

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00853/2015

Reserved on : 01.05.2019

Pronounced on: 03.05.2019

C O R A M

HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER

Prashant Kumar Manish, Son of Sri Braj Mohan Pandey, Resident of Village-Khairi, PO- Waini, District- Samastipur (Bihar).

.... Applicant

- By Advocate: - Mr. M.P. Dixit

-Versus-

1. The Union of India, through the General Manager, East Central Railway, Hajipur, District- Vaishali (Bihar).
2. The General Manager (Personnel), East Central Railway, Hajipur, District- Vaishali (Bihar).
3. The Chief Commercial Manager, East Central Railway, Hajipur, District- Vaishali (Bihar).
4. The Divisional Railway Manager, East Central Railway, Samastipur (Bihar).
5. The Senior Divisional Commercial Manager, East Central Railway, Samastipur (Bihar).
6. The Senior Divisional Personnel Officer, East Central Railway, Samastipur (Bihar).
7. The Senior Divisional Financial Manager, East Central Railway, Samastipur (Bihar).

.... Respondents.

By Advocate: - Mr. B.K. Choudhary
Mrs. P.R. Laxmi

O R D E R

Per Dinesh Sharma, A.M:- The case of the applicant is that he had applied and appeared for examination against Centralized Employment Notice No. CEN/09/2010 Category No. 1 and his roll number has appeared in the merit list of 30% additional list. He has found that persons whose name appear below him in this additional list have been given appointment

order and he has not been issued offer of appointment. He has prayed for directing the respondents to issue appointment letter to the post of Technician Signal Grade-II in favour of the applicant at par with other co-selectee whose roll number is below the applicant in order of merit as contained in the 30% extra list (Annexure A/3).

2. The respondents have denied the claim of the applicant in the written statement. They have alleged that the 30% additional list (Annexure A/3) was not in the order of merit. The applicant's roll no. stood at rank 118 while the person selected ranked 107. The persons who have been selected did stand higher in the order of merit than the applicant. The applicant could not be selected because of filling of all notified vacancies in UR category with persons ranking higher than him. The WS also annexed the relevant portion of the 30% extra merit list of all categories.

3. The applicant filed a rejoinder in which he questioned placing of persons under OBC category whose rank position was much below him (sl. No. 143 and 147). He also alleged that the number of vacancies in UR category was 55 and as per his calculation these posts are yet unfilled.

4. A reply to this rejoinder was filed by the respondents in which they stated that there were 3 OBC candidates who had secured sufficient marks to be in the general (Unreserved) merit list (Sl. Nos. 88, 92 and 93). Since they were higher in rank than the last person selected under unreserved quota, these candidates had to be moved from the OBC community merit list to UR community merit list. In this reply to rejoinder, the respondents have also given complete details of how, in the form of

three panels sent respectively on 05.03.2012, 31.05.2012 and 31.10.2012, they have filled all the vacancies leaving only one vacancy of ST and two vacancies of OBC community unfilled (because there were no candidates under these categories left in the 30% extra list).

5. A second rejoinder has been filed by the applicant after this reply in which he has cited the judgment of Hon'ble Supreme Court as reported in AIR 2017 SC 1945 (**Deepa EV Vs. UOI**) according to which, the applicant alleges, no person of OBC, SC and ST can be given the benefit of UR category. He has reiterated his claim about total vacancies of UR category still not filled completely.

6. Another rejoinder (to the reply to the rejoinder - filed by the respondents) was filed by the applicant on 30.04.2019, i.e. one day before the date of final hearing in which the applicant alleges some of the selected candidates having higher age than the prescribed age limit.

7. We have gone through the pleadings and heard the learned counsels of both the parties. The main issue here is whether the respondents have selected anyone in the unreserved category (to which the applicant belong) who stands lower in merit than the applicant. The second issue is whether the respondents have filled all the seats in the unreserved category which were notified for the relevant examination. The third related issue, in this context, is whether any person belonging to a reservation category, if he/she secures higher rank in the order of merit, should be counted against the category of reservation or against the unreserved category. We have not included any issue on the basis of the

new pleadings raised by the applicant in his last rejoinder (to the reply to the rejoinder) since raising of such new issue, totally unconnected with the initial pleadings in the OA, two years after the OA was filed, amounts to an afterthought and a fishing expedition which cannot be allowed to drag this matter endlessly.

8. We have found from the details given by the respondents in their reply to rejoinder-II (filed on 24.04.2019) that all 55 vacancies of unreserved category have been filled (43, including 3 persons of OBC category who secured higher marks than the last selected general candidate, in the panel sent on 05.03.2012; 9 in the panel sent on 31.05.2012; and, 3 in the panel sent on 31.10.2012). Thus, there are no vacancies left under unreserved category. None of these candidates have a lower rank than the applicant. The last person selected under UR category is Shri Prabhat Kumar whose rank is 107, which is above that of the applicant. Thus, our finding on the first two issues is that there has been no breach of any kind in not selecting the applicant for the unreserved quota and all the unreserved vacancies have been filled. Regarding the third issue- about whether reserved category candidates who secure sufficiently high rank should be included under the unreserved category- the learned counsel for the applicant has cited a case as reported in AIR 2017 SC 1945 to support his case. We have gone through this decision. This decision was specifically in the context of Export Agency Recruitment Rule-9 which provided an express bar for candidate belonging to SC/ST/OBC who had availed age relaxation for being considered for general category candidates.

The Hon'ble Supreme Court has specifically noted in this case that the appellant had not challenged the constitutional validity of the proceeding read with this Rule-9 of the Export Inspection Agency (Recruitment) Rule. Thus, this case was distinguished from the earlier decision of the Apex Court in **Jitendra Kumar Singh and Anr. Vs. State of UP** (where the finding of the Apex Court was exactly the opposite of the finding in this case). In Jitendra Kumar Singh's case the Apex Court had found that *"if any person belonging to reserved categories is selected on the basis of merits in open competition along with general category candidates, then he will not be adjusted towards reserved category, that is, he shall be deemed to have been adjusted against the unreserved vacancies. It shall be immaterial that he has availed any facility or relaxation (live relaxation in age limit) available to reserved category"*. In the OA before us, the respondents have pointed out that as per para 313.3 of RRB Manual, candidates belonging to SC/ST/OBC who have been selected on their own merit along with candidates belonging to other categories will not be adjusted against the quota reserved for SC/ST/OBC category (Annexure- A -V to reply to rejoinder-II). Thus, it is very clear that the RRB has its own rule and the respondents have followed their own instructions correctly. Since the applicant has not been selected because of his not being high enough in the order of merit to be selected against the unreserved vacancies, his prayer under the OA cannot be granted. The OA is, therefore, dismissed. No order as to costs.

[Dinesh Sharma]
Administrative Member
Srk.

[Jayesh V. Bhairavia]
Judicial Member