

CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH

OA 1104/2012

Date of Order: 4/12/2015

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

Shri Mriduranjan,  
Roll No. 41114528,  
Son of Late Ram Bachchan Prasad Singh;  
Aged about 34 years,  
Residing at Shishuranjan,  
Karyananad Nagar, Near Bidyut Colony,  
Purani Bazar, Lakhisaraj (Bihar),  
Pin – 811311.

... Applicant.

Versus

1. Union of the India  
Through the General Manager,  
Eastern Railway,  
Kolkata - 700001.
2. The Chairman,  
Railway Recruitment Cell,  
56 C.R. Avenue,  
Kolkata - 700012.
3. The Assistant Personnel Officer,  
Recruitment Railway Recruitment Cell,  
56 C.R. Avenue,  
Kolkata - 700001.

... Respondents.

For the Applicant(s) : Mr. A. Chakraborty

For the Respondent(s) : Mr. A.K. Guha

ORDERPer Dr. Nandita Chatterjee, Administrative Member:

Aggrieved with the rejection of his candidature for the post of Group-D in response to Employment Notice No. 0106, the applicant has approached the Tribunal paying for the following relief:

"8.(a) Action of the respondents by not including the name of the applicant in the list of eligible candidates is not tenable in the eye of law and therefore the decision may be quashed.

(b) An order do issue directing the respondents to recommend the name of the applicant for his appointment in Group-D post in the Eastern Railway.

(c) An order do issue directing the respondents to produce the verification report of candidates before the Hon'ble Tribunal so that conscionable justice may be administered."

2. Heard Ld. Counsel for both parties. Perused pleadings and documents on record.

3. The case of the applicant, as submitted by the Ld. Counsel, is that the applicant had applied in response to Employment Notice No. 0106 inviting applications for formation of panel for filling up various categories of Group-D posts. The applicant appeared in the Written and Physical Efficiency Tests respectively and, although the applicant was purportedly successful in such tests, his candidature was rejected on the alleged ground that para 6 of the application form was not written by the candidate. The applicant, thereafter, obtained information under Right to Information Act, 2005, which revealed that the actual cause of rejection was that he did not write in his OMR sheet the paragraph which was given in paragraph 3 (three) of the question booklet and that the earlier cause of rejection mentioned erroneously in office order dated 10.12.2008 was regretted. Thereafter, a series of litigations followed with candidates, including the present applicant, having filed different O.As. before the CAT, Kolkata Bench challenging the action of Respondents in rejecting their candidature and, finally, with reference to directions of Hon'ble High Court of Calcutta in W.P.C.T. No. 45/2009, the Tribunal passed an order dated 09.04.2010 in O.A. 706/2009 and other O.As. in which the Tribunal had held that the rejection of candidature of applicants was unreasonable and arbitrary and quashed such rejection order. As the Tribunal had observed that the rejection of candidature of applicant is not sustainable, the

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candidature of the applicant cannot be rejected on the self same grounds and, accordingly, the applicant had approached the Tribunal for relief.

The applicant, inter alia, has advanced the following grounds in support of his claim:

- (a) That, when the Tribunal had already observed while disposing of the case of the applicant and others, that the rejection of the candidature of the applicant is not sustainable, the candidature of the applicant cannot be rejected on the self same grounds.
- (b) That, there was no allegation of impersonation against him.

4. Per contra, Respondents have argued as follows:

That the Respondent authorities had issued an Employment Notice E.N.No. 0106 and a provisional part panel consisting of 3820 candidates was published by RRC-ER on 10.08.2009. Being aggrieved, some of the candidates filed O.As. against Respondent authorities and the Tribunal disposed of the said O.A. No. 706/2009 on 20.08.2009 with certain directions on the Respondent authorities. Being aggrieved with the orders of the Tribunal, a group of empanelled candidates approached the Hon'ble High Court of Calcutta by filing WPCT No. 278/2009, which was disposed of by quashing the order of CAT, Kolkata dated 20.08.2009 and directing the CAT, Kolkata to rehear the matter after writ petitioners were arrayed as parties. O.A. 706/2009 along with other O.As. and M.As. were finally disposed of by the Tribunal by an order dated 09.04.2010 in which the rejection orders in individual cases stood quashed and the candidature of applicant candidates were directed to be reconsidered from the stage from where it was stopped. The Respondents were also accorded liberty to scrutinize on their own the rejection of 2.6 lakh candidates (as admitted by the Respondent authorities) and, thereafter, upon completion of scrutiny, if

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any or some of the candidates or any other rejected candidates were found to be coming within the zone of consideration according to merit vis-à-vis the empanelled candidates in the provisional panel, then their names were directed to be interpolated in the provisional list at appropriate places. The Respondent authorities, in obedience to the CAT, Kolkata order dated 09.04.2010, thereafter, published a provisional modified interpolated panel of 5512 candidates strictly according to merit and, as the applicant of the instant O.A. had failed to reproduce on the OMR sheet, as per instructions, the paragraph of page no. 3 of the question booklet delivered to him at the time of examination, his candidature was cancelled when detected at a later stage. The communication that para 6 in application form was not written by the candidate was discovered to be an erroneous communication, which was withdrawn and the actual cause of rejection was communicated to the applicant on 02.07.2009, the correct reason for rejection of the applicant's candidature being "you did not write the paragraph which was given in page 3(three) of Question Booklet in the OMR Sheet".

That, it was clearly noted in the Notification No. 0106 that admission to be examination centre is provisional as the applications are fully scrutinized later on and, in case a candidate does not fulfil the entire requirements prescribed in the Employment Notice, his/her candidature is liable to be rejected even at a later stage, when the deficiency is noticed. Mere issue of call letter for appearing in written examination by RRC-ER, does not confer any right for any subsequent stage of recruitment process or placing his/her name in the panel. According to the Respondents, as the applicant, in the instant O.A., had not reproduced the paragraph given in page 3 (three) of question booklet of OMR sheet, his candidature was

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rejected and the reason of rejection being based on valid grounds, the instant O.A. is liable to be rejected.

5. The point of determination in instant O.A. is whether the rejection of the candidature of the applicant was invalid.

6. At the outset, we refer to the orders of the Tribunal in O.A. No. 706/2009 and other O.As. and M.As. as issued on 09.04.2010, which has been relied upon by both the applicant and Respondent authorities. The operative part of the order is reproduced below:

*"30. In view of the above position as admitted by the railway respondents, and keeping in view the observations of the Hon'ble Supreme Court in Bisco Lawrie case (supra), we are of the view that the rejection of the candidatures of the applicants herein is unreasonable arbitrary and cannot be supported and hence such rejection orders in individual cases stand quashed and their candidature be reconsidered from the stage it was stopped. In order to provide equal opportunity to all those similarly placed candidates who may not have come before us, we further direct that the recruitment cell shall issue appropriate notice within a month from the date of this order, giving one month's time from the date of such notice to them to submit representations against such cancellation (those who have already made representation in response to earlier notice need not apply against) and consider the same accordingly in the light of our observations made above. The respondents shall also have the liberty to scrutinize on their own the rejection of 2.67 lakhs candidates as admitted by them. After completion of scrutiny, if any or some of the applicants or any other rejected candidates are found to be coming within the zone of consideration according to merits vis-à-vis the empanelled candidates in the provisional panel, then their names may be interpolated in the provisional list at appropriate places and thereby excluding equal number of candidates in the existing provisional panel from the bottom. Entire exercise be concluded and revised panel published within six months from the date of this order and till then the existing provisional panel shall not be operated or if any appointment order has been issued, the same may be kept in abeyance."*

Upon examination of the above operational paragraph of the order, the following are inferred:

- (a) Rejection of the candidature of the applicants in various O.As. so considered by the Tribunal vide its order dated 09.04.2010 was

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found to be unreasonable and arbitrary and hence such rejection orders in individual cases stood quashed.

(b) That the candidatures of such individual applicants were to be considered from the stage at which it was stopped.

(c) To provide equal opportunity to all similarly placed candidates, who may not have approached the Tribunal. The Recruitment Cell was directed to issue appropriate notice within a month from the date of the order of the Tribunal giving one month's further time to such candidates to submit representations against such cancellation and those who had made such representations earlier were not to apply afresh.

(d) Such representations to be considered by the Respondent authorities.

(e) Respondent authorities will also have the liberty to scrutinize the case of 2.6 lakh rejected candidates and, after completion of scrutiny, if some of the applicant or any other rejected candidates are found to be coming within the zone of consideration according to merit vis-à-vis the empanelled candidates in the provisional panel, then their names may be interpolated in the provisional list at appropriate places thereby excluding equal number of candidates in the existing provisional panel from the bottom and that the entire exercise was to be completed within six months from the date of the order.

The highlighted inferences as deciphered from the above are as follows:

(i) That the individual rejections having been quashed, the

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candidature of the applicant were to be considered from the stage it was stopped.

- (ii) The Respondents had liberty to scrutinize the cause of rejection of 2.6 lakh rejected candidates.
- (iii) If any such rejected candidates come within the zone of consideration, according to merit, vis-à-vis the empanelled candidates, their names to be interpolated suitably in the provisional list.

It is noted herein that emphasis of the order of the Tribunal was on merit and that while individual rejections were quashed by the Tribunal, the Tribunal provided liberty to the Respondents to reconsider the candidature of each of the applicants solely on the ground of merit. The Respondents have confirmed in their affidavit that the final provisional panel was prepared strictly in accordance with and have further admitted that the earlier cause of rejection as communicated to the candidate vide RRC's reference dated 10.12.2008, namely that para 06 in application form not written by the applicant, was later withdrawn vide a further communication dated 02.07.2009 and the actual cause of rejection of the candidate was noted as follows:

"You did not write the paragraph which was given in page 3(three) of Question Booklet in the OMR Sheet." (Annexure-A/1 and A/2 to the O.A.)

It has been admitted by the applicant and confirmed by the Respondents that the applicant was given an opportunity to appear in the RR Office on 20.07.2009 for inspection of documents for rejection of his candidature against Employment Notice No. 0106 of 2008 for recruitment in Group-D post and that, he, after having personally inspected the OMR sheet on 20.07.2009, had submitted a written statement dated 20.07.2009

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with his signature and thumb impression (Annexure-A/5 to the O.A). Annexure-A/5 to the O.A. also contained written statement of the applicant as submitted after inspection of his OMR sheet. Such copies as annexed as A/5 as the O.A. being illegible, the Respondent authorities had been directed subsequently by the Tribunal to furnish the copy of the original OMR sheet of the applicant as well as the copy of the statement of the applicant dated 20.07.2009. On 12.10.2018 the Respondents had furnished the following documents:

1. Photo copy of OMR Sheet.
2. Copies of two letters of Sri Mriduranjan dated 20/07/2009.
3. Copy of letter of CPO (Admn.) & PI to Mriduranjan.
4. Letter of AGM/E Rly. & Appellate Authority to Mriduranjan dated 12/01/2010.

At the outset, the copy of the applicant's OMR sheet is examined. The marked portion, which is the cause of rejection of the applicant is perused in detail. The instructions were as follows:

"In your own running handwriting reproduce the paragraph given in the Page-3 of the Question Booklet in the line below."

The applicant in his own handwriting has written as follows:

"In your own running handwriting reproduce the paragraph given in the Page-3 of the Question Booklet in the below."

The actual directions were that there was a paragraph noted in page 3 of the question booklet and candidates were directed to reproduce the contents of the said paragraph 3 in the space below in the OMR sheet but the applicant had reproduced the question itself in the OMR sheet and not reproduced the para 3 in his own handwriting in response to the directions in the answer sheet.

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The clear copies of the applicant's written statement as made available by the Respondent authorities are perused thereafter and the same are reproduced below, exactly in the language in which the written statements were furnished:

"सेवा में,

सहायक कार्मिक अधिकारी

कोलकाता मर्ली सेल, पूर्व रेलवे कोलकाता

विषय:- श्री.एम.आर.श्रीट दिखाने के सम्बन्ध में

महोदय,

सविनय निवेदन है की मैं R.R.C कोलकाता द्वारा आयोजित पद

ग्रुप-डी की लिखित परीक्षा पास कर शारीरिक दक्षता जाँच परीक्षा एवं

प्रमाणपत्रों के सत्यापन में भाग लिया था, इन प्रक्रियाओं में कहीं भी मेरी उम्मीदवादी

के विरुद्ध कोई साक्ष्य नहीं मिली थी, परंतु तब आवेदनक मेरी उम्मीदवादी आवेदनपत्र के

पारा. ६ वही भरे जाने की बात कह कर निरस्तीकरण कर दी गई. तब मैंने पुनः अपील

२३-१२-२००८ की किया, उसके बाद भी ०६-०४-०९ तक आपके द्वारा हमें कोई सूचना नहीं

दी गई की आपका अपील सत्य अथवा असत्य है तब मैंने ०६-०४-०९ को सूचना के अधिकार

के तहत आपसे हमने परा ०६ की क्षमा प्रती की माँग की थी, तब आपके द्वारा पता में हमसे पुनः

१०-०६-०९ को सूचना जान संपर्क अधिकारी सह मुख्या कार्मिक अधिकारी पूर्व रेलवे कोलकाता ७००००९

की दी. तब फिर जाकर उसका जवाब हमें ०७-०७-२००९ को दिया गया, उससे मैंने परा-०६ की बात ना

कहकर श्री.एम.आर.श्रीट में पारग्राफ नहीं भरी जाने की बात कही गी, जबकि सत्य यह है की हमने स्वयं

परा-०६ और श्री.एम.आर.श्रीट का पारग्राफ भरा है.

अतः मुख्य कार्मिक अधिकारी के अनुरोधर हमसे संबंधित सारी कामना के साथ श्री.एम.आर.

श्रीट का मूल प्रती दिखाने की कृपा की जाय जिसके लिए श्रीमान का सदा आभारी रहूँगा.

आपका विश्वासी  
नाम:- मृदुंजन

DT. 20.07.2009

"सेवा में,

उपमुख्यपुत्रमुख कार्मिक अधिकारी भारती

R.R.C कोलकाता

विषय:- OMR SHEET दिखाने के संबंध में

महोदय

सविनय निवेदन पूर्वक कहना है की मैंने आज सुबह सहायक कार्मिक अधिकारी की

सूचना दिया था मैंने C.P.O (Admn) P.I.O प्रक RRC-ER/RTI 17/2009 दिनांक -

०२-०७-०९ के आधार पर OMR SHEET देखा जा रहा है

OMR SHEET को मेरे को दिखाया गया है उससे देखा जा Question booklet

page-3 में जो Paragraph था वह OMR SHEET में न लिखकर मैंने In your own

running handwriting reproduce the paragraph given in the Page -3 of the question

booklet in the below लिख दिया था। जो विषय Question booklet Page -3 में था वह नहीं लिख

सका। जिसके लिए मैं क्षमाचार हूँ।

आपका विश्वासी

मृदुंजन

रोल नं.-411114528

Date-20-07-09"

मा.ल.

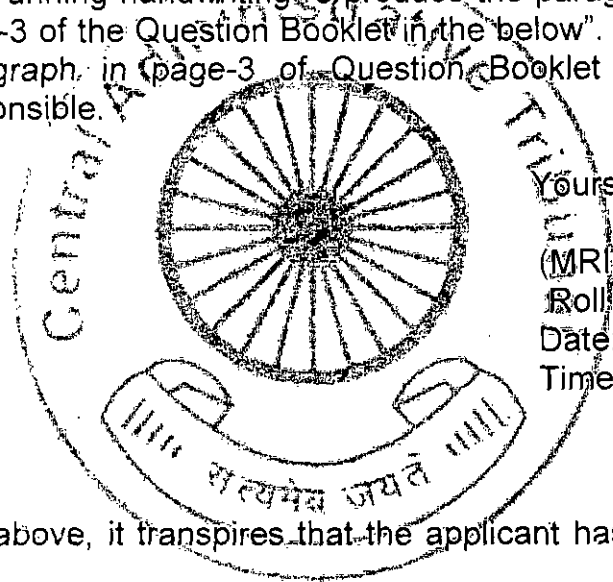
The Respondents have furnished an English translation of the above statement, which is reproduced below:-

"Dy. Chief Personnel Officer(Rectt.)  
Railway Recruitment Cell  
Eastern Railway  
Kolkata

Sub: Regarding perusal of OMR Sheet personally.

I beg to state that in reference to the letter of CPO(A) & PIO's letter No.-RRC/ER/RTI/17/2009 dated 02/07/2009, I want to peruse my OMR Sheet for which information has been given to Asst. Personnel Officer to day morning.

I was shown the OMR Sheet. In the instruction given in OMR Sheet, it was mentioned to re-produce the paragraph given in the page-3 of the Question Booklets. I wrote "in your own running handwriting re-produce the paragraph given in the page-3 of the Question Booklet in the below". I did not write the paragraph in page-3 of Question Booklet for which I am responsible.



Yours faithfully,

(MRIDURANJAN)  
Roll No.-41114528  
Date: 20/07/2009  
Time: 02:50"

From the above, it transpires that the applicant has clearly admitted that he was not able to correctly reproduce the paragraph given in page 3 of the question booklet in his own running handwriting and that he is responsible for the said lapse.

7. As the applicant had made a mistake in answering in the OMR sheet, he had little scope of being included in the zone of consideration on the basis of merit. The candidate has advanced the ground that when the Tribunal had observed that the rejection of the candidature of the applicant was not sustainable then on the self same grounds candidature of the applicant cannot be rejected. It is seen that the original ground adduced by

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the Respondent authorities in the rejection of his candidature was withdrawn and the actual cause of rejection was thereafter conveyed on 02.07.2009. It is nowhere averred by the applicant that the actual cause of rejection had been challenged by the applicant in the O.As. which were disposed of by the Tribunal on 09.04.2010. In the absence of such averments, we cannot conclude that the rejection of the candidature was on the self same ground.

The actual reason for rejection of the applicant's candidature contains no allegation of impersonation either.

The Tribunal, while disposing of the O.As. on 09.04.2010, had directed and given liberty to the Respondents to scrutinize each representation and rejection on merit. Admittedly, the applicant had not filled his OMR sheet accurately and hence has not been able to convincingly justify that despite such error, he deserves to be considered on merit for empanelment in the provisional list.

It is a settled principle of law that a candidate does not have any legal right to be appointed. In terms of Article 16, he has the right only to be considered therefor and such consideration is ordinarily required to be made in terms of existing rules. It has not been established that the Respondents have violated any rules in course of the recruitment process.

As held in the case of **K.H.Siraj Vs. High Court of Kerala, (2006) 6 SCC 395**, persons, who were not eligible candidates cannot question the legality or otherwise of the select list.

It has been further held in **B.R.Bapuji (Dr.) Vs. Dr. N.Sivaramamurthy, Registrar, Telugu University, (1994) 11 LLJ 650 (AP)** that the Court will not assess the relative merit of the candidates interviewed by the selection committee. This ratio has been reiterated in

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**Vijay Syal Vs. State of Punjab, (2003) 9 SCC 401**, in that marks given by interview committee are not subject to judicial review unless malafide or arbitrariness are alleged. In **S.L.Soni Vs. State of M.P., 1995 Supp (3) SCC 156**, it has been held that, while exercising the power of judicial review, the court will not evaluate the comparative merits or suitability of candidates.

8. The applicant/candidate has admitted that he has filled part of the OMR sheet inaccurately. Such inaccuracy does not strengthen his claim to be considered on merit as the Respondent authorities have standardized OMR sheets and Question Papers. Hence, correct response is to be recorded in OMR sheet in response to the question paper and this is an absolute necessity as per the examination system. We, therefore, cannot find any infirmity in the action of the Respondent authorities in rejecting the applicant's candidature on account of inaccurate writing in the OMR sheet. We are also of the considered view that the Tribunal had not quashed individual rejections on merit but had given a liberty to all the applicants in the various O.As. to be reconsidered afresh on the basis of merit and if the applicant has not qualified on merit thereafter, his claim for being considered for empanelment does not arise.

Hence, in the background of our findings on facts as well as law, we are of the considered view that this application does not succeed on merit and is dismissed accordingly. There will be no orders as to costs.

(Dr. Nandita Chatterjee)  
Member (A)

(Manjula Das)  
Member (J)