



**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH**

O.A. No. 350/01212/2016
M.A. No. 350/00026/2019

Date of Order: 25.02.2019

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

Payel Paul
Wife of Sri Kaushik Paul
Aged about 42 years
Residing at 4/2, Bishalakshmitala Road
Post Office – Purnashree Pally
Behala, Kolkata – 700060.

...Applicant

-Versus-

1. The Union of India
Through General Manager
Eastern Railway, Fairlie Place
Kolkata – 700001.
2. Chief Personnel Officer
Eastern Railway, Fairlie Place
Kolkata – 700001.
3. The Chairman
Railway Recruitment Cell
Eastern Railway, 56, C. R. Avenue
Kolkata – 700012.

...Respondents

For the Applicant : Mr. A. Chakraborty

For the Respondents : Mr. A.K. Guha

ORDER (ORAL)NEKKHOMANG NEIHSIAL, MEMBER (A):

In this O.A., the applicant challenged the impugned Speaking Order of the respondents dated 28.06.2016 under No. RRC/ER/OA/903/2012(0106) which has been issued in compliance of this Tribunal's order dated 26.11.2015 passed in O.A. No. 903/2012 (0106) but rejecting the application of the applicant for appointment/recruitment in Group 'D' posts.

2. In the O.A. No. 903/2012, this Tribunal vide order dated 26.11.2015 had directed as here under:

"The Railway administration shall see that applicants who actually passed the written test as well as the PET and coming within the zone of consideration dehors the new and additional conditions subsequently imposed, are empanelled after subjecting them to medical examination and depending upon the vacancies they should be given offer of appointment as per law. This process has to be completed within a period of 4 months from the date of receipt of a copy of this order."

3. Accordingly, said Speaking Order dated 28.06.2016 has been issued by the respondent authorities rejecting the claim of the applicant on the ground that the candidate i.e. Payel Paul (OBC), Roll No. 11122037 scored 93.67 marks out of 150 and only the candidates who secured up to 98.33 marks out

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of 150 were called for medical examination. Accordingly, she could not make for medical examination as well as for final selection.

4. This has been contested by the applicant as under:-

- "(i) Firstly authority concerned failed to comply the directives passed by the Hon'ble Tribunal dated 26.11.2015. It amounts to violation of Court's Order and the respondents should be held guilty for flouting the Court's Orders.
- (ii) The authority concerned cannot reply RBE Bo. 73 of 2008 when employment notice was issued in 2006. The Hon'ble Tribunal passed an order to the effect that Railway Administrative shall see the applicant who actually passed the written test as well as the PET and coming within the zone of consideration dehors and new and additional conditions subsequently imposed are empanelled after subjecting to medical examination. It is evident that new conditions are imposed which cannot be sustained.
- (iii) If Railway authority at all applies the circular of 2008, it was their duty to prepare waiting list 'Replacement panel in lieu of the candidates who finally not turned up for taking appointment. It was admitted by the respondents that more than 1200 vacancies were not filled up. Therefore the authority concerned violated Railway Board's circular No. 73 of 2008. On that ground also speaking order is to be quashed."

5. The applicant further contested and sought for relief as under:-

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“8.a) Speaking Order dated 28.06.2016 issued by the Chairperson RRC cannot tenable in the eye of law and same may be quashed.

b) An order do issue directing the respondents to adjust the applicant against the vacancy which was not filled up due to not turning up of empanelled candidate or in any other vacancies of Group D Post and to grant all consequential benefits.”

6. In response to the para 4.11(iii) regarding preparing waiting list 'Replacement panel in lieu of the candidates who finally not turned up for taking appointment, the respondent authorities responded with the statement that if any or some of empanelled candidate are not joined at any units, the same posts are transfer to next indent. So, there is no system of replacement panel by RRC/ER.

7. We have carefully gone through the Speaking Order No. RRC/ER/OA/903/2012(0106) dated 28.06.2016. As pointed out by the applicant in this O.A; the examination for the recruitment pertains to Notice issued in 2006. But the Speaking Order quoted the RBE No. of 73/2008 as the authority for the purpose of calling candidates for medical examination. This has been challenged by the applicant on the ground that since the examination was of 2006, her case could not have been examined and considered with reference to the order of 2008.

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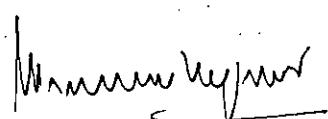
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8. It was also claimed by the applicant that more than 1200 vacancies were not filled up initially as some candidates have not turned up for taking appointment. The Speaking Order has not mentioned as to how these 1200 vacancies have eventually been filled up.

9. It is observed that the applicant contested the aforesaid remark on the ground that resultant left out vacancies of more than 1200 without being filled up by the candidates of the replacement panel as per Railway Board Circular/RBENO. 73/2008 is violated by the respondents. This aspect has not been fully elaborated by the respondents in the speaking order.

10. The respondent authorities in their written statement filed on 06.09.2017 at para 10 stated that RBE No. 121/2005 has never instructed to call all the candidates who have cleared up to PET and the same was confirmed in RBE No. 73/2008 when the examination for recruitment pertaining to the year 2006.

11. Keeping in view of the above, we find that Speaking Order No. RRC/ER/OA/903/2012(0106) dated 28.06.2016 is defective and non-compliant to the above extant and is liable to be set aside and accordingly, the same is set aside.

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12. The respondents are directed once again to consider the case of the applicant as directed by this Tribunal on earlier occasion in O.A. No. 903/3012 dated 26.11.2015 within a period of three months from the date of receipt copy of this order. They also should explain as to how stated unfilled vacancies of 1200 have been eventually filled up.

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

14. Consequently, M.A. No. 350/00026/2019 for preponent of date of hearing of O.A. No. 350/01212/2016 is also disposed of.

(NEKKHOMANG NEIHSIAL)
MEMBER (A)

(MANJULA DAS)
MEMBER (J)