

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No.109/2017

Date of Decision: 29th October, 2018

CORAM: HON'BLE DR. BHAGWAN SAHAI, MEMBER (A)
HON'BLE SMT. RAVINDER KAUR, MEMBER (J)

Mr. Umesh Kumar Yadav,
 Age 26 years, S/o. Madan Yadav
 Bahura Village, Gorakha, Gauri
 Post, Ghazipur - 233 223,
 Uttar Pradesh.

... *Applicant*

(By Advocate Ms. G. Geeta)

VERSUS

1. Union of India,
 Through : The Secretary,
 Railway Recruitment Cell,
 Central Railway,
 Lajpat Nagar-1, Delhi (South)
 New Delhi - 110 024.

2. The Chairman
 Railway Recruitment Cell,
 Central Railway,
 Chief Project Manager (Conv's)
 Office Building,
 P.D. Mello Road,
 Wadi Bunder,
 Mumbai - 400 010.

3. The Railway Recruitment Officer,
 Railway Recruitment Cell,
 Central Railway,
 Chief Project Manager (Conv's)
 Office Building,
 P.D. Mello Road,
 Wadi Bunder,
 Mumbai - 400 010. ... *Respondents*

(By Advocate Shri V.S. Masurkar)

O R D E R (ORAL)**Per: Smt Ravinder Kaur, MEMBER (J)**

The present OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

“8(a) This Hon'ble Tribunal be pleased to graciously call for the record of the case and after perusing the same, quash and set aside the impugned order dated 07.11.2016 in Order No.HPB/629/RRC/WB/Staff Matter issued by 2nd and 3rd respondents as illegal and void.

(b) The respondents may be directed to consider the applicant in reserved category i.e. OBC – Reserved Category.

(c) The Respondents may be directed to place the name of the applicant in the Second Provisional Part Panel issued by Respondents under their website with immediate effect.

(d) This Hon'ble Tribunal be pleased to direct the respondents to issue appointment letter to the applicant for the post of Group – D under OBC i.e Reserved Category with immediate effect from the same category of others appointment.

(e) This Hon'ble Tribunal be pleased to restrain the respondents from filling one vacancy out of the 496 under the OBC i.e. Reserved Category based on the Second Provisional Part Panel issued by respondents in their website until the hearing and final disposal of the present case.

(f) That the grievance of the applicant is that the respondents have issued impugned order dated 07.11.2016 in Order NO.HPB/629/RRC/WB/Staff Matter, after order dated 13.10.2016 vide in OA No.695 of 2016 passed by Hon'ble Central Administrative Tribunal at Bombay Bench and the applicant has immediately approached this Hon'ble Tribunal. Hence there is no delay. However, it is humbly submitted that in case of any delay the same may be

condoned and render justice.

(g) All consequential reliefs be granted.

(h) Any other and further relief that this Hon'ble Tribunal may deem fit in the nature and circumstances of the case. “

2. The respondents had issued Notification Employment Notice No.RRC/CR/03/2013 dated 08.08.2013 for Group 'D' post in PB-I, 5200-20200 + Grade Pay Rs.1800 with total number of vacancies 5740. The applicant applied for the said post and on being found eligible was placed in the unreserved category despite the fact he was not from the creamy layer of the society. He was issued hall ticket and was called for written exam on 30.11.2014 under the unreserved category. The applicant raised objections to his being called under unreserved category but he was assured that the issue would be resolved after the written examination. It is claimed that the applicant alongwith the application form had submitted all the Annexures including caste certificate i.e. OBC certificate for the year 2011-2012 as mentioned in para 7 of the recruitment form and this itself was sufficient to place the applicant in the OBC category. It is claimed that the written examination held on 30.11.2014 was qualified by the applicant.

Thereafter, he was called for PET test on 23.02.2015 under UR (Unreserved Category). He contacted the office of RRC and put up his grievance orally to the RRC officer that he was not being considered as OBC category but without any result. It is submitted that the case of the applicant is required to be considered in the reserved OBC category as he is not from the Creamy Layer of the society. He also sought information under RTI Act, 2005 vide letter dated 31.08.2016 about the marks he obtained and was informed that he had secured 63.27% marks whereas cut off percentage of OBC category was 56.06 and for unreserved category 64%.

3. The applicant sent his representation on 26.02.2016 and thereafter on 13.08.2016 to respondent No.2 through Registered Post. However, he did not get any relief, consequently, filed OA No.695/2016 seeking direction to the respondents to consider his representations and to reserve one post under OBC i.e. reserved category based on the 2nd Provisional Part Panel issued by respondents on their website and also to consider the case of the applicant under reserved category.

4. In the above OA, vide order dated 13.10.2016, this Tribunal directed the Respondent No.2 to consider and pass appropriate and reasoned order on the pending representations of the applicant dated 22.06.2016 and 13.08.2016 (Annexure A-3) in accordance with law and to communicate the said order to the applicant at the earliest. In terms of directions of the Tribunal, the respondents passed order dated 07.11.2016 which is impugned here. The respondents have rejected the representations of the applicant on the ground that the applicant had not enclosed the OBC Non-Creamy Layer certificate in the Central Government format for the year 2013-2014 as required for the OBC candidate and thus he was rightly treated as an UR candidate as per Note below the item 8.18 of the Notification dated 08.08.2013. Consequently, the applicant was considered as of UR category which also includes OBC (Creamy Layer).

5. The impugned order dated 07.11.2016 has been challenged on the ground that the same is illegal, violative of principles of natural justice and violative of Articles 14 and 21 of the Constitution of India.

6. The applicant has sought quashing of the said impugned order and has also sought direction to the respondents to consider the applicant in reserved category i.e. OBC, to place the name of the applicant in the 2nd Provisional Part Panel issued by the respondents and to issue the appointment letter to the applicant for the post of Group 'D' under OBC (reserved) category with immediate effect.

7. The respondents in their reply submitted that the applicant had applied against RRC/CR's Employment Notice No.03/2013 as an OBC candidate but did not enclose the required OBC/NCL certificate for the year 2013-14 alongwith the application form. Instead he enclosed OBC/NCL certificate dated 02.04.2011. Consequently, he was treated as a general candidate as he was fulfilling the age criteria as UR candidate. However, the applicant could not qualify in written test as general candidate.

8. It is claimed by the respondents that the impugned order dated 07.11.2016 is well within law and is not violative of any legal or fundamental right of the applicant.

9. Learned counsel for the respondents has submitted that the Hon'ble Apex Court vide order

dated 08.10.2014 in SLP (C) No.706/2014 has held that the conditions mentioned in the Employment Notification are mandatory and thus required to be fulfilled by the applicants. That in the present case the applicant did not fulfil the required conditions of the Notification by not submitting the OBC/NCL certificate in Central Government format for the year 2013-14 and thereafter he was treated as UR candidate.

10. We have gone through the Notification dated 08.08.2013 (*Annexure A-1*). The relevant clauses of the Notification are 7.6 and 8.18. The same are reproduced as follows:-

*“7.6 The OBC candidates should attach non-creamy layer certificate for the year 2013-14 in Central Government format only (*Annexure-B*)*

*8.18 OBC candidates not enclosing non-creamy layer certificate for 2013-14 to Central Government format (*Annexure-B*)*

Note: OBC candidates not attaching non-creamy layer certificate for the year 2013-14 in Central Government format shall be treated as General candidate subject to their fulfilling age criteria”

11. As per clause 7.6 the OBC candidates should attach Non-Creamy Layer Certificate for the year 2013-14 in Central Government format only. In clause 8.18 it is also specifically mentioned that OBC candidates not enclosing Non-Creamy Layer certificate for 2013-14 in Central

Government format (Annexure-B) shall be treated as general candidate subject to their fulfilling age criteria. In the present case, admittedly, the applicant did not attach alongwith the application form, the Non-Creamy Layer Certificate for the year 2013-14 in the required format and instead filed OBC certificate for the year 2011-2012 which was not the requirement. In the Notification, the format of the certificate to be produced by OBC applying for appointment to the post under the Government of India for the year 2013-2014 has also been given. The relevant clauses of the Notification referred to above are absolutely unambiguous and clearly lay down that filing of Non-Creamy Layer Certificate for the year 2013-2014 alongwith the application form in the required format was mandatory and its non compliance could lead to the application being declared invalid under clause 8.18. It is also undisputed fact that the Creamy Layer changes every year and it is for this reason that vide Notification dated 08.08.2013 the requirement was to file Non-creamy Layer Certificate for the year 2013-14 only and not for any other period as it would have frustrated the very purpose of the said

Notification. Since in the present case, the applicant did not annex the required Non-creamy Layer Certificate alongwith his application form, therefore, he was treated as a general candidate as he was fulfilling the age criteria of UR candidate. It was expected of the applicant to have been extra careful and vigilant at the time of filling of his application form to ensure that he filled all the contents of the same correctly and annexed the relevant required documents. Clause 16 of the Notification is equally relevant which is reproduced as under:-

“16. DECLARATION BY THE CANDIDATE (Please reproduce the paragraph in your own running handwriting not in CAPITAL letters) I hereby declare that all the particulars given in this application are true and correct to the best of my knowledge and belief. In the event of any information being found false, my candidature/appointment is liable to be cancelled/terminated.”

As per this clause, the applicant was required to furnish the true and correct particulars and Annexes in the application. However, the applicant mischievously submitted the Non-creamy Layer Certificate for the year 2011-12 instead of the year 2013-14.

12. We have gone through the impugned order dated 07.11.2016 carefully. In the facts and circumstances referred to above, we do not find any infirmity or illegality in the said order.

Hence, the application is devoid of any merits and is thus dismissed. No order as to costs.

(Smt Ravinder Kaur)
Member (J)

(Dr. Bhagwan Sahai)
Member (A)

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