

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PATNA BENCH, PATNA  
OA/050/00098/15**

Date of Order: 23.01.2019

**C O R A M**

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

Pawan Kumar Ray, Son of Sri Paras Ray, Resident of Village- Pallian, Post- Kakila, PS- Jagdishpur, District- Arrah (Bhujpur)- 802158.

..... Applicants.

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

-Versus-

1. The Union of India through the General Manager, EC Railway, Hajipur-840001.
2. The Dy. Chief Personnel Officer (Recruitment), Railway Recruitment Cell, Palson Complex, East Central Railway, Digha Ghat, Patna-11 (Bihar).
3. The Assistant Personnel Officer, Railway Recruitment Cell, Digha Ghat, Patna-11 (Bihar).

..... Respondents.

- By Advocate(s): - Mr. Rajesh Mohan

**O R D E R  
[ORAL]**

**Per Dinesh Sharma, A.M.:-** The prayer of the applicant in this case is for having his name included in the final list of selectees for appointment to the Group 'D' post against Employment Notice No. RRC/ECR/GP-1800/1/2012 and for issuance of offer of appointment in his favour. He has alleged that though the applicant has qualified in the written test held on 01.12.2013, physical efficiency test held on 18.02.2014, paper verification held on 01.05.2014 and medical test held on 21.05.2014, he has still not been given appointment for the advertised post though there are still 51 vacancies existing. He has found it from the letter of respondents dated

28.05.2014 (Annexure - A/5) that out of the 1126 vacancies reserved for UR (Unreserved) candidates the respondents have empanelled only 1075 persons in this category. The letter shows that there are still 99 persons whose medical test process is either not complete or have been found to be medically unfit. The prayer of the applicant, in brief, is to consider him against any UR post remaining unfilled on account of not turning up of empanelled candidates or on their being found medically unfit.

2. The respondents have filed their written statement giving details of the examination process and its result. They have accepted that against 2272 vacancies, provisional panel of 2173 candidates was published on 28.05.2014 because 99 candidates were at different stages of medical examination. They have also added that after publishing provisional panel of 2173 candidates on 28.05.2014, 40 candidates out of 99 have already been empanelled after completion of medical process. The respondents have also made clear that there was a provision to seek a replacement panel from the RRC for filling up vacancies remaining unfilled. However, that provision has been withdrawn vide RBE No. 06/2014 dated 10.01.2014 (Annexure- R/7).

3. At the time of arguments, the learned counsel for the applicant cited the order by this Tribunal dated 23.12.2015 passed in OA/051/00176/2014 where this Tribunal has decided in favour of giving appointment to those in the wait list when candidates selected in the original merit list do not join.

4. After going through the pleadings and hearing the learned counsels of both the parties, we find that the only issue which needs to be decided here is whether any vacancies remaining unfilled due to non-joining/being medically unfit of any empanelled candidate can be filled by the persons who secure the next highest marks. While the respondents have not denied that a number of vacancies still remained unfilled at the time of their filing the written statement, they have expressed inability to consider those further down in the merit list on account of the Railway Board Circular RBE 06/2014 quoted above. This circular is dated 10.01.2014. Since the applicant had appeared in the examination following a notification in the year 2012, it would be unfair to apply this notification on an earlier selection process. As decided in the case before this Tribunal in OA/051/00176/14 cited above, it is very just and reasonable to consider persons appearing lower in the merit list who were found suitable in all ways but who could not make it to the final select list only on account of persons securing higher marks than them being available. The respondents have admitted that even on the date of filing Written Statement in this case, there were 59 vacancies (99-40) still not filled due to non- completion of some or other formalities. It is likely that a good number of these vacancies may have still remained unfilled under the UR quota. If it is so, the applicant's case needs to be considered if there are no other persons above him available to fill such vacancies of UR category. We, therefore, direct the respondents to ascertain whether there were vacancies (under UR quota) remaining unfilled in the selection process commissioned with Employment

Notice No. RRC/ECR/GP-1800/1/2012. If so, the case of the applicant should be considered for appointment against these vacancies, if he is found eligible on account his standing in the merit list. This should be done within two months of the receipt of this order. We make it again clear that the Railway Board Circular RBE 06/2014 should not be allowed to come in the way of this consideration.

5. In terms of the above direction, this OA is disposed of. No order as to costs.

**[ Dinesh Sharma ]**  
**Administrative Member**  
**Srk.**

**[Jayesh V. Bhairavia]**  
**Judicial Member**