

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
Circuit Sitting: Bilaspur

Original Application No.996 of 2013

Jabalpur, this Tuesday, the 3rd day of December, 2019

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Rajendra Singh, S/o Shri Ramnarayan Chouhan,
Date of birth 14.9.1969, R/o Near Durga Temple,
Kanhaiyapuri, Kasardeeh, Durg-491001(CG)

-Applicant

(By Advocate –**Shri A.V.Shridhar**)

V e r s u s

1. Union of India, through General Manager,
South East Central Railway, Bilaspur (CG)-495004

2. Deputy Chief Personnel Officer,
Railway Recruitment Cell, South East Central Railway,
Bilaspur (CG)-495004

-Respondents

(By Advocate –**Shri Vivek Verma**)

(Date of reserving the order:-06.12.2018)

ORDER

By Ramesh Singh Thakur, JM:-

The applicant is aggrieved with the action of the respondents in not filling up all the posts advertised for visually handicapped persons in the notification dated 15.12.2010 issued for filling up Group “D” posts in pay band I with Grade Pay of Rs. 1800/-.

2. The applicant has prayed for the following reliefs in this Original Application:-

“8. Relief Sought:-

8(i) Summon the entire record from the possession of the respondents including the vacancy position under visually handicapped category for its kind perusal.

(ii) Upon holding that the inaction of the respondents authorities in not filling up all vacancies under visually handicapped category as per the notification dated 15.12.2010 and the mandate of Section 33 of the Act of 1995 is arbitrary, unjust, unfair and unreasonable in nature, command the respondents to fill up all vacancies of visually handicapped category as advertised under notification dated 15.12.2010 Annexure A-1 and empanel/appoint the applicant in Group “D” post under visually handicapped category quota with all consequential benefits.

(iii) Any other order/orders, which this Hon’ble Court deems fit and proper may also be passed.

(iv) Award cost of the litigation in favour of the applicant.”

3. The brief facts of the case are that the applicant is an unemployed youth and is in search of a proper job. The Railway Recruitment Cell, SECR, Bilaspur issued a notification of filling up Group ‘D’ post including special recruitment drive for candidates with physical disability. The total vacancies advertised were 5798 out of which 90 posts were reserved for visually handicapped, 90 for orthopaedic handicapped and 78 for hearing handicapped persons. The applicant being a physically handicapped (Visually) applied for the said post under visually handicapped category. A copy of the certificate showing physically handicapped person is annexed as Annexure A-2. The applicant was called for written examination and the admit card was issued

to the applicant as shown in Annexure A-3. The result of the said examination was declared by the respondent department vide employment notice NO. SECR/02/2010 dated 08.08.2012, wherein name of the applicant does not find place in the select list out of 39 selected candidates for visually handicapped category. The applicant has been informed vide order dated 19.11.2012 (Annexure A-5) that 39 persons have been selected under visually handicapped category and the posts advertised for the said category were 90 and the respondents chosen to fill up only 39 posts out of 90. The applicant obtained RTI information dated 17.10.2013 (Annexure A-6) wherein the respondents have furnished the information regarding candidates empanelled under physically handicapped (visually handicapped) quota. A bare perusal of the list would show that the last candidate under unreserved category has secured 43.33 marks and the applicant has secured only 37.43% marks. Further it has been submitted that under visually handicapped quota only 36 candidates have been empanelled out of 90 posts.

4. It is relevant to mention that just after the declaration of result without filling up all the posts, the respondents have proceeded with another selection by advertising notification dated 25.08.2012 and in the said advertisement under physically

handicapped quota, the respondents have again advertised 24 posts under orthopaedic handicapped category, 17 posts under visually handicapped category and 21 posts under hearing handicapped category. Hence this Original Application.

5. The main grounds for challenge in this Original Application is that the respondent department have advertised 90 vacancies for visually handicapped category and as per the mandate of Section 33 of the Persons with Disability (Equal Opportunity, Protection of Rights and Full Participation) Act, 1995 they should have filled up the statutory quota, however, they have filled up on 36 posts which is unjust, unfair, unreasonable.

6. The respondents have filed their reply. The respondents in their reply have submitted that the applicant is not challenging any particular order but aggrieved with the action of the respondents in not filling up all the posts as advertised for visually handicapped quota vide notification dated 15.12.2010. It is further submitted by the respondents that the applicant has not secured the minimum qualifying marks as per the guidelines issued by the Railway Board vide letter dated 18.07.2005-RBE No. 121/2005 circulated vide SECR, Estt. Rule No. 195/2005 (Annexure R-1). It is further submitted by the replying respondents that the Railway Board issued guidelines for recruitment of Group 'D' posts by railway

administration. Clause 7 of the guideline is provided selection procedure for the Group 'D' posts and also clause 7.4 reproduced as under:

“7.4- Result of written examination will be declared based on the Evaluation Agency's Report and scrutiny of the records. Minimum pass marks will be 40% for General candidates, 30% for SC/ST and OBC candidates. In order to eliminate the advantage of guesswork, one mark shall be deducted for three wrong answers (assuming choice of answers in objective type question papers is four in each question). Result of written examination should be tabulated in order of merit of candidates. While preparing the merit list of the written test, due care should be taken to ensure adequate availability of candidates to meet the requirement of reservations prescribed for SC, ST and OBC.”

7. The respondents further submitted that the written examination result for persons with disabilities had been declared on 08.08.2012 in which 39 (visually handicapped), 25 (hearing handicapped) and 90 (Orthopedically handicapped) and extra 19 (Orthopedically handicapped) candidates have been provisionally declared qualified for verification of original certificates and medical examination. The shortfall had been occurred in visually handicapped and hearing handicapped due to sufficient number of candidates had not obtained the minimum passing marks in various category i.e. UR-40%, SC/ST and OBC-30%. The applicant belongs to unreserved category and as per clause 7.4 of the guidelines minimum passing marks will be 40% for unreserved

candidates and the applicant not secured the passing marks for UR candidate i.e. 40%.

8. The applicant has filed the rejoinder to the reply filed by the respondents wherein he reiterated its earlier stand taken in the Original Application.

9. The applicant in rejoinder submitted that the respondents have averred that the applicant has obtained only 37.43% marks in the written examination, thus, has failed to attain the minimum eligibility criteria of passing marks of 40%. In this regard it is submitted by the applicant that norms regarding fixing of minimum qualifying marks i.e. 40% for unreserved category and 30% for SC/ST and OBC would not apply for the candidates who applied as against the vacancies advertised under the Personal Disability Act. The applicant has filed Employment Notice No. SECR 02/2010 (Annexure RJ/1), para 6 of which shows that no code of marks for attaining eligibility has been prescribed for such candidates. The applicant is annexing another notification No. SECR 03/2012 dated 25.08.2012 (Annexure RJ/2), Para 6(8) prescribing mode of selection clearly shows the criteria for selection whereas notification of 2010 against which the applicant has applied no such pre-declaration has been mentioned. Apart from this, there are several posts lying vacant under the specific

quota (Visually handicapped), thus, the applicant is entitled to get appointment on the aforesaid post.

10. Heard the learned counsel for the parties, perused the pleadings and the documents annexed therewith.

11. From the pleadings it is clear that the applicant has sought relief for not filling up all the posts advertised for visually handicapped persons in the notification dated 15.12.2010 issued for filling up Group “D” posts in pay band I with Grade Pay of Rs. 1800/-.

12. It is also an admitted fact that the applicant being a physically handicapped (Visually) applied for the said post under visually handicapped category. The applicant was called for written examination and the admit card was issued to the applicant as shown in Annexure A-3. The result of the said examination was declared by the respondent department vide notice dated 08.08.2012, wherein name of the applicant does not find place in the select list out of 39 selected candidates for visually handicapped category. The case of the applicant is that there were 90 posts for the disability category but only 39 posts have been filled up.

13. The second arguments of the applicant is that the last candidate has secured 43.33 marks and the applicant has secured

only 37.43% marks. Later on the respondent department has proceeded with another selection by advertising notification dated 25.08.2012.

14. The replying respondents have specifically submitted that the applicant has not secured the minimum qualifying marks as per the guidelines issued by the Railway Board vide letter dated 18.07.2005-RBE No. 121/2005 circulated vide SECR, Estt. Rule No. 195/2005 (Annexure R-1). It is further submitted by the replying respondents that the Railway Board issued guidelines for recruitment of Group 'D' posts by railway administration. Clause 7 of the guideline is provided selection procedure for the Group 'D' posts and also clause 7.4 which is reproduced in Para 6 of this O.A.

15. It is also clear from the pleadings of the parties that result for persons with disabilities had been declared on 08.08.2012 in which 39 (visually handicapped), 25 (hearing handicapped) and 90 (Orthopedically handicapped) and extra 19 (Orthopedically handicapped) candidates have been provisionally declared qualified for verification of original certificates and medical examination. The shortfall had been occurred in visually handicapped and hearing handicapped due to sufficient number of candidates had not obtained the minimum passing marks in various category i.e. UR-40%, SC/ST and OBC-30%. The applicant belongs to

unreserved category and as per clause 7.4 of the guidelines minimum passing marks will be 40% for unreserved candidates and the applicant has not secured the passing marks for UR candidate i.e. 40%. The applicant has secured only 37.43%.

16. The applicant has not challenged Railway Board letter No. 121/2005 whereby the guidelines have been provided for selection to Group 'D' post and admittedly the applicant is not eligible because the applicant had secured only 37.43% marks.

17. Resultantly, in view of the above position, we do not find any ambiguity or illegality in the action of the respondent department and the Original Application is dismissed. No order as to costs.

(Ramesh Singh Thakur)
Judicial Member
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(Navin Tandon)
Administrative Member