



CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 488 of 2011

Present: Hon'ble Ms. Manjula Das, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

DILIP SOW
S/o Late Subal Sow,
R/o Vill & PO - Orphuli,
PS - Bagnan,
Dist. - Howrah,
Pin - 711303.

...APPLICANT

VERSUS

1. Union of India, through
The General Manager,
S.E.Railway,
Garden Reach,
Kolkata - 700043.
2. Divisional Personnel Officer,
S.E.Railway,
Kharagpur,
PO - Kharagpur,
Dist. - Paschim Medinipore.
3. The Additional General Manager,
S.E.Railway,
Garden Reach,
Kolkata - 700043.

...RESPONDENTS.

Heard on : 5.12.2017

Order on : 21.2.2018

For the applicant : Mr.A.Chakraborty, counsel
Ms. P.Mondal, counsel

For the respondents: Mr.S.K.Ghosh, counsel

O R D E R

Per Ms. Manjula Das, Judicial Member

Being aggrieved with non-selection for the post of Gangman in pursuance of the advertisement in terms of notification dated 2.1.1998 the applicant approached before this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :


- a) An order do issue directing the respondents to evaluate the answer sheet as the result of the applicant was no made available as computer did not accept OMR answer sheet;

- b) An order do issue directing the respondents to follow instructions made in the notification dated 2.5.1998 in the matter of evaluation of the answer sheet and declare the result of the applicant for appointment in the post of Gangman.

2. Heard Mr.A.Chakraborty, Id. Counsel for the applicant and Mr.S.K.Ghosh, Id. Counsel for the respondents.

3. The basic grievance of the applicant is that he appeared in the selection test for appointment to the post of Gangman vide notification dated 2.1.1998. He was declared successful in the Physical Endurance Test (PET in short). He was called to appear in the written test. However, due to wrong marking in the OMR sheet the answer sheet was not evaluated. The result of the applicant was not made available as computer did not accept the OMR sheet on the ground of incomplete or wrong marking. Accordingly the applicant prayed for evaluation of the answer sheet and declared the result of the applicant for appointment in the post of Gangman.

4. Mr.Chakraborty, Id. Counsel for the applicant submitted that in pursuance of the advertisement dated 2.5.1998 for the post of Gangman the applicant was declared fit in the Physical Endurance Test and was called for supplementary written test for the said post held on 17.12.2006 where he appeared but was not informed about the result for more than 2-3 years though he was confident enough of his success in the examination. Later on, after making application under RTI Act, 2005, the applicant was informed that he might be one of the candidates who did mistake in the OMR (Optical Marks Reader) answer sheet which laid to rejection of OMR sheet on 18.12.2009. Further the applicant was informed that if he is not satisfied with the reply contained in the letter of 16.12.2009, he may make an appeal/representation to the Additional General Manager, S.E. Railway, Garden Reach, Kolkata. Thereafter the applicant made a representation/appeal before the respondent No.3 to investigate on the point of claim and consider his OMR sheet with a sympathetic view. It was submitted by the Id. Counsel by referring to the appeal made by the applicant on 2.7.2010, it was ordered by the Central Public Information Officer and Dy. Chief Commercial Manager that the OMR sheet of



the applicant is to be supplied to him and in that context the applicant was advised by a letter dated 13.8.2010 to attend the office of Public Information Officer on 23.8.2010 to see his OMR. The applicant on the very day presented himself at the office of Public Information Officer and saw the OMR sheet and found that the said sheet was not checked. He was informed that though he has filled in the boxes provided in the "Community" column in OMR sheet he had made a mistake in darkening the circle provided under the box of the community column and for that the answer sheet was rejected.

It was submitted by Mr.Chakraborty that in 1998 there was no provision of filling up of OMR sheet. If there is any mistake on the part of the applicant in filling up of OMR sheet the applicant cannot be held responsible. It was further submitted by Id. Counsel that the applicant was confident of getting more than 65% in the examination held on 17.12.2006. It was also submitted that according to the Divisional Personnel Officer, S.E.Railway, Kharagpur, that OMR answer sheets were got evaluated in the computer system and the result of many examinations were not made available as the computer did not accept those OMR sheets on the ground of incomplete or wrong marking and the applicant might be one of the candidates who made mistake in the OMR sheet which led to rejection of his OMR answer sheet. As such the applicant prays for evaluation of the answer sheet and to declare the result.


5. On the other hand Mr.Ghosh, Id. Counsel for the respondents by filing the written statement submitted that the selection will be finalised in two stages - (i) Physical Endurance Test and (ii) Intelligence Test. Subsequently the number of vacancies had been increased by taking into account direct recruitment quota (Gr. D) vacancy of Operating and S&T Department. Thus total number of vacancies category wise was UR - 656, OBC - 315, SC - 197 and ST - 144 i.e. total 1312, for which recruitment was going on. It was submitted by Id. Counsel that out of 68,195 applications only 9596 candidates were declared eligible to appear after scrutiny of applications for Physical Endurance Test and after finalisation of Physical Endurance Test, total 2253

successful candidates were shortlisted for next stage of selection i.e. intelligence test.

It was further submitted by Id. Counsel that thereafter the result of Physical Endurance Test was cancelled due to administrative reasons and following the cancellation of result of PET, lot of Court cases were filed before this Tribunal by different candidates. The Tribunal after hearing all the OAs and explaining everything in details passed a common order on 11.8.2004 directing the Railway respondents to go ahead with the second phase of selection i.e. Intelligence Test to fill up the vacancies as expeditiously as possible. The written test was held on 5.3.2006 wherein only 415 candidates of all communities (UR, SC, ST & OBC) were selected for appointment to the post of Group 'D' category. Accordingly, the appointment was made for the medically fit empanelled candidates. Subsequently necessary instructions were received by Kharagpur Division to conduct a supplementary written test for those candidates who had failed to qualify in the written examination held on 5.3.2006.

It was submitted by referring to para 5 (f) of written statement of the respondents, that the supplementary written examination was conducted for 1617 candidates on 17.12.2006 and a select list was prepared for 639 successful candidates of all communities i.e. UR, SC, ST & OBC and they had been appointed after their medical fitness. It is seen that all noticed vacancies for UR community have been filled up but for want of successful SC, ST & OBC candidates notified vacancies of those categories could not be filled up.

The categorical stand of the respondents made in para 12 of the written statement that the process of selection to the post of Gangman has attained finality so there is no way to go back to the previous step, which took place in the year 2006. According to Id. Counsel for the respondents, after a lapse of 5 years, it is not at all possible to evaluate the answer script by an examiner. The selection process is a consolidated topic and it cannot be dealt with in a piecemeal manner. Hence the OA lacks merit and is liable to be dismissed in limine.



6. By countering the arguments advanced by the ld. Counsel for the respondents as well as reply filed by the respondents, ld. Counsel for the applicant by filing rejoinder has submitted that in the recruitment notice dated 2.5.1998 nowhere it was stated that the applicant will have to fill up OMR sheet for the purpose of appearing in the written test for appointment to the post of Gangman in the Kharagpur Division and if the OMR is not filled up properly the OMR sheet will be cancelled. It is also stated in the said notification that selection will be through adjustment of Physical Endurance Test as well as Intelligence Test. The Railway Board for the first time introduced the system filling up of OMR sheet for the purpose of appearing in the written test for appointment to the post of Gangman. According to the ld. Counsel Mr.Chakraborty, the authority concerned cannot go beyond what has been stipulated in the notification. As such the application deserves to be allowed.

7. Heard both the ld. Counsels and perused the pleadings and materials placed before us.

8. An advertisement in terms of notification dated 2.5.1998 was issued by the respondent No.2 on the subject of recruitment of Gangman in Kharagpur Division in the pay scale of Rs.2601-3540/- (RP 97) inviting applications from the candidates for recruitment for the post of 982 numbers of Gangman. Out of total 982, 191 vacancies were for UR, 147 for SC, 108 for ST and 236 for OBC. In the said advertisement it was provided that selection procedure will be held by two stages – (i) Physical Endurance Test and (ii) Intelligence Test.

In pursuance of the said advertisement the applicant along with other candidates applied for the said post by making applications where the call letter was issued to the applicant amongst others being Roll No. GM/2274. The applicant was called for in the Physical Endurance Test where he was declared fit and thereafter he appeared in the written examination held on 17.12.2006. The applicant made grievances before this Tribunal that despite appearing in the written test held on 17.12.2006 after long 2-3 years the result was not published. He then made RTI application on 3.12.2009 and the applicant was

also replied by the authority vide letter dated 18.2.2009 along with the enclosure which amongst other information dated 16.12.2009 of letter of Divisional Personnel Officer, S.E. Railway, Kharagpur addressed to the PIO & ADRM, S.E. Railway, Kharagpur. The applicant was provided opportunity to submit his representation, he had make representation/appeal before the authority where he was given opportunity to go through the relevant file and OMR sheet. Consequently the OMR sheet of the applicant was supplied to him. From Annexure A/4 dated 16.12.2009 issued by the DPO, S.E. Railway, Kharagpur it was intimated in reference to the RTI application made by the applicant, as under :

"No.E/Rect/RTI/GM/DS/2009
To
The PIO & ADRM
S.E.Railway, Kharagpur.

Office of the
Divl. Railway Manager (P)
Kharagpur
Date : 16.12.09

Reg : Information under Right to Information Act'2005

Ref : APIO & Sr. DMM/KGP's letter No. RTI/KGP/09-10
/Dilip Sow/01
Date : 7.12.2009

Sri Dilip Sow, Roll No. GM/2274 appeared along with 1632 examinees in the Written Examination held on 17.12.2006 for appointment as Gangman in the Division. The question cum answer booklets in OMR sheet (Optical Marks Reader) with guidelines thereon were supplied to all the examinees in respective examination centres for answering to the questions. Later on the OMR answer sheets were got evaluated in computer system. The result of many examinees were not made available as computer did not accept those OMR answer sheet on the ground of incomplete or wrong marking. The representationist might be one of the candidates who did mistake in OMR answer sheets which led to rejection of his OMR answer sheets.

This is for your information please.

Sd/-
Divl. Personnel Officer
S.E.Railway, Kharagpur."

9. Now the question before us is whether the applicant at any point of time agitated or questioned the supply of specimen copy of OMR sheet followed by instruction while despatching the call letters.

The categorical stand made in para 5(g) of the reply of the respondent authorities that while despatching the call letters individually a specimen copy



of the OMR sheet followed by instructions were sent to each eligible candidate for their proper guidance.

We have also noted from the Annexure A/4 dated 16.12.2009 of the department's letter in regard to the RTI application that a question cum answer booklet with OMR sheet with guidelines thereon were supplied to all the examinees in respective examination centres for answering to the questions. The applicant either in his pleadings or in the rejoinder failed to counter the statement made by the respondent authorities regarding the guidelines supplied towards the completion of OMR sheet. From Annexure R/2 i.e. OMR sheet of the applicant it is vividly clear that Clause 12 "Community" column is blank.

We further note that once the guidelines/instruction is followed by the department so as to streamline the recruitment against the vacancies, the authority has to go by the said formality not only minutely but distinctly and in our view for making the selection, no such flaw has been committed by the respondent authorities. While going through the recruitment process leading to the appointment, no flaw has been apparently visible. The OMR sheet of the applicant has fully established that there is lack of formalities to complete the OMR sheet.

10. After taking into account the entire conspectus of the case, we do not find any merit in the present case. As such the OA is dismissed. No costs.

(DR. NANDITA CHATTERJEE)
ADMINISTRATIVE MEMBER

(MANJULA DAS)
JUDICIAL MEMBER

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