

CENTRAL ADMINISTRATIVE TRIBUNAL

MADRAS BENCH

OA/310/01335/2018Dated 18th ,the day of September Two Thousand Nineteen

P R E S E N T

Hon'ble Mr. P. Madhavan, Member J)

&

Hon'ble Mr. T. Jacob, Member (A)

T. Dhanesh
No. 11/25, Sundapattivilai
South Soorankdi
Kanyakumari
Tamil Nadu – 629 501. Applicant

By Advocate **M/s. R. Ramesh**

1. Union of India
Represented by the Chairman
Ministry of Railways
Southern Railways
Railway Recruitment Cell
Chennai.

2. The Assistant Personal Officer /Recruitment
Railway Recruitment Cell, Southern Railways
No. 5, Dr. P.V. Cherian Crescent Road
Egmore, Chennai – 600 008. Respondents

By Advocate **Mr. D. Hariprasad**

O R D E R

(Pronounced by Hon'ble Mr. T. Jacob, Member(A))

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:

“To call for the records pertaining to Order bearing no. RRC 353/OA00009/2018 dated 16.03.2018 of the 1st respondent and set aside the same and consequently direct the respondents to appoint the applicant to the Post in the pay Band –1 of Rs. 5200-20200 with Grade Pay of Rs. 1800/- in terms of the selection held in response to the Employment Notice No. 02/2013 dated 21.09.2013 and pass such further or other orders”

2. The brief facts of the case as submitted by the applicant are as follows:

The applicant is the selected candidate in the selection conducted in terms of the Employment Notification No.02/2013, dated 21.09.2013 to the post in Pay Band -1, Rs. 5200-20200, Grade Pay of Rs. 1800/-. He had applied online for the same under the Physically Handicapped quota. He is handicapped to the extent of 60% disability as per the disability certificate issued by Kanyakumari Government Medical College Hospital, Asarpallam, Nagarcoil. His disability had been recognised by the Government of India and had been issued with the I.D. No.4955/06. He was qualified in the written examination and was the only handicapped person and belonged to Other Backward Class community who had taken up the examination from Nagarcoil District. The respondent issued letter No.RRC/E.N.02/2013/PET informing him that he was qualified in the written examination and was provisionally called for Document Verification on 24.02.2015 at 1.00 p.m. He appeared before the respondent and submitted the documents enlisted for verification. Failing to receive

any response, he submitted a representation to the respondent requesting appointment to the post in Pay Band-1 Rs. 5200–20200, Grade Pay of Rs.1800/-. Since he did not receive any reply from the respondent, he filed OA .9/2018 before this Tribunal which was disposed of by this Tribunal directing the 2nd respondent to consider and pass reasoned and speaking order on the applicant's representations dated 23.02.2016 and 15.03.207. On 16.03.2018 the 1st respondent passed the impugned order rejecting the request of the applicant. Aggrieved by the above, the respondent the applicant has filed this OA seeking the above relief.

3. The grounds on which the applicant has based his prayer for relief are as follows:

- i. The averments made in the impugned order that he had produced certificate pertaining to hearing handicapped and during certificate verification he had produced orthopaedically handicapped certificate is not correct as he had no other certificate except the certificate of orthopaedically handicapped (OH). Further, he had not submitted any other certificate other than the OH certificate and there is not suppression or misrepresentation of facts for rejecting the applicant's candidature.
- ii. The applicant comes within the category of physically handicapped whether it is hearing handicapped or orthopaedically handicapped. There is no separate quota allotted for each sub category of handicapped. Therefore having qualified in the written examination as per the result published by the respondent, the applicant cannot be rejected on a wrong interpretation of the

notification and on any other ground when there is no misrepresentation from the applicant and having produced the disability certificate.

4. The respondents have filed reply. It is stated that the applicant was called for Document Verification only based on his mentioning in the on-line application (cited as Annexure R-2) that he is an “HH” candidate. The cut-off marks for “HH” candidates for Document Verification is 28.000 and the applicant had secured 40.000 marks in the Written Examination. However, from the Certificate produced for Proof of PWD at the time of Document Verification on 24.02.2015, cited as part and parcel of Annexure A-7, it was evident that the applicant is an “OH” candidate. Had the Applicant mentioned in the on-line application Annexure R-2, that he is a PWD candidate with nature of Disability as “OH”, the question of calling him for Document Verification would not have arisen at all. The reason being that as against the cut-off marks of 53.533 meant for the “OH” candidates called for Document Verification, the marks secured by the applicant in the Written Examination was only 40.000. The fact remains that in the category of “OH”, 976 candidates who have scored in between the cut-off marks of 53.533 and 40.000, could not be recruited against E.N. No.RRC 02/2013 cited as Annexure A-1. In other words, to consider the applicant as an OH candidate, the applicant ought to have scored not less than 53.533 marks in the Written Examination. However, the marks scored by the applicant in the Written Examination were 40.000 only. Hence the respondents pray for dismissal of the OA.

5. Heard the learned counsel for the respective parties and perused the pleadings

and documents on record.

6. This is the second round of litigation before this Tribunal. Earlier the applicant had filed OA.9/2018 wherein this Tribunal by order dated 03.01.2018 directed the respondents to consider the representations of the applicant dated 23.02.2016 and 15.03.2017 and pass a reasoned and speaking order. In pursuance of the same, the respondents have passed the impugned order dated 16.03.2018 rejecting his request against which, the applicant has filed the present OA.

7. It is not in dispute that the applicant belongs to Orthopaedically Handicapped category with a disability of 60%. In response to Employment Notification No.RRC 02/2013 dated 21.09.2013, for the recruitment to posts in Pay Band -1 (Rs. 5200-20200) with Grade Pay of Rs. 1800/- in Southern Railway & Integral Coach Factory, the applicant had applied online vide Transaction Id. 2510582 dated 03.10.2013. As per the notification, vacancies were exclusively ear-marked for various categories like Orthopaedically Handicapped(OH), Visually Handicapped(VH) and Hearing Handicapped(HH). A careful perusal of Annexure R2 would indicate that the applicant had furnished various informations starting from Sl.No.1 to Sl.No.21. Against Sl.No.13 (meant for Person with Disabilities) he has affirmed that he is a Person with Disabilities and Disability as HH (Hearing Handicapped) with the Certificate No.4764 dated 21.01.2006. On the basis of his averment in the online application that he belongs to the category of “HH” disability his application was processed under that category only. The cut off marks for various disabilities are different. Thus, the cut off marks for candidates falling under the classification of

“HH” (Hearing Handicapped) was 28.000. As the applicant had secured 40.000 marks in the Written Examination, based on his mentioning in the on-line application cited as Annexure R-2, that he is an “HH” candidate, he was called for Document Verification through Annexure A-2. However, at the time of Document verification he produced Disability Certificate No 4956 dated 19.02.2015 for “OH”. The fact remains that the applicant was called for Document Verification based on his mentioning in the on-line application Annexure R-2 that he is a “HH” candidate despite the fact that he is a “OH” candidate. In the said 'Disability Certificate', 'tick marks' were made against Locomotor or cerebral palsy, (iv) OA – One Arm affected (a) impaired reach & (b) Weakness of grip. Further, the mention of Hearing Impairment has been cut off. The Percentage of disability is mentioned as 60%. In other words, as against his mention of 'HH' (Hearing Handicapped) in his online application, he has produced certificates for 'OH' (Orthopaedically Handicapped). As against the cut-off marks of 53.333, in the category of “OH”, the marks scored by the applicant were 40.000. Had he secured the marks higher than the cut off marks of 53.33, the respondents would have waived the error of his having applied under “HH” category and considered under the “OH” category and accommodated him. That is not the case here. But, for his mentioning as “HH” in the application, the marks scored as an “OH” candidate, he would not have been subjected to Document Verification by the respondents. As such, the rejection of his candidature of the applicant for appointment to the post in the Pay Band –1 of Rs. 5200-20200 (Grade Pay Rs. 1800/) is totally valid in the eyes of law. Even assuming if he is to be

considered as an 'OH category', he ought to have scored not less than 53.533 in the Written Test, which is the mark scored by the last candidate who got recruited under the 'OH' category. The marks scored by him in the Written Test were 40 only. Hence we are of the considered view that the applicant whose candidature was rejected at the time of Document Verification does not have the right of seeking appointment under the 'OH' category. As there have been more meritorious candidates, rightly the applicant could not be accommodated under the Orthopaedically Handicapped quota.

8. In the conspectus of the above facts and circumstances of the case and the discussions herein above, we see no illegality or irregularity in the order of the respondents rejecting the claim of the applicant for appointment to the post in the pay Band –1 of Rs. 5200-20200 with Grade Pay of Rs. 1800/-.

9. In the result, the OA is liable to be dismissed and is accordingly dismissed. No costs.

(T. Jacob)
Member (A)
AS

.09.2019

(P. Madhavan)
Member (J)