

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. 683/2018

Date of Decision: 4th June, 2019

CORAM: R. VIJAYKUMAR, MEMBER (A)
RAVINDER KAUR, MEMBER (J)

1. Bhairu Narayan Bailykar,
Age: 31 years,
Residing at Haladawade
Post - Karanjivane
Taluka - Kagal,
District - Kolhapur,
Maharashtra - 416 219.
2. Rajdeep Sarjerao Kadale
Age 45 Years
Residing at 4/348/4180,
M.H.B. Colony,
Tagore Nagar, Vikhroli (E)
Mumbai - 400 083. ... *Applicants*

(By Advocate Ms. Pradnya Kardak with Ms.
Namrata Kalote)

VERSUS

1. The Union of India
Through General Manager,
Western Railway, GM Building,
Churchgate, Mumbai - 400 020.
2. The Chairman
Railway Recruitment Cell,
Parcel Depot,
Alibhai Premji Marg,
Grant Road, Mumbai-20 ... *Respondents*

(By Advocate Ms. Sangeeta Yadav)

ORDER (ORAL)PER: R. VIJAYKUMAR, MEMBER (A)

This application has been filed on 11.09.2018 under Section 19 of the Administrative Tribunals Act, 1985 claiming the following reliefs:-

"8(1) to recruit the applicants for the post for which they applied.

8.2) to quash and set aside impugned orders dated 1st September 2017, 1st August 2016, 18th July 2016, 14th August 2019.

8.3) to award the cost of the application and to pass further order as the Hon'ble Tribunal may deem fit and proper in the facts and nature of the case.

8.4) Permission to amend if necessary as this Hon'ble Court may deem fit and proper."

2. The respondents had issued the Employment Notification No.2/2012 dated 27.09.2012 for filling up 2249 posts in PB-I with Grade Pay of Rs.1800/- and in this Notification, they have specified the suitability of persons with different kinds of disability who could apply for each category of the seven posts listed under this Notification. The applicants applied for selection and after passing the written examination, they appeared for document verification and then received the medical certificates which have been enclosed

by them at Page Nos.51 and 52 as Annexure A-12 and A-13 with recorded the nature of their disability as above 40% with PH (OH), with kyphoccoliosis and multiple erostosis in respect of applicants Nos.1 and 2 respectively.

3. Later, at the time of deciding the candidates to be selected, the applicants appear to have been rejected on the basis that their disability does not fall within the categories mentioned in the Employment Notification. The applicant No.1 filed a complaint, before the Court of the Chief Commissioner for Persons with Disabilities, New Delhi who passed an order in case No.2766/1014/2014 dated 29.01.2016 advising both the respondents as follows:-

“17. In view of the above, the respondent is directed to re-examine the case in consultation with the Department of Empowerment of Persons with Disabilities, Ministry of Social Justice & Empowerment so as to include 'spinal deformity' in sub category of OH/PH category and consider the case of complainant as he has qualified all stages of examinations and proved his competency for the posts under consideration. However, this shall not be taken as a precedence. A copy of this Record of proceedings be also forwarded to the Secretary, Department of Empowerment of persons with Disabilities for necessary/appropriate action.”

4. The respondents have filed reply in this matter and learned counsel for the respondents specifically pointed to the Notification which

lists the categories of physically disabled persons who could be employed against the specific posts advertised.

5. The essential contention of the applicants is that despite the orders of the Court of the Chief Commissioner for Persons with Disabilities, the respondents have not taken any steps in the matter. They also have the grievance that their applications could have been eliminated at the initial stage itself and they have been unnecessarily taken through a long process of examinations etc for which they hold the respondents responsible.

6. Learned counsels have been heard and the pleadings have been carefully examined.

7. The applicants can derive an enforceable right only from the Notification. This Notification makes it clear that only specific categories of physically disabled persons would be accommodated for consideration in the specific posts advertised in this Notification. Learned counsels for the applicants were enquired on which posts they applied and have said that they had applied for the post of Helper/Stores which accommodates persons with

OA-One Arm Affected, BL- Both Legs Affected but not Arms and OL- One Leg Affected under the OH category. She fairly concedes that the applicants do not fall in any of these categories and were clearly ineligible. The respondents are barred from considering other kinds of disability because if they do so, they would be violating the terms of the Notification and would have, therefore, affected the rights of similar placed persons who had carefully studied the Notification and not applied for the job. Therefore, merely because the applicants applied for this job and they were called for the examination and other processes, they cannot derive an enforceable right that can be considered by this forum. On this basis, the main plea of the applicants fails and no relief is available on this aspect.

8. With regard to the difficulties of the applicants in having gone through the application process and being finally told that they are not eligible *prima facie*, this Tribunal has no jurisdiction to examine the aspect of any damages that might accrue to the

applicants. However, it was also the responsibility of the applicants to have verified their eligibility. At the same time, it was also the responsibility of the various interacting staff of the respondents to have suitability advised the applicants. We do not wish to comments further on this course. In the circumstances, this OA does not succeed.

9. The Original Application is dismissed without any order as to costs.

(Ravinder Kaur)
Member (J)

(R. Vijaykumar)
Member (A)

ma.

JP
07/6/19