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**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI**

O.A.No.210/00712/2015

Dated this Wednesday the 6th day of February, 2019

**Coram: Hon'ble Dr. Bhagwan Sahai, Member (A).
Hon'ble Shri R. N. Singh, Member (J).**

1. Mrs. P. Latha
Age-40 years,
Occupation: Housewife,
residing at G69 Sonynagar,
Modi Hudco, Dist-Solapur,
Maharashtra-413003.

...Applicant.

(By Advocate Shri A. Tamhane).

Versus

1. Union of India,
through General Manager,
Central Railway Headquarters Office,
CST, Mumbai-400001.
2. Central Railway,
Railway Recruitment Cell,
Office at 1st Floor, Chief
Project Manager (Conversion)'s
Office, P D'Mello road, Wadi
Bunder, Mumbai-400 010.

... Respondents.

(By Advocate Shri V. S. Masurkar).

O R D E R (O R A L)

Per : R. N. Singh, Member (Judicial)

Present.

1. Shri A. Tamhane, learned counsel for the applicant.
2. Shri V. S. Masurkar, learned counsel for the respondents.
3. The applicant had challenged a letter dated 13.04.2015 by which the applicant had received a

letter under the Right to Information Act, 2005 and the same reads as under:-

"CENTRAL RAILWAY

Railway Recruitment Room,
C.P.M. Office Building,
P.D'Mello Road, Wadi Bunder,
Mumbai-400 010.

No. HPV/706/RRRoom/Group 'D'/1/2007/RTI/
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Dated: 13.04.2015.

Kumari P. Lata,
59, Soni Nagar,
Nodi Gudki, Near Rani Kazia,
Solapur, Maharashtra,
Pin Code-413003.

Sub: Information under RTI Act 2005.

On the captioned subject, your letter dated 18.03.2015 have been inspected and the following information is hereby given to you.

S. N.	Information demanded	Information given
1	Why my appointment is stopped by which reasons?	You have ticked in the OBC Group and also written examination by which you have written OBC in the OMR Sheet but you have not annexed the certificate of OBC, therefore, you have not called in the next recruitment process, therefore, your selection can not done under the OBC Group.
2	How many cut off marks have been fixed for other OBC	Till today's date the cut off marks for other backward class is 75.33 and general group is 100.33 as per

	Candidates?	the Employment Information No.01/2007.
3	How many marks I have got in the written examination?	You have got 89.00% marks in the written examination, therefore, you are also not eligible for selection in general group.

If you are not satisfied with this reply, you are hereby requested to file an Appeal before the Appellate Authority within 30 days from the receipt of this letter against this Information.

In this regard, the address of the Appellate Authority:

Addl. General Manager,
Central Railway,
Mumbai, C.S.T. 400 001.

Sd/-
(Onima Korda)
Asst. Public Information
Officer (K),
& Senior Personnel
Officer (Rec.)

Copy to:
S.J.S.A./S.K.A.Mum.CST.

4. The applicant have sought the following reliefs:-

"(i) this Honourable Central Administrative Tribunal, Mumbai be pleased to call for records and files pertaining to recruitment process conducted by Respondent in respect of Class 'D' posts of Central Railway, Mumbai and after perusal and examination thereof.

(ii) this Honourable Tribunal be pleased to quash and set aside the letter dated d13.04.2015 issued by

the Respondent.

(iii) This Hon'ble Tribunal be pleased to appoint the applicant on Class 'D; post of Central Railway, Mumbai.

(iv) Grant any other relief which this Hon'ble Tribunal may deem fit in the facts and circumstances of the case.

(v) Cost of the Application be provided for."

5. The precise fact of the case is that in pursuance to the employment notice no.1/2007 the applicant had applied for the post of Khalasi, a Grade-D post under the respondents. The said notification was issued by the respondents to fill up 6412 vacancies and in response to that, 4,62,361 candidates appeared for PET, out of which 31,396 candidates were found eligible to participate in the Written Test and 7,870 candidates were called out for document verification including 20% extra candidates to make good shortfall in the panel. In the panel, total 6171 candidates were empaneled as per the merit.

6. The learned counsel for the applicant submits that the applicant has participated in the selection process and came in the panel of the merit list prepared by the respondents. However, she was not granted an appointment under the respondents and

her candidature was rejected. The learned counsel for the applicant submits that the applicant found place in the merit list panel of meritorious candidates of OBC. However, she did not come in the merit panel prepared for the General Category candidates. The learned counsel for the respondents submits that in fact the applicant was considered against the vacancies made for General Category candidates in the facts and circumstances that the applicant has neither annexed a copy of requisite certificate for belonging the OBC non-creamy layer and the applicant has also given tick mark on both the categories of General as well as OBC category.

On verification of documents in support of application annexed in consonance given with the reply in notification, the respondents were required to consider the applicant only against the General Category candidates. However, the applicant does not come in the merit of General Category candidates.

7. The learned counsel for the applicant in the rejoinder submits that the applicant while filing up the form has given tick mark only against the OBC Category and not against the General Unreserved Category and the applicant is not aware as to who has given the tick mark against the Unreserved Community in the application filed by the

applicant.

8. It is admitted case of the applicant as she has not annexed the requisite certificate required in term of the aforesaid notification about her being an OBC category candidate. The respondents have filed reply and said on oath that the tick mark is made by the applicant only and there are no specific pleadings or arguments on behalf of the applicant that her tick mark against the Unreserved Category has been made by the authorities of the respondents. There is no occasion for this Tribunal to go into the disputed facts.

9. We have perused the original records produced by the learned counsel for the respondents and we are satisfied that in Col.14, tick mark has been given against both the categories (Unreserved as well as OBC). The learned counsel for the applicant submits that in pursuance to the notice dated 27.01.2012, the applicant has produced OBC certificate before the respondents. However, it is stated by the respondents that production of such certificate is out of context in the case of the applicant in as much as this notification was not meant for those candidates who applied as a Unreserved candidates and at a later stage of recruitment claimed to be belonging to SC/ST/OBC

candidates.

10. The learned counsel for the applicant submits that the applicant has scored 89.00 marks in the written examination and cut off marks for unreserved category candidate was 100.33 and hence the applicant was not placed in the panel of successful candidates belonging to Unreserved Category. With regard to the applicant belonging to OBC category it is stated on behalf of the respondents that the applicant has not annexed the requisite documents with the application for claiming candidature as belonging to OBC and thus she has not complied with the instructions given in the notification which was clearly stated in column no.14 of the notification. It was required by every candidate to enclose OBC/NCL Certificate along with the application and it is admitted case of the applicant that while applying for the post she has not enclosed any certificate about her belonging to OBC/NCL category. The learned counsel for the respondents Shri V. S. Masurkar argues that once the applicant has participated in the selection process under Unreserved Category and she has not found place in the merit list of unreserved category there is no illegality in the action of the respondents by not putting her name in the successful candidates in

the OBC Category.

11. The learned counsel for the respondents further submits that in all communications made to the applicant the applicant has always been treated as Unreserved Category candidate. With regard to the the claim of the applicant that she belongs to OBC category, the learned counsel for the respondents submits that this stand appears to have been taken by the applicant as after thought in as much as clear instructions were given in the recruitment notification the applicant has not given requisite certificate of her belonging to OBC category. Therefore her application has been rejected. There is no illegality in the action of the respondents.

12. The learned counsel for the Respondents has relied upon the judgment dated 08.10.2014 of Hon'ble Supreme Court in SLP(C) No.706/2014 titled Union of India and Another Vs. Sarwan Ram and Another wherein it has been ruled as under:-

"Condition No.8.7(i) is one of the condition mandate mentioned in the employment notice. We are of the view that in non-compliance of such condition, it was always open to the competent authority to reject such application being incomplete. Respondent no.1 having failed to do so, the competent authority has rightly rejected the application. In such circumstances, it was not open to the High Court to direct the authorities to consider the case of

respondent no.1 for appointment, sitting in appeal over the scrutiny of application by referring to certain certificate of length of service. High Court under Article 226 of the constitution of India is not competent to scrutinize the applications filed for appointment and cannot substitute its own opinion based on some evidence to come to a conclusion whether the application form is defective.

In view of the reasons recorded above, we have no other option but to set aside the impugned judgment dated 28th May, 2014 passed by High Court of Judicature for Rajasthan, Jaipur Bench at Jaipur in D.B. Civil Writ Petition No.13032 of 2011.

The appeal is allowed no cost."

13. In view of the aforesaid discussion and law laid down by the Hon'ble Apex Court we find no merit in the OA.

14. In the facts and circumstances, the OA is dismissed. No order as to costs.

(R. N. Singh)
Member (J)

(Dr. Bhagwan Sahai)
Member (A)

v.

