

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

O.A.210/00423/2014

Dated this Tuesday the 05th day of March, 2019.

**Coram: Dr.Bhagwan Sahai, Member (Administrative)
Shri R.N. Singh, Member (Judicial).**

Bhagwan Sahay Panchal,

Residing at:

VPO : Jastana, Tahsil : Bonli,

District : Sawai Madhopur,

State : Rajasthan

Pin Code : 322 030.

.. Applicant.

(By Advocate Shri R.G. Walia).

Versus

1. Union of India, through
The General Manager,
Central Railway,
Headquarters' Office,
CST, Mumbai - 400 001.
2. Chief Personnel Officer,
Central Railway,
Headquarters' Office,
CST, Mumbai - 400 001.
3. Railway Recruitment Cell,
Through its Chairman/
Secretary,
P' D'Mello Road,
Wadi Bunder, Mumbai-400010. .. Respondents.

(By Advocate Shri V.S. Masurkar).

Order reserved on : 15.01.2019

Order delivered on : 05.03.2019.

O R D E R

Per : Dr.Bhagwan Sahai, Member (A).

Shri Bhagwan Sahay Panchal, has filed
this O.A. on 07.07.2014 seeking direction to the
respondents to issue appropriate appointment

letter to him with full consequential benefits of seniority, back-wages, etc from the date his juniors were appointed for the post for which selection was conducted and declare that action of the respondents denying him appointment was illegal and wrong, and also to provide cost of this O.A. to him.

2. Facts of the case:

2(a). The applicant has stated that he has qualification of B.A, B.Ed. with diploma of Electrician from ITI, Jaipur and also diploma in Computer Operator in Programming Assistance. He claims that he belongs to poor farmer family, is married and has two minor children. He has participated at various stages in the recruitment process as per Employment/Advertisement Notice No.01/2007 for Group 'D' posts issued by Respondent No.3 i.e. Railway Recruitment Cell (RRC), Mumbai. As he was eligible for the vacancies notified, along with application he enclosed his SSC passing certificate dated 22.06.2000 wherein his date of birth as 11.05.1985 has been clearly mentioned. He belongs to OBC category.

2(b). After scrutiny of his application form, he underwent a physical test on 12.04.2011 and was

successful in it and thus became eligible for the written test. Only after verification of his application form and on finding it correct, he had been allowed for the physical test and no shortcoming in the application form was pointed out to him by the respondents. He took the written test on 16.10.2011, the result of which was announced on 25.10.2011 and he was declared passed in that test also.

2(c). Thereafter he was called for documents verification (Annex-A-6) on 04.01.2012. He presented himself before the Railway Recruitment Cell with his documents, and on being satisfied with his documents, he was asked to undergo medical examination at Pune Medical Railway Hospital which he underwent on 09.01.2012 and cleared that test also.

2(d). Since he did not get his appointment letter/order, under provisions of Right to Information Act, 2005, he got details of reasons for not issuing him the appointment letter. In the reply on 30.01.2014 he was informed that he did not attach the proof of his date of birth along with his application form. However, this claim is absolutely incorrect and false as he had enclosed 10th and 12th mark-sheet with the

application form, otherwise his application would not have been processed at all.

2(e). He had also applied under OBC community quota for which cut off marks were 75.33 and he scored 99 marks in the written test. Under the RTI Act, 2005, he received another reply on 07.04.2014 mentioning the same reason for not issuing him the appointment order.

2(f). He cannot be declared as ineligible for the advertised posts after he has undergone the entire selection process and qualified in it. The respondents have not appreciated the fact that his date of birth was mentioned in the SSC mark-sheet itself. Therefore, the respondents were estopped from declaring him ineligible for appointment on specious ground that he has not provided proof of his date of birth.

2(g). Even if it is assumed that there was some mistake in filling up the application form, the respondents could have asked him to rectify it as he has passed the entire selection process and his date of birth was clearly mentioned in the SSC mark-sheet certificate. There was no appropriate reason for not issuing him the appointment order. Also other persons who have secured less marks than him have been appointed. Hence he should be

appointed and also be provided consequential benefits from the date of appointment of his juniors. Hence this O.A.

3. Contention of the parties:

The applicant has contended that -

3(a). the impugned action/order of the respondents in not appointing him is absolutely illegal and wrong, it is arbitrary and malicious and violative of Articles 14, 16 and 21 of the Constitution of India. The action of the respondents in denying him appointment is totally unjustified and capricious after he having undergone successfully the entire selection process;

3(b). he denies all the contentions and averments made by the respondents in their reply. The applicant had complied with all the eligibility criteria and passed the entire selection process, therefore, rejection of his candidature for appointment is illegal and wrong. If he had not enclosed the SSC passing certificate the respondents would have rejected his candidature at the time of initial scrutiny of his application. Therefore, the claim of the respondents that his SSC certificate did not reach them cannot be accepted now;

3(c). in the reply received by him under the provisions of RTI Act, 2005, he was only informed that he had not submitted his proof of date of birth and hence he was not eligible. The ground taken by the respondents that due to large number of applications received it was not possible to check the shortcomings in the application and, therefore, the applicant was made eligible cannot be accepted. It reflects negligence as specific officials were appointed to scrutinize / check the various documents submitted by him and thereafter he was allowed to go through the selection process;

3(d). claim of the respondents that he has not submitted his OBC certificate in the Central Government format is also not correct. The respondents seem to have misplaced his SSC certificate because of large number of applications received by them. The ground of rejection of his candidature is hyper-technical and on such ground his candidature cannot be rejected; and

3(e). the applicant has also attempted to benefit from the Apex Court view in **Civil Appeal No.1691/2016 in Ram Kumar Gijroya Vs. Delhi Subordinate Services Selection Board and another**

decided on 24.02.2016. In this the decision of Delhi High Court (Division Bench) was set aside holding that the petitioners therein were entitled to submit OBC certificate before provisional selection list was published to claim benefit of reservation of OBC category to achieve the object of reservation and, therefore, the candidature of the candidates could not be rejected simply because of late submission of caste certificate. Hence the O.A. should be allowed.

The respondents have submitted that -

3(f). the applicant had applied against the Employment Notice No.01/2007 for Group 'D' posts. The Respondent No.3 did not receive his SSC marks certificate dated 22.06.2000 in which his date of birth was mentioned. Submission of this certificate was necessary to ascertain his age for eligibility, but he had not submitted it along with the application form, which rendered him ineligible for further recruitment process. It is mandatory to submit all the requisite documents along with application itself and they cannot be submitted at a later stage;

3(g). the applicant had enclosed a copy of caste certificate stating that he belongs to OBC community but it was not in the prescribed format

as mentioned in the advertisement;

3(h). the advertisement also mentioned in Para 8.10 (vii) that only attested copies of educational qualification certificate, proof of age and caste certificate or SC/ST/OBC should be enclosed. But the applicant did not submit attested copy of his OBC certificate and as per the format. Hence his application was to be rejected, but because of large number of applications received, due to oversight the applicant might have been made eligible although he was not actually eligible;

3(i). the applicant was called for documents verification on 04.01.2012 and it was pointed out to him that he had not produced the proof of date of birth and the OBC Certificate in the Central Government format. That is why the applicant gave a written statement on 04.01.2012 that he would produce the OBC non-creamy layer certificate (Exhibit R-1 and R-2) before 07.02.2012;

3(j). para 10.6 of the advertisement very clearly specified that before applying for the posts, the candidate should ensure that he/she fulfils the eligibility criteria and the RRC/Central Railway shall reject the applications not fulfilling the requisite criteria at any stage

of recruitment and if erroneously appointed such candidates shall be liable to be summarily removed from service;

3(k). as per para 9.6 of the advertisement, the decision of the RRC/Central Railway on all matters related to eligibility / acceptance or rejection of the application, issue of free Railway pass, penalty for false information, mode of selection, conduct of examinations, allotment of examination centres, allotment of posts/place to selected candidates and all other matters related with conduct of recruitment process are binding on the candidates and no enquiry or correspondence in this regard will be entertained;

3(l). the contention of the applicant that his SSC certificate is possibly misplaced by the respondents is not correct. The applicant violated the instructions mentioned in the para 3.2, para 8.10(ii) and para 8.10(vii) of the notification and because of his failure to prove his date of birth and submission of OBC non-creamy layer certificate in the Central Government format, his candidature was rejected. Therefore, the O.A. should be dismissed;

3(m). in support of their contentions, the respondents have cited the Apex Court decision in

Union of India and others Vs. Shri Sarwan Ram and others in SLP No.706/2014 decided on 08.10.2014 holding that for non-compliance of conditions mentioned in the notification / advertisement, it was always open to the Competent Authority to reject such application being incomplete, and rejection of the application in that case by the respondents was held to be correct. The application/candidature of the present applicant was also rejected by the respondents in view of non-submission of proof of his date of birth and non-submission of OBC non-creamy layer certificate in the prescribed format.

4. Analysis and conclusions:

We have perused the O.A. memo and its annexes, rejoinder of the applicant, reply filed by the respondents, and reply to rejoinder with annexes, the caselaws cited by the parties and considered the arguments advanced by both of them. At the time of hearing of the case on 27.11.2018, the respondents were directed to produce the original application submitted by the applicant along with its annexes and copy of the advertisement/notification. Accordingly the respondents have produced the original record in sealed cover during hearing on 15.01.2019. We

have perused this original record. From consideration of the above, we conclude as under:

4(a). The admitted position by the parties is that in pursuance to the Advertisement No.01/2007 dated 17.05.2007 issued by the RRC/Central Railway, Mumbai, the present applicant submitted his application and he was allowed to take physical endurance test, written test and medical examination. He seems to have cleared all these tests, but thereafter he was not issued the appointment order / letter for the advertised Group 'D' post.

4(b). While the applicant has contended that he had submitted all necessary documents along with his application form which were verified and after their scrutiny only he was allowed to undertake various tests in the selection process.

However, our perusal of the original record produced by the respondents reveals that-

(i). the scrutiny sheet/checklist for verification of eligible candidates prepared by the respondents has specifically mentioned that no date of birth proof was attached with the application, 10th mark list was not available with the application; his name was not in the OBC list and non-creamy layer OBC certificate of 2007-2008

was not there and he was marked as provisionally eligible;

(ii). the applicant himself submitted a declaration/undertaking at the time of document verification on 04.01.2012 that he would produce non-creamy layer OBC status of 2007 by 06.02.2012 and accordingly he submitted later on a self attested copy of OBC non-creamy layer certificate for 2007 issued by Tahsildar, Bonli, district Sawai Madhopur, Rajasthan dated 19.01.2012;

(iii). he submitted an attested copy of his Senior Secondary School Examination 2002 certificate with mark-sheet. Thus this certificate submitted was of the Senior Secondary School Examination (i.e. 12th standard), 2002 and in it no date of birth is mentioned. The Board of Secondary Education, Rajasthan mentions the date of birth of a candidate in its Secondary School Examination Certificate of marks, which is now enclosed with O.A. as Annex-A-3. This certificate mentions his date of birth as 11.05.1985. However, in the original case record produced by the respondents, we find that the Secondary School Examination Certificate of the applicant was not there and that is why the checklist clearly mentioned in the noting/comment that no date of

birth proof was attached to the application and 10th mark list₁₀ was not available;

(iv). the original case record also reveals that the applicant had submitted a copy of his OBC certificate issued by the Tahsildar, Bonli on 24.08.2004 but this copy was not attested. Since these notings/comments were made on the checklist at the time of documents verification on 04.01.2012, obviously these details must have become known to the applicant. That is why he undertook to submit the OBC non-creamy layer certificate before 07.02.2012.

(v). In view of the above facts, our findings from the original record summed up as under clearly establish that his application was incomplete:-

requirement of application as per the notification	actual submission by the applicant
(a) Para 8.10 (iv) attested copy of only one educational qualification containing proof of age.	(a) attested copy of Senior Secondary School exam. Certificate of marks/having no date of birth, <u>Secondary School exam. Certificate which has date of birth was not submitted.</u>
(b) Para 8.10(ii) annex-II OBC certificate with non-creamy layer	(b) only OBC certificate, during document verification undertook to submit it later on, was thus allowed to do so.
(c) Para 8.10 (vii) only attested copy of every certificate/Document, self attested certificates/documents will not be valid.	(c) unattested OBC Certificate.

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4(c). Thus the applicant did not submit SSC Certificate as proof of his age. He did not submit his OBC non-creamy layer certificate along with his application and not even at the time of documents verification. At that time on 04.01.2012, he undertook to submit it before 07.02.2012 and seems to have submitted during the extended period. This means for submission of his non-creamy layer OBC certificate, the respondents allowed him extended time even after the date of documents verification. Therefore, on this count the applicant cannot have any grievance. Because of these deficiencies in the application, in the scrutiny sheet/checklist the respondents clearly listed him as provisionally eligible candidate and based on it he was allowed to take the test. As per para 8.10(vi), this clearly made his application incomplete and his candidature ineligible, for which the applicant himself was responsible. Therefore, the contention of the applicant that he had submitted all required documents and allegation of malicious, capricious, illegal, arbitrary, etc against the respondents stand demolished. This contention was totally false. Hence as contended by the respondents and specifically stipulation under Para 10.6 of the

notification, the RRC/Central Railway was right in rejecting his application for not submitting complete application and for not fulfilling the requisite criteria at subsequent stage of the recruitment process even after provisionally allowing to take the test.

4(d). The reliance of the respondents on the caselaw - Union of India and others Vs. Shri Sarwan Ram and others is also correct.

4(e). In view of these facts of the case, we do not find any merit in the O.A., it is a wasteful litigation. Hence it deserves dismissal.

5. Decision:

The O.A. is dismissed.

(R.N. Singh)
Member (J)

(Dr. Bhagwan Sahai)
Member (A).

H.

