



**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH**

O.A. No. 350/0568/2013

Date of Order: 25.02.2019

Present: **THE HON'BLE SMT. MANJULA DAS, MEMBER (J)**
THE HON'BLE MR. NEKKHOMANG NEIHSIAL, MEMBER (A)

Shri Jyoti Shankar Bhadura
Son of Ramananda Prasad
Aged about 31 years
Residing at Chaurashekhar Lodge
Rampur Lane, Mushallah, Purhaj
Mahendru, Patna, Bihar.

...Applicant

-Versus-

1. Union of India through the General Manager
Eastern Railway, Kolkata – 700001.
2. The Chairman, Railway Recruitment Cell
56, C.R. Avenue, Kolkata – 700012.
3. The Assistant Personnel Officer
Recruitment, Railway Recruitment Cell
56, C.R. Avenue, Kolkata – 700012.

...Respondents

For the Applicant : Mr. A. Chakraborty & Ms. T. Das

For the Respondents : Mr. A.K. Guha

ORDER (ORAL)

NEKKHOMANG NEIHSIAL, MEMBER (A):

By this O.A., applicant prays the following reliefs:-

- '8.(a) The rejection order issued in respect of the applicant may be quashed and the name of the applicant may be included in the panel of his appointment in Group-D post in the Eastern Railway.

[Handwritten Signature]

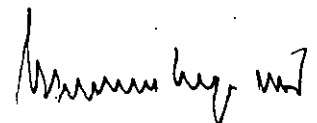
- (b) An order do issue directing the respondents to produce all the documents for the end of justice.
- (c) Passed any other order/orders as may deem fit."

2. The main grounds for relief of the applicant are that:

- a) For that the issue whether the candidature of the applicant can be terminated without giving him an opportunity to counter the remarks of the respondent authority regarding out of Zone of consideration.
- b) For that the name of the applicant was not added in the list successful candidates published after the Hon'ble Tribunal's order although the applicant was provisionally empanelled in the earlier list of successful candidate published on 10.08.2009.
- c) For that when applicant's candidature was considered as successful in written test, PET and medical examination and he was empanelled in list of successful candidate published earlier, his name cannot be arbitrary cancelled.
- d) For that the action of the respondents is concocted and after thought to accommodate another by de-empanelled the candidature of the applicant.

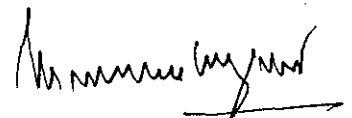
3. Facts of the case of the applicant are as follows:-

- (i) That the applicant, under OBC Group submitted his application for his candidature against the Employment Notice No. 0106 dated 25.09.2006 inviting application for preparing a panel for filling up various categories of Group-D posts.
- (ii) That the applicant states that as per call letter for written test he appeared in written test held on 06.01.2008 and was declared successful.



The said call letter is enclosed hereto and marked as Annexure A-1 to this application.

- (iii) Applicant states that thereafter he was called for physical efficiency test (PET) and he appeared for such on 09.06.2008 and being successful he was called further for medical examination which was held on 16.12.2008 at Chittaranjan Locomotive Works, Chittaranjan, Burdwan, West Bengal. Copies of call letters for PET & Medical Examination are enclosed herewith and marked collectively as Annexure-A-2.
- (iv) That the applicant states that on being successful in PET and medical examination he was provisionally empanelled as OBC candidate for recruitment to Group - D post. The copy of the empanelment result as received through interest is enclosed herewith and marked as Annexure-A-3.
- (v) Applicant states that in the meantime some of the candidates whose name not appeared in the empanelment list filed various applications before the Central Administrative Tribunal, Calcutta Bench challenging the action of the respondent for rejecting their candidature. The Hon'ble Tribunal disposed of those application by a common order dated 22.08.2009. The relevant portion of the order is reproduced below:
- "In the result, we set aside and quash all the impugned rejection/cancellation orders of these applicants challenged in these OAS and direct that their candidature shall be proceeded further to the next step where they were stopped and the respondents shall consider their candidature for selection of merits and communicate the result through internet and till such consideration of the candidature of the applicants is made, the final panel stated to be containing shall not be finalized, published and/or appointment orders



issued, in order to provide equal opportunity to all those similarly placed candidates who may not have come before us, we further direct that the recruitment cell shall issue appropriate notice within a fortnight from the date of this order, giving one month's time from the date of such notice to them to submit representations against such cancellation and decide the same within one month from the date of their receipt in the light of our observations made above".

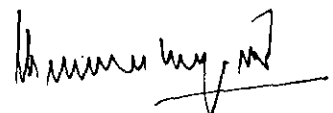
- (vi) That some of the successful candidates preferred WPCT 45 of 2009 against the Hon'ble Tribunal order dated 22.08.2009 before High Court, Calcutta. The Hon'ble High Court passed the following order.

That successful candidates preferred WPCT of 45 of 2009 against the order. The Hon'ble High Court passed by the following order.

"Having regard to the fact that about 5300 candidates were empanelled in such selection process the panel of which was cancelled by learned Tribunal below by the impugned order, we are of the view that while hearing the present writ petitioners who are hereby added in all the original applicants as party respondents, learned Tribunal will take steps for issuing notice so that anybody may appear either in a representative capacity or individually to contest the matter before the learned Tribunal."

- (vii) Applicant states that many empaneled candidates including the applicant of the O.A. were added as parties as per Hon'ble High Court's order. Again some of the unsuccessful candidates also filed new cases before the Hon'ble Tribunal. All those cases were disposed of vide common order dated 09.04.2010.

- (viii) That the applicant states that it is not understood that when the applicant was successful in written examination, PET and also

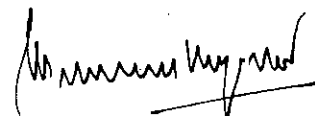


in medical test and when he was empanelled in the earlier list how his candidature was not added in the test of the successful candidates published by the respondent on 22.01.2012.

4. The respondents have filed their written statement on 14.03.2014. Apart from narrating legal battles/fights between the parties involving the Central Administrative Tribunal, Kolkata Bench and Hon'ble Calcutta High Court, the respondent authorities stated as under:-

"However, panel for the left out vacancy [Notified vacancy 5726-1st provisional Panel published on merit (on 22.01.2012) for 5512] = of remaining 214 nos. candidates was published on 11.08.2012 strictly as per merit and as such no vacancy against EN No. 0106 is available. As the applicant of this O.A. did not come within the zone of consideration after considering the merit, so they were not empanelled."

5. We have considered the above submissions and arguments of both the parties. However, it is observed that in the Speaking Order No. RRC/ER/OA/903/2012(0106) dated 28.06.2016 which was passed in another similar case in O.A. No. 350/01212/2016 and O.A. No. 350/01213/2016, the respondents have recorded that as per standing instruction of Ministry of Railways, at the stage of medical examination, the candidates are being summoned in the ratio of 1:1. If this is the norm adopted by the respondent authorities, it is not clear to us as to



how the present applicant who was called for medical examination, could not make to the final list of selection, more so, when he was already included in the provisional list of selected candidates.

6. Keeping in view of the above, we consider that the respondent authorities need to come out transparently as already ordered by this Tribunal on earlier occasion in O.A. No. 903/3012 dated 26.11.2015. We therefore, direct the respondents to re-examine the case of the applicant and consider him again for final selection within a period of three months from the date of receipt copy of this order.

7. With the above observations and directions, O.A. stands disposed of. There shall be no order as to the costs.


(NEKKHOMANG NEITHAL)
MEMBER (A)


(MANJULA DAS)
MEMBER (J)