

(2023) 05 CAT CK 0055

In the Central Administrative Tribunal

Case No : Original Application No. 200, 695 Of 2019, 722 Of 2021

Sunil Singh & Ors

APPELLANT

Vs

Union Of India Through Its General Manager, West Central
Railway, Indira Market, Jabalpur (M.P.) 482001 And Ors

RESPONDENT

Date of Decision : 17-05-2023

Acts Referred:

Citation : (2023) 05 CAT CK 0055

Hon'ble Judges : Akhil Kumar Srivastava, Member (J); Kumar Rajesh Chandra, Member (A)

Bench : Division Bench

Advocate : M.N. Banerjee, P.K. Chourasia, A.P. Khare

Final Decision : Allowed

Judgement

Kumar Rajesh Chandra Member (A)

1. Since both the above O.As have common facts and grounds of law and as such they have been heard together and are being disposed of by a common order.
2. In the above O.As, the applicants have prayed for a direction to the respondents to issue appointment order to the applicant on Group 'D' post on which they had qualified with all benefits of service with a further prayer in O.A. No. 722 of 2021 to quash the impugned order dated 20.6.2017, 16.8.2017 and 5.9.2017 (Annexure A-1 to A-3)
3. The facts of O.A. no. 695 of 2019 are being taken, being leading one, for brevity of the case.
4. Respondents issued Employment Notice No. RRC/WCR/Group D/2/2012 for appointment on Group 'D' post. The applicant, being an eligible candidate, has submitted his application for appointment on Group 'D' post under Other Backward classes (OBC) quota. After scrutiny of application forms, the applicant was issued Admit Card to appear in the written test scheduled to be held on 17th

November, 2013 by allotting Roll No. 2173206831. The applicant has been declared successful in the written test and thereafter he has been called to appear for PET test scheduled to be held on 6.3.2014. In this test too, the applicant was declared successful. Subsequently, the applicant was called for documents verification on 21.5.2014, but thereafter the applicant had not received any communication from the respondents despite making requests in this regard. The applicant, therefore, sought information under Right to Information Act, 2005, to which the applicant has been informed that he has obtained 60.28% marks and the last cut off selected candidate under OBC category was 58.60%. From the above, it is clear that the last selected candidate under OBC category got less marks than the applicant, but in spite of that, the applicant has been deprived from appointment to a Group 'D' post. Feeling aggrieved, one Deepak Kumar Choudhary, similarly situated person like the applicant, preferred a representation before the authorities concerned, but all in vain. Therefore, the applicant knocked the door of Jaipur Bench of the Tribunal by filing Original Application No. 643 of 2015. However, the same was dismissed as withdrawn vide order dated 15.7.2019 on the issue of jurisdiction. The applicant assailed the said order before the Hon'ble High Court of Rajasthan at Jaipur by filing Civil Writ Petition No. 1194 of 2019, which was dismissed vide order dated 31.7.2020 Hence, this O.A.

5. The applicant in O.A. No.722 of 2021 succeeded in the written examination as well as in PET test conducted by the respondents on 19.10.2012 and thereafter the applicant was called for document verification, but nothing was heard thereafter from the respondents.

6. Per-contra, the respondents have contested the claim of the applicant by filing separate Reply wherein they have stated that as per the order dated 22.2.2017 the respondents have made it clear that all the relevant documents pertaining to Notification No. 2/2012 had already been destroyed on 17.2.2017 as they were old. They further took a ground that the present O.A. is hopelessly barred by time. It is settled proposition of law that merely making a representation does not renew the original cause of action. The respondents also stated that the cut off marks of last selected candidate of OBC category was 60.37% and the applicant applied under the category of OBC. As the applicant did not secure minimum required marks and less marks to the last selected candidate and as such he could not be selected. The respondents further took the ground that it is wrong to say that the applicant secured 60.28% marks in written and PET test. Infact all the tests are to be qualified individually and there is no procedure of clubbing of marks. The respondents have further stated that the applicant has no case and the O.A. is liable to be dismissed.

7. The applicant has also filed Rejoinder to the Reply filed by the respondents by refuting the contentions of the respondents made in the Reply by affirming the averments as already made in the O.A.

8. Additional Reply has also been filed by the respondents negating the

contentions of the applicant made in the Rejoinder by reiterating the averments already made in the Reply. In the Additional Reply, the respondents have stated that Railway Board vide letter dated 10.1.2014 (RBE No. 06/2014) directed that no replacement panel are to be given against non-joining of selected candidates and as such in Group 'D', there is no provision of replacement panel. The respondents have also stated that in compliance of the order of Jabalpur Bench of the Tribunal in O.A. No. 239 of 2015 and other connected O.As, the applicants of the said O.As were appointed and that no vacancy remained vacant in any notification and since maximum posts are safety category post, therefore, vacant vacancies of a particular notification carry forward to the next notification.

9. Learned counsel for the applicants have placed reliance on the following decisions in support of their case:-

(i) Dinesh Kumar Kashyap Vs. South East Central Railway and Others (Civil Appeal No. 11360-11363 of 2018)

(ii) Jitendra Mukhariya & Others Vs. Union of India & Others decided by Jabalpur Bench of the Tribunal in O.A. No. 239 of 2015 and other connected O.A.

(iii) Gangadhar Sahu & Others Vs. Union of India & others decided by Jabalpur Bench of the Tribunal in O.A. No. 1123 of 2017.

(iv) Durbo Singh Vs. Union of India & Others decided by Jabalpur Bench of the Tribunal in O.A. No. 59 of 2015.

10. Learned counsel for the respondents has also placed reliance the following decision in support of their arguments:-

(i) Vallampati Sathish Babu Vs. State of Andhra Pradesh & Others (Civil Appeal No. 2473 of 2022)

11. We have heard the learned counsel for the parties at length and also perused the pleadings available on record.

12. The simple question involved in both O.As is whether the applicants, therein, are entitled to get the relief(s) as prayed for in view of the facts as projected by them in their respective O.As or not ? Admittedly, the applicants succeeded in the written examination as well as in PET test. They have also been called for documents verification. Further, the respondents issued another panel on 28.1.2013 of selected candidates pursuant to notification no. 05/2010 where too the names of the applicants find place. However, a corrigendum has been issued by the respondents on 14.2.2013 wherein it has been mentioned that three candidates mentioned in the order dated 28.1.2013 have been removed from the panel and their names have been kept in the reserved panel in their respective category. Further those three persons who were removed from the panel, belonged to ST category. In the same order, three candidates were included in the panel of respective categories and these three persons were initially selected against general category. One of them was included in ST category and

remaining two are in the SC category.

13. We may also observe that while passing the order dated 14.2.2013, no opportunity of any kind whatsoever viz. show cause notice or notice of any kind or personal hearing has been given to the applicants, so the action of the respondents is faulty one. Not only that, there were 2671 posts notified by the respondents and against that, a panel of 2185 candidates were declared on different dates and as such it is clearly established that 486 posts are lying vacant. The purpose of declaring the result of 20% extra candidates is to ensure that in the eventuality of some of the candidates who are higher up in the merit, not turning up for the document verification or being declared unfit in medical examination, the unfilled post to be filled from the reserved panel.

14. We have also carefully perused the citations as submitted by learned counsel for the parties during the course of hearing. In the case of Dinesh Kumar Kashyap (supra) the Hon'ble Supreme Court has passed an order to the appellants therein only. However, subsequently vide order dated 1.4.2019 passed in M.A. No. 439-442 of 2019 in Civil Appeal No. 11360-11363 of 2018, the Hon'ble Supreme Court has clarified that the benefits of the said judgment shall be made available to all those persons who have filed O.A. before CAT or before any other Court prior to passing of judgment in the case of Dinesh Kumar Kashyap. Since the applicant's case was pending before Jaipur Bench of the Tribunal and the matter was sub-judice there since 2015 i.e. much prior to the passing of order dated 27.11.2018, therefore, the said benefit is liable to be extended in the case of the applicants as well.

15. Jabalpur Bench of the Tribunal in number of O.As have followed the dictum of Hon'ble Supreme Court in the case of Dinesh Kumar Kashyap (supra) and that has been affirmed by the Hon'ble High Court of M.P. and as such the issue involved in these O.A. is no longer res-integra for further adjudication.

16. In the case of Vallampati Sathish Babu (supra), the facts and circumstances of that case is on different footing with that of the cases, in hand, and as such the ratio laid down in the cited case is not at all applicable in the instant O.As.

17. In the result, both O.As deserve to be allowed and are accordingly allowed. Order dated 20.6.2017, 16.8.2017 and 5.9.2017 (Annexure A-1 to A-3) in O.A. No. 722 of 2021 are quashed and set-aside. Respondents are directed to consider the claim of the applicant for appointment on the post of Group 'D' pursuant to notification no. 05/2010 dated 15.10.2010 within a period of 90 days from the date of receipt of certified copy of this order. Parties are directed to bear their own costs.

18. Copy of this order be placed in the connected case as well.