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**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA**

No.O A/350/1468/2018

Date of order : 01.10.2018

**Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr.(Ms) Nandita Chatterjee, Administrative Member**

Arindam Sen,
Son of Siddhartha Kr. Sen presently
Residing at 5 No. Pairakhana Road,
PO Nutanganj Burdwan 713102

.....Applicant

- Versus -

1. The Chairman, Railway Board,
Rail Bhavan, Raisina Marg,
New Delhi 110003;
2. The Executive Director(EN),
Railway Board, Ministry of Railways,
Rail Bhawan, New Delhi-110001;
3. The Director/Dy. Director(Res),
Railway Board, Ministry of Railways,
Rail Bhawan, New Delhi
Pin-110001;
4. The Chairman, Railway Recruitment Board,
Kolkata Metro Railway AVG Complex Chitpur,
Opp. To R.G. Kar Medical College & Hospital,
R.G. Kar Road, Kolkata 700037;
5. The General Manager, Eastern Railway,
17, Netaji Subhas Road,
Kolkata -700001

.....Respondents

For the applicant : Mr. G.C. Chakraborty, counsel

For the respondents : Mr. M.K. Bandyopadhyay, counsel

ORDERBidisha Banerjee, Judicial Member

Admittedly the applicant is suffering from mental illness, but aspiring for an employment under the Railways he has come up with this O.A. seeking consideration against Employment Notification No.2/2018 on the ground that no provision for mentally challenged have been provided by the Railways which violates Section 37 of Rights of Persons with Disabilities Act, 2016 inasmuch as the act mandates reservation for mentally disabled.

2. A representation has been preferred to the Chairman, Railway Recruitment Board (RRB) on 04.07.2018 seeking information in regard to the candidature of the present applicant, by his father namely Siddhartha Kumar Sen.

3. Ld. counsel for the applicant would vociferously urge that the date of examination is scheduled on 10.10.2018 and if the applicant is not allowed to appear at the examination, he would be seriously prejudiced.

4. Ld. counsel for the respondents on the other hand would submit that the applicant while preferring his application and filling in the format against the employment notification did not seek consideration as a person with mental disability, rather he applied against the General category, therefore, he is estopped from seeking consideration otherwise. Ld. counsel would produce the copy of the application filled in by the applicant which in fact demonstrates that although provisions were there to seek consideration on the ground of mental illness, the applicant chose not to avail of such opportunity and, therefore, Ld. counsel would vehemently oppose the admission of the O.A. He would submit that the O.A. is liable to be dismissed as the applicant has not come up with clean hands.

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5. We heard the ld. counsel for the parties and perused the record.
6. We note that the applicant has in fact not sought for consideration as a mentally challenged person and his father has admitted in his representation dated 25.04.2018 as under:-

".....In this connection, it may kindly be noted that my son Sri Arindam Sen, though belongs to the category of mentally challenged/mentally ill persons, but has applied under Group D posts under the Railway Recruitment Board as a candidate of General category due to lack of not mentioning of that very category "Mentally challenged/mentally ill persons" in that advertisement (CEN-02/2018) under Railway Recruitment Board. Due to such lapses, his candidature may perhaps be treated under a candidate of 'General Category' instead of as a candidate under the category "Mentally challenged/ mentally ill persons" during scrutiny."

In view of such candid submission, no relief can be granted to the present applicant.

7. However, in view of the fact that he has applied for appointment against General category allegedly due to lack of specification to enable the mentally challenged persons to apply, the O.A. is disposed of with a direction upon the applicant to seek appropriate consideration before the Chairman, Railway Recruitment Board within two days. On such representation, the Chairman, Railway Recruitment Board would appropriately consider the matter and issue his orders before 10th of October, 2018 which shall accordingly govern his entitlement.

8. The O.A. is disposed of. No cost.
9. Let an urgent copy of this order be provided to ld. counsels.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member