



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: October 13, 2023

(18) + W.P.(C) 11247/2017

DELHI METRO RAIL CORPORATION LTD AND ANR.

..... Petitioners

Through: Mr. V. S. R. Krishna and
Mr. V. Shashank Kumar, Advs.

versus

MR. RAJENDER SINGH

..... Respondent

Through: Mr. Rahul Kumar Singh and
Mr. Shailendra Kr. Singh, Advs. with
respondent in person.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

V. KAMESWAR RAO, J. (ORAL)

1. This petition has been filed by the Delhi Metro Rail Corporation Limited ('DMRC', for short) and its functionary challenging the order dated April 8, 2016 in Original Application No.1923/2013 ('OA', for short) and order dated August 10, 2017 in Review Application No.138/2016 ('RA', for short) passed by the Central Administrative Tribunal Principal Bench, New Delhi ('Tribunal', for short) whereby the Tribunal vide order dated April 8, 2016, has allowed the OA filed by the respondent herein by holding in paragraphs 9 and 10 as under, and dismissing the RA filed by the petitioners herein:



“9. In the light of our above discussions, we hold that as the applicant’s name appeared at sl.no.3 of the waiting list for SC candidates prepared by the respondents pursuant to the recruitment process initiated in 2009, and the main panel of 345 candidates, along with the waiting list, was valid up to 30.3.2012, he was entitled to be considered for selection and appointment to the post of Station Controller/Train Operator, when the six SC candidates, who were included in the list of 345 candidates, and were issued the offers of appointment, did not join the service, and that the impugned rejection of the claim of the applicant for consideration of his candidature for selection and appointment to the post of Station Controller/Train Operator against one of the six SC vacancies which remained unfilled on account of non-joining of the said six SC candidates, is unsustainable. Accordingly, we direct the respondents to consider the candidature of the applicant from the stage of his medical examination, and to issue him offer of appointment to the post of Station Controller/Train Operator, in the event of his being found medically fit, and after verification of his documents. Considering the facts and circumstances of the case, we make it clear that the applicant shall not be entitled to any service benefits with retrospective effect. The respondents shall comply with the direction contained in this order within three months from today.

10. In the result, the O.A. is allowed to the extent indicated above. No costs.”

2. The respondent had filed the OA seeking his appointment to the post of Station Controller / Train Operator (‘SC/TO’, for short). The petitioner No.1 / DMRC had issued an advertisement, which was published in the Employment News dated 28th November - 4th December, 2009, for filling up 196 vacancies of the post of SC/TO.



Subsequently, the DMRC vide notices dated December 23, 2009 and February 18, 2010, increasing the vacancies of SC/TO to 450.

3. The respondent had applied for selection and recruitment to the post of SC/TO, as a Scheduled Caste (SC) candidate. Suffice to state, the selection process involved written test, psycho test, and personal interview followed by medical examination. The DMRC published the final result of the candidates with roll numbers in order of merit, wherein the respondent's name appeared at Sl. No.655. The DMRC shortlisted and called 345 candidates, belonging to different categories, to appear for their medical examination, and verification of their documents. The respondent was not included in the said panel of 345 candidates.

4. On an application filed under the RTI Act by the respondent, the DMRC through the Public Information Officer, vide letter dated 11th /13th May 2010, informed the respondent that a shadow panel / waiting list is maintained by DMRC to meet the unforeseen situations, like, medical failure, non-joining of candidates, sudden attrition, sudden increase in manpower requirement, etc.

5. It is noted by the Tribunal that while the said shadow panel / waiting list was in operation, the DMRC issued another advertisement in July 2010 for filling up 228 vacancies in the post of SC/TO. Vide letter dated August 9, 2010, the Public Information Officer of the DMRC informed the respondent that his name appeared at Sl. No.3 of the shadow panel / waiting list for SC candidates.

6. It was also informed to the respondent vide letter dated October 11, 2012, that 6 SC candidates did not join the service. Therefore, the



respondent made representation, dated October 25, 2012, requesting the petitioners to offer him appointment to the post of SC/TO against one of the 6 SC vacancies which remained unfilled on account of non-joining of 6 SC candidates, who were included in the list of 345 candidates, and were issued the offers of appointment.

7. As there was no response of the petitioners, the respondent filed OA No.338/2013 which was disposed of by the Tribunal on January 29, 2013, directing the petitioners to consider and dispose of the respondent's representation dated October 25, 2012 by passing a speaking and reasoned order within a period of six weeks.

8. Suffice to state that the representation of the respondent dated October 25, 2012 was rejected by the petitioners on February 27, 2013 by stating as under:

“As per the orders of Hon'ble CAT, it is submitted that operation of shadow panel is considered under extreme administrative exigencies only and not as a routine matter. Whenever the vacancies remained unfilled in a panel, new recruitment drives are launched in the instant recruitment panel, the shadow panel was not operated at all.

In this case also, vacancies left vacant in various categories viz., SC, ST or OBC in the instant recruitment panel were carried forward in the next open market recruitment drive for the post of SC/TO & filled up. Moreover, the currency of the instant panel was fixed for 2 years from the date of its approval and the instant panel has already lapsed.

Under above circumstances, your request to consider you for appointment to the post of SC/TO is not tenable.”

9. The case of the respondent before the Tribunal, without disputing the facts as noted above, was that the currency of panel was



for two years from the date of approval of the panel, i.e., March 31, 2010, and, hence, the panel was valid till March 30, 2012. The final result was declared on April 5, 2010, whereby a total of 345 candidates were shortlisted for appointment to the post of SC/TO. The unfilled vacancies were carry forward to be filled through a fresh recruitment. As the respondent was not included in the panel he has no right for appointment.

10. We have already reproduced the relevant portion of the order passed by the Tribunal in the OA.

11. When the matter was listed on February 2, 2023, this Court had passed the following order:

“1. Having heard the learned counsel for the parties, the petitioner Corporation is directed to file an additional affidavit on the following points:

- 1. The cadre strength of the post of Station Controller / Train Operator.*
- 2. The date, when the DMRC came to know that six candidates who were part of the Select panel have not joined the Corporation despite offer of appointment issued to them.*
- 3. The date of decision of the competent authority to issue a fresh advertisement of July, 2010 for filling up the above posts.*
- 4. The number of vacancies which could not be filled in the other categories in respect of the above posts, and as to whether the shadow panel was implemented in respect of those categories.*

2. The affidavit shall be filed within two weeks.

3. List on March 7, 2023.”



12. Pursuant thereto, affidavits have been filed by the petitioners on March 6, 2023 and April 3, 2023. In the affidavit filed on March 6, 2023, the paragraphs 6 to 13 read as under:

“6. The item wise position is as under:-

1. The cadre strength of the post of Station Controller / Train Operator.

7. The total requirement of SC/TOs before the issue of advertisement (IV/2009) was 1500. True copy of note dated 12.11.2009 is annexed herewith as Annexure A.

8. However in view of the administrative requirements, i.e., increased number of trains to be introduced due to Commonwealth Games, there was increase in the overall requirement of SC/TOs to 1633. That the sanctioned strength of SC/TOs is presently 3202 numbers. True copy of SC/TO & Supervisor Manpower Requirement upto Phase 2 is annexed herewith as Annexure B.

2. The date, when the DMRC came to know that six candidates who were part of the Select panel have not joined the Corporation despite offer of appointment issued to them.

9. It is submitted that the 345 nos. of empanelled candidates (main panel) were called for document verification / medical from 12th to 28th April 2010, and those candidates, who were found eligible and declared medically fit, were called for joining, in batches. True copy of notice dated 05.04.2010 is annexed herewith as Annexure C.

10. The majority of the empanelled and medically fit candidates joined in the months of April-May 2010. However, the last candidate to be appointed on the post of SC/TO was on 27.4.2012. True copy of Officer Order dated 27.4.2012 is annexed herewith as Annexure D.

3. The date of decision of the competent authority to issue a fresh advertisement of July, 2010 for filling up the above posts.



11. It is submitted that as a general practice all the unfilled category-wise vacancies, including those occurred on account of shortfall/medical unfitness/non-reporting of candidates, are considered in the next recruitment drive. In the instant case also the shortfall of 109 nos. of SC/TOs, through the previously issued advertisement (II/2009) dated 20.6.2009, was accounted for, in the Advertisement (IV/2009). A copy of note dated 12.11.2009 is annexed herewith as Annexure A in support of the said statement.

12. As regards the date of decision of the Competent Authority to issue a fresh advertisement of July 2010, it is submitted that the original or copy of the record is now not available as the case file for the said recruitment has been weeded-out in terms of DMRC's Records Retention Schedule Policy 2022, wherein the tenure of 10 years has been prescribed for retaining the record of recruitment. It is submitted that as the said open market recruitment (Advt. No.1/2010) was not under challenge, its records has been weeded out in October 2022. True copy of the relevant extract of DMRC's Record Retention Schedule Policy is annexed herewith as Annexure E. True copy of note dated 04.10.2022 is annexed herewith as Annexure F.

4. The number of vacancies which could not be filled in the other categories in respect of the above posts, and as to whether the shadow panel was implemented in respect of those categories.

13. It is submitted that the shadow panel for SC/TO (IV/2009) was not operated for any category. The same is detailed hereunder:-

Cate gory	No. of vacanci es advertis ed	No. of candidates empanelled (Main Panel)	No. of candidate s kept in shadow panel	No. of candidate called for medical/joini ng	Marks of empanell ed candidat e	No. of candid ates joined	Shortf all
UR	184	184	114	184	49.03	173	11
OBC	90	90	90	90	44.64	83	07
SC	54	54	45	54	43.03	49	05
ST	64	17	-	17	33.47	15	49
TOT AL	392	345	249	345	-	320	



13. The second affidavit filed by the petitioners, paragraphs 4 to 6 thereof, read as under:

“4. It is submitted that the Approval Note dated 25.06.2010 throws light on the non-operation of the shadow panel for the SC/TO 2009 and is relevant to the present case and may be taken as an additional submission alongside the additional affidavit dated 06.03.2023. That the same may also be read for clarifying the item no. 3 crystallized in the Hon’ble Court’s order dated 02.02.2023.

5. It is submitted that the Approval Note dated 25.06.2010 provides for the decision of the then MD which decided as follows:-

The shadow panel candidates will not measure upto our expected standards. DMRC must have the best of candidates on our rolls. We may assess our total requirement and have a fresh recruitment for the total number.

True copy of Approval Note dated 25.06.2010 is annexed herewith as Annexure A.

6. That the above observation is due and proper as none of the shadow list candidates had secured the minimum cut off marks for consideration to the post of SC/TO in the DMRC. As stated in the earlier affidavits the cut off marks for SC candidates in the SC/TO selection was 43.03 while the highest marks in the shadow list belonged to Sh. Dinesh Chandra, Sh. Shiv Nand Kumar and the Petitioner who had scored 42.97, 42.75 and 42.69 respectively which is lower than the cut off marks. It is also relevant to submit that the shadow panel was not operated for any other categories.”

14. A reply has been filed by the respondent to the first affidavit. The submission of Mr. V. S. R. Krishna, learned counsel appearing for the petitioners is by relying upon the decision of the Managing Director



of the DMRC, i.e., the Competent Authority dated June 25, 2010 to contend that it was decided that as the shadow panel in which the name of the respondent appeared, will not measure upto expected standards, DMRC may assess total requirement and have a fresh recruitment for the total number. In other words, it is his submission that pursuant to the said decision the shadow panel was not acted upon, and the left over vacancies were decided to be filled by way of a fresh recruitment.

15. He submits that it is the case of the DMRC that the shadow panel has not been operated with respect to candidates in all the categories. He submits that the said decision of the DMRC is well considered decision.

16. He also submits that there were two candidates belonging to the SC category, who were above the respondent, and it is not the case of the respondent that they have since appointed. He submits that no right would accrue to the respondent seeking appointment on the basis of shadow panel which has been scrapped.

17. On the other hand, Mr. Rahul Kumar Singh, learned counsel for the respondent would submit, the record reveals that there were two vacancies of ST category which have been filled from the shadow panel. He by drawing analogy that as per the record, 47 vacancies of the ST category were not filled but later on only 45 vacancies of the ST category were advertised. Hence, in that sense, two vacancies have been filled by the petitioners.

18. That apart, Mr. Singh would also submit that the shadow panel having been created was required to be operated by the petitioners and they could not have scrapped and resorted to fresh recruitment process.



We are not impressed by the submission made by Mr. Singh for the simple reason that the decision which is annexed along with the affidavit of April 3, 2023 at page 13 clearly depict that the Managing Director deciding as under:

“Discussed with ED/HR- The shadow panel candidates will not measure upto our expected standards. DMRC must have the best of candidates on our rolls. We may assess our total requirement and have a further recruitment for the total number.

*-/sd/-
25/6”*

19. It is an undisputed case that a fresh advertisement was issued in the month of July 2010. On a pointed query from the Court to the respondent, who is also present in person, whether any person has been appointed from the shadow panel, no reply is forthcoming, except reiterating the plea advanced by Mr. Singh which we have recorded in paragraph 17 above.

20. We note that the petitioners have, in paragraph 6 of the affidavit of April 3, 2023, stated that the shadow panel was not operated in any categories.

21. If that be so, the decision of the Competent Authority / Managing Director not to operate the shadow panel cannot be faulted.

22. The order dated April 8, 2016 of the Tribunal directing the petitioners to consider the candidature of the respondent from the stage of medical examination and issue him the offer of appointment to the post of SC/TO is clearly untenable and the same is liable to be set aside and we order so.



23. In view of our above conclusion, the RA filed by the petitioners herein which was dismissed by the Tribunal only on the ground that the scope of review is very limited and the Tribunal cannot act as an Appellate Court is also set aside.

24. The writ petition is disposed of as allowed. No costs.

V. KAMESWAR RAO, J

MANMEET PRITAM SINGH ARORA, J

OCTOBER 13, 2023/aky