

Reserved**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH**
CIRCUIT SITTINGS: BILASPUR**Original Application No.203/01040/2016**Jabalpur, this Wednesday, the 10th day of April, 2019**HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER**
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Hari Babu
 S/o Shri K. Appa Rao.
 Aged about 37 years
 Unemployed
 R/o Ward No.4
 Maa Bhawani Nagar
 Sirgitti Bialspur 495001 (CG)

-Applicant

(By Advocate-Shri B.P. Rao)

V e r s u s

1. Union of India,
 Through: The General Manager
 S.E.C. Railway
 Bilaspur Zone
 Headquarters' Office
 Bilaspur 495004 (C.G.)

2. The Chief Personnel Officer,
 S.E.C. Railway
 Bilaspur Zone
 Headquarters' Office
 Bilaspur 495004

3. The Assistant Personnel Officer,
 Railway Recruitment Cell
 S.E.C. Railway
 Bilaspur 495004

(By Advocate-Shri R.N. Pusty)

*(Date of reserving the order: 02.04.2019)***- Respondents**

ORDER**By Ramesh Singh Thakur, JM:-**

This Original Application has been filed against the letter dated 10.10.2013 (Annexure A/8), whereby the applicant has been declared as ineligible for recruitment.

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

“8.1 That, the Hon’ble Tribunal be pleased to call for records of Applicant’s case from the possession of the Respondents for its kind perusal and to decide the grievance of the poor Applicant.

8.2 That, the Hon’ble Tribunal be pleased to set aside the Respondent No.2’s official Letter dated 10.10.2013 (A-8) addressed to Applicant in the interest of justice.

8.3 That, the Hon’ble Tribunal be pleased to pass an order, directing the Respondents to consider the Applicant’s case for Recruitment for Group-D post in terms of Employment Notification No.SECR/02/2010 dated 15.12.2010 in the interest of justice.”

3. The case of the applicant is that in terms of Employment Notice No.SECR/02/2010 dated 15.12.2010, the applicant submitted his application for Group D posts in the appropriate format along with the requisite document/fees etc. The applicant belongs to OBC category

and was allotted Roll Number 52414154 and was allowed to participate in the written test. A copy of applicant's call letter for written examination is annexed as Annexure A/1. The written test was held on 10.06.2012, wherein the applicant participated and was declared passed with sufficient merit as such the applicant was issued another call letter for Physical Efficiency Test which was held on 31.10.2012. The applicant secured desired qualifying marks in PET.

4. On the basis of merit in the written test, the applicant was called for document verification which was held on 16.01.2013. A copy of call letter of physical efficiency test and call letter for document verification are annexed as Annexure A/2 and A/3. The applicant appeared for document verification wherein the documents were found correct. The applicant was sent for medical examination, in which also the applicant was found fit for the applied post. Thereafter the respondents-department disclosed on the website that the percentage of marks obtained by the

applicant i.e. 38.99% in OBC category. A copy of marks awarded to the applicant is annexed as Annexure A/4.

5. Thereafter, the respondents published first list of empanelled candidates wherein the applicant's name was not empanelled and it was instructed that the applicant can try after publication of second list. A copy of said communication is annexed as annexure A/5. The applicant's name was also not appeared in the list of empanelled candidates in the second list. The applicant submitted an application under RTI to know the reasons thereof. A copy of applicant's application under RTI dated 11.09.2013 is annexed as Annexure A/6. The respondents have considered the application of the applicant and vide their official letter No.9141 dated 13.09.2013 and forwarded the matter to the concerned department. Accordingly, the Chief Personnel Officer, Headquarters, Bilaspur vide letter dated 10.10.2013, communicated the applicant that the last OBC selected/empanelled marks is 37.18% and since there is difference of applicant answers

to nearly 23 questions in OMR original sheet and carbon copy as such the applicant has been declared ineligible for recruitment. The copy of the aforesaid letters dated 13.09.2013 and 10.10.2013 are annexed as Annexure A/7 and A/8 respectively.

6. The main ground put forth by the applicant in the Original Application is that in the written test the applicant had secured 38.99% marks in OBC category. Despite the fact that the applicant also qualified in the Physical Efficiency Test and also the document have been duly verified and the applicant was also fit in the medical examination. So, how vide the impugned letter declared the applicant ineligible. Further ground of the applicant is that only one set of OMR answer sheet was provided to the applicant which was attempted by the applicant and on the basis of which the applicant was awarded marks 38.99%. So it is very astonishing that as to how the 23 answers do not match with the OMR answers. As per information received from the RTI, the selected candidate in the

category of OBC has scored 37.18% whereas the applicant scored 38.99%. So, the applicant has been wrongly ignored by the respondent-department.

7. The respondent-department has filed the reply to the Original Application. In the preliminary submission itself the respondent-department has spelt out the system regarding supplying of OMR sheet along with its duplicate sheet at the time of examination. It has been specifically submitted that the practice in vogue, the original and duplicate OMRs are separated in the examination venue itself and packed and sealed in the envelope in the examination venue itself and handed over to the Town in charge of the city of the examination. All such sealed packets containing the original OMRs and duplicate OMRs are accounted for and sealed in separate trunks. The Town Incharge on the same day hands over the trunk containing sealed packets of Original OMRs to the representative of confidential agency of Railways for the purpose of evaluation. The guidelines of Railway Board

has been communicated vide letter dated 18.07.2005 (RBE No.121/2005) which is annexed as Annexure R/1, the sealed truck containing packets of duplicate OMRs are kept by the Town Incharge in the custody of GM/AGM.

8. In the matter of written examinations against Employment Notification No.SECR/02/2010, the same procedure was followed. The Original OMRs were handed over to the Confidential Agency by the respective Town Incharges and the duplicate OMRs to AGM/SECR as per orders of GM/SECR. The keys of the trunks containing duplicate OMRs are also kept in the custody of AGM/SECR. The trucks containing duplicate OMRs are opened in presence of nominated officers for particular occasions like matching work etc. The candidates were given one set of OMR answer sheet which contains one original OMR and one duplicate OMR which is the carbon copy of the original OMR. All the markings on original OMR are reflected on the duplicate OMR also. There are clear instructions given to candidates not to temper the OMRs

by any means. It has been clearly mentioned on the original OMR that once darkened the circle, changes are not permitted. Similar instructions are also given over leaf the duplicate OMRs. A sample photocopy of OMR is also sent to the candidates along with call letter to ensure that the candidates get accustomed to fill up the OMR correctly.

9. In the case of the applicant, it was noticed during the cross verification of his original and duplicate OMRs that there are difference of 23 markings in the original and duplicate OMRs. Attested Xerox copies of original and duplicate OMRs of the applicant are annexed as Annexure R/2 to establish the misdeed of the applicant which he was not supposed to do.

10. In the main reply of the O.A., the replying respondents have specifically submitted that on cross verification of applicant's original and duplicate OMRs, there was difference of 23 markings in the original and duplicate OMRs. The respondent-department as per the

practice in vogue, the original and duplicate OMRs are separated in the examination venue itself and packed and sealed in the envelope in the examination venue itself and handed over to the Town In-charge of the city of the examination. All such sealed packets containing the Original OMRs and duplicate OMRs are accounted for and sealed in separate trunks. The Town In-charge on the same day hands over to the Trunk containing sealed packets of original OMRs to the representative of the confidential Agency of Railways for the purpose of evaluation. The guidelines were issued by the Railway Board vide letter dated 18.07.2005 (RBE No.121/2005) annexed as Annexure R/1. The sealed trunk containing packets of duplicate OMRs are kept by the Town In-charge in the custody of GM/AGM. The same procedure is followed in the instant case of the applicant. The candidates were given one set of OMR answer sheet which contains one original OMR and one duplicate OMR which is carbon copy of the original OMR. All the markings on original

OMR are reflected on the duplicate OMR also. As per order of the Railway Board 100% matching of the original and duplicate OMRs of candidates who fall in the zone of consideration of empanelment are done to ensure arrest any lapses and oversights. For the purpose of matching of original and duplicate OMRs a team of officers and supervisors are nominated. The clear instructions are given to candidates not to tamper the OMRs by any means. It is also clearly mentioned on the original OMR that once darkened the circle, changes are not permitted. Similar instructions are also given over leaf the duplicate OMRs. A sample photo copy of OMR is also sent to the candidates along with call letter to ensure that the candidates get accustomed to fill up the OMR correctly.

11. In the case of the applicant it was noticed during cross verification of his original and duplicate OMRs that there are difference of 23 markings in the original and duplicate OMRs. The applicant has been provided copy of the original and duplicate OMRs which are asked for the

same through RTI. The replying respondents have also raised the issue of delay in filing the O.A. after a period of more than three years and three months.

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

13. From the pleadings, it is clear that the employment notification was issued by the respondent-department dated 15.12.2010 and the applicant has submitted application of Group 'D' post in the appropriate format. It is also admitted by both the parties that the applicant belongs to OBC category. It is also an admitted fact that vide Roll No.52414154 the applicant has participated in the written examination and as per call letter Annexure A/1, the applicant has attempted written examination and was declared successful in the written examination. It is also clear from the pleading that the physical efficiency test was held on 31.10.2012, the applicant has secured the desired qualification marks and thereafter the applicant

was also called for document verification which was held on 16.01.2013. From Annexure A/5, it has also clear that the applicant could not be empanelled in the list and further also the name of the applicant did not figure in the second empanelment. It is also admitted by both the parties that the applicant has moved an application under RTI vide Annexure A/6 and the respondents have communicated the applicant regarding the marks obtained by the last candidate is 37.18%. It is also admitted by both the parties that vide Annexure A/8 dated 10.10.2013, the applicant was declared ineligible.

14. In the instant case, the question for determination is that whether the applicant is ineligible as per instructions issued by the respondent-department while attempting the written test on OMR sheets. The specific stand taken by the respondent-department is that on over leaf of OMR sheet there is clear instructions to the fact that the candidates are to answer questions from the multiple choice of answer A, B, C or D. Select the right answer to

each question and darken the correct circle on the answer sheet. Once darkened the circle, changes are not permitted. As per instruction No.12, it has been further indicated that failure to adhere to the instructions above will render your answer sheet as invalid and it will not be evaluated. So, the replying respondents have relied upon these instructions which made it clear that any violation of following instructions will amount to invalidation of the answer sheet. In the instant case as per Annexure R/2 there is original OMR sheet and along with it the duplicate OMR sheet has also been annexed. There is a specific submission made by the replying respondents that there is a difference of 23 markings meaning thereby the applicant has done something wrong. It is settled law that the document prepared in the official capacity is presumed to be correct and until and unless otherwise proved. The applicant did not file any rejoinder to the reply filed by the replying respondents. So the presumption of truth lies in favour of the replying respondents. In view of the specific

instructions communicated on the over leaf of Annexure R/2, the copy of which has also been given to the applicant, there is clear cut violation of the instructions and as per instruction No.12 it has been specifically mentioned that if there is any violation of instructions the answer sheet will render invalid. From the documents itself, the action of the respondents is valid. Moreover, the applicant has moved M.A.No.200/01017/2016 for condoning the delay of more than 03 years in filing this O.A. We do not find any plausible reasons given in the said M.A. for explaining the delay in filing the O.A. Hence, the M.A. is rejected.

15. In view of the above, we are of the opinion that there is no ambiguity in the action taken by the respondents and there is no reason to interfere with the impugned order.

16. Resultantly, the Original Application is dismissed.
No costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

kc