) as the Hon'ble Tribunal deems fit and proper."

2. The facts, in brief, are that a Centralized Employment Notice bearing No.03/2012 dated 12.05.2012 was published by

the Railway Recruitment Board inviting applications for filling up certain posts. Accordingly, being eligible, the applicant applied for seven numbers of posts. Call letter bearing Roll No.5071722 was issued to the applicant to appear in the preliminary examination (stage 1) for all notified categories. Having been successful in the preliminary examination (stage-1), applicant was issued call letter to appear in the 2nd stage i.e., main written examination for the categories of posts as specified in the said call letter. The applicant qualified in the main written examination (2nd stage) and the results were published vide notification no. RRB/KOL/SC/RWE/13/Pt.V/1 dated 31.01.2014 wherein applicant (Roll No.5071722) figured against category no.4 (Goods Guard). His testimonials were verified on 04.03.2014 but was declared unfit in A2 medical category attached to the post of Goods Guard vide letter dated 02.07.2014. According to the applicant, though he applied for seven number of posts, he was not considered for other posts. Applicant obtained information under RTI Act that he scored 102.12 points in the main written examination (2nd stage) and one candidate – Moumita Ghosh bearing No.(9021934) who scored 96.09 marks in the said 2nd stage examination, found her name figured in the common waiting list of category nos.1, 2, 3

and 4 and subsequently was recommended for appointment for the post of ECRC. The grievance of the applicant is that despite scoring 102.12 marks applicant has been considered for one post i.e., Goods Guard ignoring his options for other five posts, but Moumita Ghosh, who scored less marks than the applicant, figured in common waiting list of four posts and subsequently recommended for appointment for the post of ECRC. The applicant submitted representation dated 26.12.2015 but to no avail. Hence this OA.

3. The respondents have filed their written statement. They have referred to some relevant and important conditions of the said Employment Notice as under:-

"(A) Medical Standard is indicated as 'C-1' for the post of ECRC and 'A-2' for the post of Goods Guard as per the said Employment Notice.

(B) Para 8 of the said Employment Notice indicates the details about the Medical Fitness Test and elaborates the vision standards for A-2 and C-1 categories

(C) Para 8 Note (iii) is reproduced below:-

"Candidates qualifying in examination(s) for these post but failing in prescribed medical examination(s) will not in any case be considered for any alternative appointment."

(D) Para 10.08 of the Employment Notice (page 15 of the instant OA is reproduced below:-

"All selected candidates will be subjected to medical examination by Railway Medical Authority at the time of appointment and only those conforming to the medical standards as laid down in the Indian Railway Medical Manual and other extant provisions, as the case may be, will be eligible for appointment. Selection does not imply appointment in Railways."

According to the respondents, applicant indicated the post of Goods Guard and ECRC as 1st and 2nd preferences and Moumita Ghosh indicated the post of Commercial Apprentice, Traffic Apprentice and ECRC as 1st, 2nd and 3rd preferences respectively.

She did not indicate her preference for the post of Goods Guard. As the vision standard for A-2 and C-1 medical standards are elaborated in the employment notice, the applicant is aware of the same before submitting his preference at the time of 2nd stage of written statement held on 18.08.2013. According to the respondents, on the basis of her performance Ms. Moumita Ghosh was placed in the common waitlist for the posts of Commercial Apprentice, Traffic Apprentice, ECRC and Goods Guard. It was also further stated that in fact the wait list was made in excess of the actual vacancy to make good any shortfall. Hence the score of candidates figured in the wait list are obviously less than the candidates called and empanelled against actual vacancy. Subsequently, the Railway Board vide

letter No.2012/E(RRB)/25/1 dated 10.10.2014 instructed that no candidate from wait list can be empanelled for the post of Commercial Apprentice and Traffic Apprentice, therefore, Ms. Moumita Ghosh, and waitlisted candidate was considered for ECRC on the basis of merit and performance. Since the applicant scored higher marks he was considered and selected for actual vacancy for the post of Goods Guard on the basis of his 1st preference. Ms. Moumita Ghosh bearing Roll No.9021934 (UR) pursuant to selection of CEN-03/2012 obtained 96.09 as normalised marks as such she was placed in wait listed and subsequently she was empanelled for the post of ECRC on 18.09.2015. The respondents claimed in the written statement that there is no illegality in the entire process.

4. The applicant filed rejoinder. Referring to Note 8 (iii) of the advertisement, the applicant, in the rejoinder, stated that examination was conducted for post(s) and not for a single post and there are provision for medical examination(s) in accordance with medical standard for post(s). According to the applicant, applicant qualified in the written examination for the post of ECRC also coupled with 6 other post including Goods

Guard as per his choice of preference of post. Thus, the applicant should have been medically examined for the post of ECRC and having not done so, the applicant cannot be termed as unfit.

5. Mr.C.Sinha, learned counsel for the applicant submitted that Ms Moumita Ghosh, a wait listed candidate, who got lesser marks than the applicant, given her 3rd preference to the post of ECRC contrary to 2nd preference of the applicant to said post, was empanelled/selected for the post of ECRC ignoring the criteria of merit, which reflects arbitrariness and discrimination in the selection process violating provisions of Article 14 and 16 of the Constitution of India.

6. Mr.M.K.Bandyopadhyay, learned counsel appearing for the Eastern Railway submitted that since the applicant scored higher marks he was selected against actual vacancy for the post of Goods Guard on the basis of his 1st preference and since Ms. Moumita Ghosh obtained less marks she was placed in common wait list. Subsequently, she was empanelled for the post of ECRC from waitlist on the basis of her performance. As such, learned counsel claimed that there is no illegality in the matter.

7. We have heard the learned counsel for the parties, perused the pleadings and materials placed before us. The Centralised Employment Notice No.03/2012 prescribes as under:-

"1) Stages of Exam:-

a) Common Preliminary Examination (i.e. stage I) for all the notified categories.

b) Main (Second stage) Exam for Cat No.1&2 - followed by Verification of documents.

c) Main (Second stage) Exam for Cat No.3&4-followed by verification of documents.

d) Main (Second stage) Exam for Cat No.5&6, qualifying typing test followed by Verification of documents.

e) Main (Second stage) Exam for Cat No.7&8, aptitude test followed by Verification of documents.

2) Preliminary Examination (i.e. stage I) will be held on the same day by all participating RRBs.

3) Candidates should refer para 15 of General Instructions for submission of single (i.e. common) application for Preliminary Exam for all the notified categories to the concerned RRB. Candidates who qualify in the Preliminary (stage I) Exam will again have to apply separately for Main (second stage) Examination for notified categories as Grouped in para 1.06(a)."

Clause 8 of the said Employment Notice No.03/2012 prescribes as under:-

"MEDICAL FITNESS TEST: The candidates recommended for appointment will have to pass requisite medical

fitness test(s) conducted by the Railway Administration to ensure that the candidates are medically fit to carry out the duties connected with the post. Visual Acuity Standard is one of the important criteria of medical fitness of railway staff. The medical requirements against different medical standards for different categories are outlined below:-

- a. A-2. Physically fit in all respects. Visual Standards- Distance vision: 6/9, 6/9 without glasses. Near Vision Sn: 0.6, 0.6 without glasses and must pass test for Colour Vision, Binocular Vision, Field of Vision & Night Vision.
- b. C-I. Physically fit in all respects. Visual Standards- Distance Vision: 6/12, 6/18 with or without glasses. Near Vision Sn: 0.6, 0.6 with or without glasses when reading or close work is required."

Note: (i) The above medical standards (Criteria) are indicative and not exhaustive and apply to candidates in general. (ii) For Ex-Servicemen & PWD different standards will apply. (iii) Candidates qualifying in examination(s) for these post but failing in prescribed medical examination(s) will not in any case be considered for any alternative appointment. (iv) Candidates who do not fulfil the prescribed medical standards need not apply.

8: The applicant in pursuance of Central Employment Notice No.03/2012 applied for seven number of posts and he submitted his order of preference as under:-

Sl.No.	Posts	Order of preference
01	Goods Guard	One
02	ECRC	Two
03	Sr. Clerk-cum-Typist	Three
04	Commercial Apprentice	Four

05	Traffic Assistant	Five
06	Assistant Station Master	Six
07	Traffic Apprentice	Seven

9. Now, the question posed before us by the learned counsel for the applicant is that how one Ms. Moumita Ghosh, a wait listed candidate, who got lesser marks than the applicant with preference of ECRC as third contrary to applicant's second preference , is selected for the post of ECRC ignoring criteria on merit.

10. We note that Ms. Moumita Ghosh who was selected for the post of ECRC had given 3rd preference for the said post whereas applicant given his 2nd preference for the said post. More so, learned counsel for the applicant vociferously argued that Ms. Moumita Ghosh who was selected against her 3rd preference got lesser marks than the applicant. The RTI information furnished on 27.11.2015 reveals that applicant bearing Roll No.5071722 (UR) obtained 102.12 as normalised marks in the 2nd stage written examination of CEN-03/2012. The total number of UR vacancy for the post of ECRC was as under:-

$$UR= 4, UR(OH)= 4, UR(HH)=3, UR(VH)=2$$

The cut off marks for UR candidates for the posts of ECRC, Goods Guard, Senior Clerk-cum-Typist, Assistant Station Master, were 108.2, 92.41, 84.13 and 69.31 respectively. Undisputedly applicant in the 2nd stage Main examination secured 102.12 marks whereas Ms. Moumita Ghosh secured 96.09 marks. Moreover, Ms. Moumita Ghosh who was selected against her 3rd preference for the post of ECRC scored much below than the cut off marks for UR candidate, i.e., 108.2 marks. According to the learned counsel for the applicant, medical examination is conducted for post(s) and not for a single post. The employment notice also prescribes different medical stands for the post of ECRC and Goods Guard. For the post of ECRC the requisite medical standard is A-2 whereas for the post of Goods Guard it is C-1. The requisite medical standards for the A-2 and C-1 had already been quoted above. Thus, the submissions made by the learned counsel for the applicant is hold good.

11. Secondly, if the wait listed candidate Ms. Moumita Ghosh with 96.09 marks much less than the applicant's 102.12 marks can be considered against her 3rd preference i.e., ECRC why the department ignored the case of the applicant for his 2nd preference by conducting his medical fitness test for the post of

ECRC..Accordingly, the decision of the respondents in declaring the applicant unfit irrespective of any post is not acceptable. As such, we are of the view that applicant's candidature ought to have been considered by the railways as per his preference and the prescribed medical examination. Accordingly, the respondents are directed to consider the candidature of the applicant in order of marks/merit in the main (2nd stage) examination pursuant to CEN No. 03/2012 coupled with the choice/option of posts as submitted by the applicant.

12. The OA is disposed of as above. There shall be no order as to costs.

(DR.NANDITA CHATTERJEE)
ADMINISTRATIVE MEMBER

(MANJULA DAS)
JUDICAIL MEMBER

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