

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**

Date of order: 11.12.2018

**Present : Hon'ble Mr. A.K. Patnaik, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member**

(i) O.A. 1214/16 Rabin Karmakar,
Son of Sadhan Chandra Karmakar,
Aged about 40 years,
Residing at Village Baghadabar,
Post Office – Sanka,
District - Purulia,
Pin Code – 723121.

(ii) O.A. 1215/16 Gopal Krishna Prasad,
Son of Late Bindeshwari Prasad Singh,
Aged about 41 years,
Residing at Village – Lodipur,
Post Office – Bhagalpur,
District – Bhagalpur. Pin Code no. 812001.

Applicants

Versus

1. The Union of India,
Through General Manager,
Eastern Railway,
Fairlie Place,
Kolkata – 700 001.
2. Chief Personnel Officer,
Eastern Railway,
Fairlie Place,
Kolkata – 700 001.
3. The Chairman,
Railway Recruitment Cell,
Eastern Railway,
56, C. R. Avenue,
Kolkata – 700 012.

... Respondents.

For the Applicant : Mr. A. Chakraborty, Counsel

For the Respondents : Mr. A.K. Guha, Counsel

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ORDER (ORAL)

Per Dr. Nandita Chatterjee, Administrative Member:

Two Original Applications bearing Nos. 1214/2016 and 1215/2016 have been taken up together for adjudication on account of commonality of facts as well as points of law.

2. Heard both Ld. Counsel, examined pleadings and documents on record.
3. Ld. Counsel for the applicant submits that the applicants, pursuant to an advertisement made in 2006 by the respondent authorities, applied for consideration of their candidature. The applicants appeared in the written test and qualified therein. They also qualified in the PET test. In the final panel, however, their names were not included and the applicants, along with others, approached the Tribunal earlier in O.A. No. 903 of 2012, praying for a direction on the respondents to recommend their names for appointment as a good number of vacancies have not been filled up consequent to non-appearance of a number of empanelled candidates. The respondents, in compliance to the Tribunal's directions dated 26.11.2015, passed a speaking order, without however, complying with the directions therein. Hence, the applicants have approached the Tribunal in the instant O.A.s, challenging the speaking order (Annexure A-3 to the O.A.) issued on 28.6.2016 by the respondent authorities.
4. According to the Ld. Counsel for the applicants, the prayer of the applicants in the instant Original Application are well covered by the orders dated 8.3.2016 of this Tribunal, wherein, a Division Bench in O.A. No. 520 of 2016, 521 of 2016, 522 of 2016, 523 of 2016, 524 of 2016, 525 of 2016, 526 of 2016, 527 of 2016, 528 of 2016, 529 of 2016, 530 of 2016, 531 of 2016, 532 of 2016, 533 of 2016, 534 of 2016, 535 of 2016, 536 of 2016, 537 of 2016, 538 of 2016, 539 of 2016, 540 of 2016, 541 of 2016 and 542 of 2016 had issued certain directions to empanel the applicants as per law within a specific time frame.
5. According to the Ld. Counsel for the applicants, as the applicants in the 23 O.A.s disposed of by orders dated 8.3.2018, had also challenged a speaking

46

order which had rejected their candidature on similar grounds, the orders of the Tribunal dated 8.3.2018 would be squarely applicable in the case of the applicants in the instant two Original Applications No. 1214/16 and 1215/2016 too.

6. The impugned memorandum at A-3 to the O.A. dated 28.3.2016 is extracted below with reference to its operative content:-

"Only qualifying in the Written Examination and PET does not confer any right to any candidate for calling in the Medical Examination, Candidates are called for medical examination strictly on the basis of merit in the ratio 1:1 against the total notified vacancy, who are come into the zone of consideration as per merit, he/she will be called for medical examination.

That comparing the all office records as well as the record of result, finally it is seen – Sri Rabin Karmakar (OBC), Roll No, 31206878 scored 96.00 marks out of 150.

It is seen that the following, entire formalities as well as the Railway Boards guidelines, the list of qualified candidates has been considered and revised and interpolated panel has been prepared as per merit and as directed by Hon'ble Tribunal in OA No. 706/2009, order dated 09.04.2010 and the same has been uploaded in the RRC/ER's website as revised panel in which as per merit list the last empanelled OBC candidate who was called for Medical Examination scored 98.33 marks out of 150 marks against E.N. No. 0106.

As a result Sri Rabin Karmakar-(OBC) Roll No- 31206878 could not be considered for further process of recruitment.

7. The Tribunal in its orders dated 8.3.2018 in O.A. No. 520 of 2016 and 22 other O.A.s had referred to the speaking order challenged therein and had observed as follows:-

"28. The ground taken by the respondent authority in their speaking order that – "only qualifying in the Written Examination and PET does not confer any right to any candidate for calling in the Medical Examination, Candidates are called for medical examination strictly on the basis of merit in the ratio 1:1" is not applicable in the present case inasmuch as at the time of advertisement made in the year 2006, the RBE No. 73/2008 was not borne. More so, despite clear direction of this Tribunal to empanel the applicants after subjecting them to medical examination and depending upon the vacancies, they should be given offer of appointment as per law, however, the respondent authority vide speaking order dated 18.6.2016 deviated the entire logic which is derived from judgment and order dated 17.11.2015 passed in O.A. Nos. 1132/2012, 724/2013 and 695/2013. Hence impugned speaking order dated 18.2.2016 is not sustainable under the law. Accordingly, the same is set aside and quashed."

The Tribunal had also in its order dated 8.3.2018 concluded as follows:-

"33. After taking into entire conspectus of the case, we direct the respondents to empanel the applicants in view of the order passed by this Tribunal on 17.11.2015 in O.A. Nos. 1132/2012, 724/2013 and 695/2013 depending upon the vacancies exists at that relevant period i.e. 4.6.2013 under Employment Notice No. 01-06 as per merit and consider

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the case of the applicants with due verification of the status of the applicants in regards to the participation in the proceedings of O.A. Nos. 1132/2012, 724/2013 and 695/2013 and implement the order dated 17.11.2015 accordingly as per law within a period of four months from the date of receipt copy of this order and issue offer of appointment in accordance with law."

8. Upon examination of records, it is seen that in the speaking order dated 28.6.2016, the respondents had rejected the candidature of the applicants in O.A. No. 1214 of 2016 and 1215 of 2016 on similar grounds and, accordingly, as urged by the Ld. Counsel for the applicants, the decision arrived at by this Tribunal on 8.3.2018 and its relevance to the instant O.A.s deserves consideration in the context of the two instant applicants.

9. Accordingly, we hereby direct the respondents to examine the case of the applicants as dealt with in speaking order dated 28.6.2016 and to revisit the same in the light of directions of the Tribunal in O.A. No. 520/16 (and 22 analogous O.A.s) and, thereafter, in case the applicants in the two instant O.A.s are similarly circumstanced, and, if vacancies exist at the relevant period, reconsider the case of the instant applicants in the light of the directions of the Tribunal dated 8.3.2018 in O.A. No. 520/2016 (and 22 other analogous O.A.s).

The entire exercise should be completed within a period of six months from the date of receipt of a copy of this order.

10. With these directions, the O.A.s bearing Nos. 1214/2016 and 1215/2016 stand disposed of. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(A.K. Patnaik)
Judicial Member

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