

Reserved
CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTINGS: BILASPUR

Original Application No.203/00041/2013

Jabalpur, this Friday, the 15th day of February, 2019

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Amal Kumar Sen
 S/o Shri Durga Prasad Sen
 Aged about 49 years
 Unemployed
 Residing at Qr.No.C/26
 Bhagat Singh Road
 Bagun Nagar
 PO: Baridih Jamshedpur
 District East Singh Bhum
 (Jharkhand State)

-Applicant

(By Advocate –**Shri B.P. Rao**)

V e r s u s

1. Union of India
 Through General Manager
 S.E.C. Railway
 Bilaspur Zone
 Headquarter's Office
 Bilaspur 495004 (CG)

2. The Sr. Divisional Personnel Officer
 S.E.C. Railway Bilaspur Division
 DRM's Office
 Bilaspur 495004

- Respondents

(By Advocate –**Shri Sandeep Shrivastava**)
(Date of reserving the order:-28.09.2018)

O R D E R
By Ramesh Singh Thakur, JM:-

This Original Application has been filed against the action of the respondent-department whereby the respondent-department has rejected the candidature of the applicant on the reason that the applicant does not belong to Geographical jurisdiction.

2. The applicant has sought for the following reliefs:-

“8.1 That, the Hon’ble Tribunal be pleased to allow the O.A. and by calling entire relevant records of the case from the possession of Respondents for its kind perusal to decide the Applicant’s grievance, and to set aside the respondent’s letter dated 28.08.2012 (Annexure A-10) in the interest of justice.”

8.2 That, the Hon’ble Tribunal be pleased to pass an Order, directing the Respondents to finally select the Applicant for any Group -D post taking in view the marks obtained by the Applicant is beyond the prescribed minimum marks, and as a Special case, by giving an exemption to the Applicant from physical Efficiency Test, because of the Applicant’s growing age and abnormal delay of 13-14 years caused by the Respondents in conducting the Written Examination for Applicant.”

3. Precisely the case of the applicant is that vide modified employment notice dated 23.12.1998 (Annexure A/1), applications were invited for recruitment of 200 posts (UR-100, SC-38, ST-22, OBC-48). The applicant belongs to OBC and has submitted his application in time, in the application proforma. The respondents after lapse of almost 7-8 years, conducted written examination but they rejected the applicant's candidature on the reasons that he does not belong to Geographical jurisdiction of Ex. Bilaspur. A copy of application form and said communication dated 15.09.2006 is annexed as Annexure A/2 and A/3.

4. The applicant challenged the rejection letter before the Tribunal vide O.A. No.27/2007 on the reasons that action of the respondents is violative of law laid down by Hon'ble Supreme Court in State of Orissa and others vs. Sudhir Kumar Biswal and others, reported in 1994 (3) SCC 245. The Hon'ble Tribunal allowed the OA vide its order dated 29.07.2008 by quashing the impugned

communication and directed the respondents to consider the applicant provided he fulfils all the eligibility conditions. A copy of said order dated 29.07.2008 is annexed as Annexure A/4.

5. The respondents preferred a Review Application vide R.A. No.37/2008 and by way of clarificatory order it is held that there is no ambiguity left now. The respondents have preferred a Writ Petition (S) No.4603/2009 before the Hon'ble High Court of Chhattisgarh Bilaspur. A copy of order dated 25.09.2008 passed in RA No.37/2008 and copy of the Writ Petition No.4603/2009 are annexed as Annexure A/5 and A/6 respectively.

6. The respondents conveyed the applicant vide letter dated 14.11.2011 they had decided to hold a supplementary examination for selection to Group D post and advised him to be ready for the said examination. In view of such the Hon'ble High Court has disposed of the Writ Petition. A copy of said letter dated 14.11.2011 and

the order dated 12.01.2012 is annexed as Annexure A/7 and A/8 respectively. The respondent-department has issued a call letter to the applicant along with two similarly situated along with two other candidates for written examination dated 27.05.2012. The call letter is annexed as Annexure A/9. The applicant appeared in the written examination on the stipulated date and time. The respondents vide their letter dated 28.08.2012 conveyed the result of examination and conveyed the applicant that he obtained 51 marks out of 150 i.e.34% marks, against the passing marks for empanelment for fixed in terms of establishment serial no.195/2005 and as the cut off marks for empanelment to the called for physical efficiency test was 60.80% for UR, 52.45% for SC, 47.11% for ST and 53.76% for OBC, and since applicant failed to obtain the cut off marks as such he was declared unsuccessful in the written examination. Copy of letter dated 28.08.2012 is annexed at Annexure A/10.

7. The respondents have filed their reply to the O.A. The respondents have submitted in their reply that after passing the order passed by the Tribunal whereby the respondent No.3 directed to hold the supplementary examination. It has been admitted by the replying respondents that though the replying respondent had filed the review application and also approached the Hon'ble High Court of Chhattisgarh but later on the department had decided to conduct the supplementary selection. It has been specifically submitted by the replying respondents that the matter was taken by the Railway administration and the respondent-department had decided to hold the supplementary examination vide letter dated 08.11.2011 on the following ways:-

- (i) as per the syllabus and eligibility conditions as per 1998 notification.
- (ii) since the minimum educational qualification was only 8th class at that time, the question paper would be of that standard.

(iii) after 2003 regular Railway recruitment cell headed by Dy. CPO(i.e. Deputy Chief Personnel Officer) Recruitment has been constituted in S.E.C.R. as such conducted of examination and processing of results would be executed by Railway Recruitment Cell.

(iv) the empanelment of candidates will be depend upon their performance in the written examination vis-à-vis those who took examination in 1998. Copy of the said letter dated 8.11.2011 is annexed as Annexure R/1. So the instruction issued by the headquarter, the applicant was advised to appear in the supplementary written examination vide letter dated 14.11.2011 (Annexure A/7).

When the applicant had appeared in the written examination without any objection and after publishing the result of the written examination, the applicant is raising allegation that the process applied by the respondents are not proper and legal. The same is doing only because he has failed to secure the qualifying marks in the written examination which is mandatory for getting empanelment

against the open market requirement and the claim of the applicant deserves to be dismissed.

8. The reply respondents have specifically submitted that the similarly situated persons were called to appear in the written examination and simply appearing in the written examination does not mean that the applicant has a right of selection. The date of examination was fixed as per the administrative convenience and the conditions regarding the syllabus and eligibility were same applied which were followed during the selection conducted against the notification issued in the year 1998 and there is no difference with the earlier condition applied for the selection conducted against the notification of the year 1998. The examination was conducted through Railway recruitment cell headed by Deputy Chief Personnel Officer (Recruitment) as the said cell was constituted in the year 2003 specifically for open market recruitment for which the applicant has submitted his application hence nothing wrong have been done in the applicant's case.

9. It has been submitted by the replying respondents that the claim of the applicant to provide him empanelment creation of supernumerary vacancy is necessarily required is not tenable, as the process of creation of supernumerary post are applied only against the departmental examination or to provide employment against the open market recruitment, cannot claim such benefit. It is further submitted that providing alternate appointment is administrative look out and the said arises only after passing required selection process and in this instant case the applicant has failed to succeed in the said process and his claim cannot be entertained. The Railway Board vide establishment serial no. 195/2005 where by the rules and procedure for conducting open market recruitment of Group 'D' post have been indicated and there is no difference with the earlier existing process adopted for recruitment of Group D staff through open market selection. The process of cut off marks is necessarily required to apply while holding open market recruitment

because selection of suitable candidates against such recruitment are to be finalized from the huge number of candidates, hence applying this practice is mandatory and as per the extent rule and procedure. This practice have also applied, while selected the suitable candidates against the notification issued in the year 1998 for which the applicant has submitted his application. So whatever the process was applied in selection held in the year 2006 against the notification issued on 23.12.1998, for which the applicant has preferred his applicant the same process was applied in the applicant's case also.

10. The applicant has also filed the rejoinder. The applicant has reiterated the stand taken in the O.A. It has been further submitted by the applicant that the criteria of recruitment in written examination and interview for the notification dated 23.12.1998, in Clause 8 stipulates that "criteria of recruitment will be through written examination and interview. Those candidates who qualify

in the written test will be called for interview as per rule in force.”

11. It has been further submitted that the applicant that after interview there is no PET Test. Further, the applicant has further submitted that as all the advertised vacancies were filled up there is no option except to create maximum three supernumerary vacancies for applicant and other two, without which holding supplementary examination is only as eye wash and an empty formality with an intention to satisfy the order of the Tribunal/High Court. It was further submitted that there was qualifying marks in the written examination. Furthermore it has been submitted by the applicant that the respondents had adopted negative marking system which was not stipulated in the notification dated 23.12.1998.

12. We have heard the learned counsel for both the parties and have also gone through the documents attached with the pleadings.

13. From the pleadings it is clear that the respondent department vide modified employment notice dated 23.12.1998 (Annexure A/1), had invited applications for recruitment of 200 posts (UR-100, SC-38, ST-22, OBC-48). The applicant belongs to OBC and has submitted his application in time, in the application proforma. It is also admitted fact that the respondents had rejected the applicant's candidature on the reasons that he does not belong to Geographical jurisdiction of Ex. Bilaspur vide communication dated 15.09.2006 Annexure A/3. It is also admitted fact that the applicant has challenged the rejection letter before the Tribunal vide O.A. No.27/2007 on the reasons that the action of the respondents is violative of law laid down by Hon'ble Supreme Court in State of Orissa and others vs. Sudhir Kumar Biswal and others, reported in 1994 (3) SCC 245. It is also admitted fact that the Tribunal had allowed the OA vide its order dated 29.07.2008 (Annexure A/4) by quashing the impugned communication and had directed the

respondent-department to consider the applicant, provided the applicant fulfils all the eligibility conditions. It is also admitted fact that the respondents preferred a Review Application vide R.A. No.37/2008 and by way of clarificatory order, the Tribunal has disposed of the said R.A. vide order dated 25.09.2008. It is also further admitted fact that the respondent-department had preferred a Writ Petition (S) No.4603/2009 before the Hon'ble High Court of Chhattisgarh Bilaspur and the said Writ Petition has been finally disposed of, when the respondent-department conveyed the applicant vide letter dated 14.11.2011 to the fact that the respondent-department had decided to hold a supplementary examination for selection to Group D post and advised the applicant to be ready for the said examination. A copy of said letter dated 14.11.2011 and the order dated 12.01.2012 is annexed as Annexure A/7 and A/8 respectively.

14. The respondent-department has issued a call letter to the applicant along with two similarly situated other

candidates for written examination dated 27.05.2012 as per Annexure A/9. It is also admitted fact that the applicant appeared in the written examination on the stipulated date and time and respondents vide their letter dated 28.08.2012 conveyed the result of examination. It has been conveyed by the respondent-department that the applicant has obtained 51 marks out of 150 i.e.34% marks, against the passing marks for empanelment fixed in terms of establishment serial no.195/2005 and as the cut off marks for empanelment to the called for physical efficiency test was 60.80% for UR, 52.45% for SC, 47.11% for ST and 53.76% for OBC. As the applicant failed to obtain the cut off marks, the applicant was declared unsuccessful in the written examination as per letter dated 28.08.2012 Annexure A/10. From the pleadings itself, it is clear that the supplementary examination as per direction of the Tribunal was conducted for the applicant and other two persons were called in the written examination. In the reply of the respondents it has been specifically submitted

that the matter was taken by the Railway administration and the respondent-department had decided to hold the supplementary examination vide letter dated 08.11.2011 on the following terms:-

- (i) as per the syllabus and eligibility conditions as per 1998 notification.
- (ii) since the minimum educational qualification was only 8th class at that time, the question paper would be of that standard.
- (iii) after 2003 regular Railway recruitment cell headed by Dy. CPO(i.e. Deputy Chief Personnel Officer) Recruitment has been constituted in S.E.C.R. as such conducted of examination and processing of results would be executed by Railway Recruitment Cell.
- (iv) the empanelment of candidates will be depend upon their performance in the written examination vis-à-vis those who took examination in 1998. Copy of the said letter dated 8.11.2011 is annexed as Annexure R/1.

15. As the applicant had appeared in the supplementary written examination vide letter dated 14.11.2011 (Annexure A/7), and after declaration of result, the applicant is not entitled for challenging the criteria on the principle that approbation and reprobation cannot be at the same time. The date of examination was fixed as per the administrative convenience and the conditions regarding the syllabus and eligibility were same applied, which were followed during the selection conducted against the notification issued in the year 1998 and there is no difference with the earlier condition applied for the selection conducted against the notification of the year 1998. The examination was conducted through Railway recruitment cell headed by Deputy Chief Personnel Officer (Recruitment) as the said cell was constituted in the year 2003, specifically for open market recruitment for which the applicant has submitted his application and hence nothing wrong have been done in the applicant's case. The contention of the applicant that the replying respondents

should have provided the applicant empanelment by creation of supernumerary vacancy, is not tenable, as the process of creation of supernumerary post are applied only against the departmental examination. To provide employment against the open market recruitment, cannot claim such benefit. It is further submitted that providing alternate appointment is an administrative look out and the said arises only after passing required selection process. In this instant case, the applicant has failed to succeed in the said process and his claim cannot be entertained. The Railway Board vide establishment serial no. 195/2005 whereby the rules and procedures for conducting open market recruitment of Group 'D' post have been indicated and there is no difference with the earlier existing process adopted for recruitment of Group D staff through open market selection. The process of cut off marks is necessarily required to apply while holding open market recruitment against such recruitment are to be finalized from the huge number of candidates. Applying this

practice is mandatory and as per the extent rule and procedure. This practice has also applied, while selecting the suitable candidates against the notification issued in the year 1998 for which the applicant has submitted his application. So, whatever the process was applied in selection held in the year 2006 against the notification issued on 23.12.1998, for which the applicant has preferred his applicant, the same process was applied in the applicant's case also. The contention of the applicant that after interview there is no PET Test, is not tenable due to the fact that all the advertised vacancies were filled up and there is no option to create supernumerary vacancies for applicant and other two because this is a direct recruitment from the open market. As the applicant do not secured the cut off marks in the written examination and therefore the applicant cannot claim as a matter of right to consider for the PET test.

16. In view of the above, we are not inclined to interfere with the action of the respondent-department as the action

of the respondent-department is legal and there is no ambiguity in such action.

17. Resultantly, this Original Application is dismissed.

No order as to costs.

**(Ramesh Singh Thakur)
Judicial Member**

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**(Navin Tandon)
Administrative Member**