

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

O.A. No.496/2015

CORAM:

HON'BLE MR. SWARUP KUMAR MISHRA, MEMBER(J)
HON'BLE MR. ANAND MATHUR, MEMBER(A)

K. Bharati, aged about 29 years, D/o K. Prasad Rao, at Qrs. No.L-14/3, Diesel Colony, PO/PS. Bondamunda, Dist. Sundargarh-770032.

.....Applicant

VERSUS

1. Union of India represented through the General Manager, South Eastern Railway, Garden Reach, Kolkata-43.
2. The Divisional Railway Manager, South Eastern Railway, Chakradharpur Railway Division, At/PO. Chakradharpur, Dist. West Singhbhum, (Jharkhand), Pin-833102.
3. The Sr. Divisional Personnel Officer, South Eastern Railway, Chakradharpur Railway Division, At/PO. Chakradharpur, Dist. West Singhbhum, (Jharkhand), Pin-833102.

.....Respondents.

For the applicant : Mr. B.S. Tripathy

For the respondents: Mr. T. Rath

Heard & reserved on : 04.01.2021

Order on :20.01.2021

O R D E R

Per Hon'ble Mr. Swarup Kumar Mishra, Member (J):-

This Original Application has been filed by the applicant the following relief(s):-

- “(a)To pass appropriate orders quashing the impugned order dated 02.09.2014 in annexure-A/5 as well as order dated 19.02.2015 in annexure-A/9 and further directing the Respondents-authorities to issue order of appointment in favour of the applicant; and
- (b)To pass appropriate orders as may be deemed fit and proper in the facts and circumstances of the case and allow the OA with cost.

2. The facts of the present O.A. are that pursuant to the advertisement dated 31.08.2012(Annexure-A/1) issued by respondent No.3 for recruitment under Liberalised Active Retirement Scheme for Guaranteed Employment for Safety Staff (LARSGESS), the applicant applied for the post of helper. After due scrutiny vide letter dated 09.05.2013 (Annexure-A/3) admit card was issued in favour of the applicant. Thereafter, the applicant appeared in the written test as well as viva-voce test conducted on 24.05.2013 and the result of the said tests were also published in the internet showing the applicant as qualified along with others.

3. It is submitted that on being come out successful in the written test and viva-voce test, the applicant was also sent for a medical examination as per the letter dated 15.01.2014 of Respondent No.3. On 04.02.2014 the applicant was duly examined by the medical officer and was found fit in category A-2 (Aye two). In the meantime, other successful candidates were given appointment in their respective categories since 10.07.2014, but as no order of appointment was issued in favour of the applicant, she approached the competent authority requesting to issue order of appointment in her favour in the post of Helper, but the respondent No.3 vide his letter dated 02.09.2014 (Annexure-A/5) informed the applicant that her candidature was cancelled for the reason that the educational certificate submitted by her is not acceptable for the purpose of employment in Railway as per extant instructions.

4. It is submitted that being aggrieved, the applicant made a representation dated 05.01.2015 (Annexure-A/6) before the respondent No.2 ventilating all her grievances therein inter alia requesting to consider here case sympathetically and to appoint her in any Group-D post taking into consideration the fact that the Railway instruction dated 21.11.2013 is prospective in nature and by the time the said instruction was issued, the process of selection was already over. As no action was taken in the matter, the applicant approached this Tribunal by filing

O.A. No.139/15 seeking to quash the order dated 02.09.2014 (Annexure-A/5) and this Tribunal vide order dated 24.03.15 (Annexure-A/7) was pleased to dispose of the OA at the stage of admission directing respondent No.2 to consider and dispose of the representation as per rule in force and pass a well reasoned order. Thereafter, the respondent No.3 vide his letter dated 12.05.15(Annexure-A/8) informed the applicant that the representation dated 05.01.15 has already been disposed of vide order dated 19.02.15(Annexure-A/9).

5. It is further submitted that the action of respondent No.3 in rejecting the representation of the applicant is illegal and appears to be passed without any application of mind as because the Railway Board's Guidelines was issued on 21.11.13 and prior to issuance of the same the result of written and viva-voce tests were already over and the result declaring the applicant as qualified was published. Even after the said guidelines were issued, the Respondents have conducted the medical examination of the applicant on 04.02.14. Therefore, the applicant should have been given appointment as because the guidelines having no retrospective effect and persons having similar certificates have already been given appointment. He further submits that in view of the above facts and circumstances and in the interest of justice, equality and fair play the impugned orders dated 02.09.14 (Annexure-A/5) as well as office letter dated 19.02.14 (Annexure-A/9) be quashed and further a direction be issued to the respondents-authorities to issue order of appointment in favour of the applicant.

6. The respondents have filed their counter, wherein it is mentioned that applications were invited against Liberalized Active Retirement Scheme for Guaranteed Employment for Safety Staff (LARSGESS) vide letter dated 31.08.2012 for the cycle of 2012 (1st half). Sri K. Prasad Rao, father of the applicant submitted an application for employment against Liberalized Active

Retirement Scheme for Guaranteed Employment for Safety Staff (LARSGESS). The application was scrutinized and provisionally found eligible for written test. The candidate called for appearing in the written test vide letter dated 09.05.2013. The result of the said written examination was published vide letter dated 01.11.13 (Annexure-R/6) and applicant qualified in the written examination. In the said result in N.B.(iii) it is clearly instructed to the qualified candidates that merely having qualified in the written test does not confer any right for employment upon the candidates which shall be subject to their fulfilling all the stipulated eligibility conditions.

7. It is further submitted that the applicant was sent for medical examination on 16.01.14 in prescribed medical category for Grade 'D' post. She was found fit in Medical Category A-2 (Ayee-two) & below. The educational qualification certificate of the applicant was sent for verification by deputing Ch.S & WI and he has certified that in terms of Estt.Sl. No.124/13 (Annexure-R/7), the certificates/qualifications obtained from the Nav Bharat Bidya Parisad, Orissa/India is not acceptable for the purpose of employment in railways. Before publishing the panel it was observed that as per Rly. Bd. Letter dated 04.11.13 (RBE No.118/2013) communicated vide CPO/GRC Estt.Sl. No.124/13, the certificates/qualifications obtained from the Nav Bharat Bidya Parisad, Orissa/India is not acceptable, hence in the panel published vide order dated 13.05.2014, the applicant name did not find place for the purpose of employment in Railways. The applicant has been informed about the cancellation of her candidature for recruitment under LARSGESS vide letter dated 02.09.14 (Annexure-R/8).

8. It is further submitted that in obedience to the order dated 24.03.15 passed in O.A. No.139/15 the applicant's case was considered and disposed of under intimation to her vide this office letter No.12.05.15. It is submitted that the

selection of the candidate was subject to verification/acceptance of her education certificate/qualification. As Nababharat Siksha Parishad, Odisha/India is not a recognized institution, the Railway Board clarified vide Estt.Sl. No.124/13 (Annexure-R/7), the certificates/qualifications obtained from the Nav Bharat Bidya Parisad, Orissa/India is not acceptable for the purpose of employment in Railways. Therefore, the candidature of the applicant has been cancelled with intimation to her. There is no illegality in the cancellation of the candidature as the process of selection was not over and the case was referred to the Railway Board for clarification vide letter dated 06.09.13. The applicant's plea that a good No. of candidates have been appointed on similar type of certificate is not acceptable as she has not cited any such particulars. Further, in letter dated 01.11.2013(Annexurfe-R/6) it was clearly stipulated that merely having qualified in the written test does not confer any right for employment upon the candidates which shall be subject to their fulfilling all stipulate4d eligibility conditions.

For the submissions set forth above, the OA is not maintainable in the eyes of law and liable to be dismissed being devoid of any merit.

9. The applicant has filed the rejoinder to the counter filed by the respondents. It is submitted that the action of the respondents in cancelling the case of the applicant on the basis of Estt. Srl.No.124/13 is not sustainable in the eye of law as because by the time the candidature of the applicant was cancelled, the process of selection was already over and the applicant had already appeared written test, viva-voce test and medical examination and she had also come out successful in all. Further, there was also no such stipulation in the advertisement under Annexure-A/1 that the educational certificate must be issued by an institution which is a Member Boards of Council of Boards of School Education in India (COBSE).

10. It is further submitted that the educational certificate produced by the applicant was duly verified at a time of submission of the application and thereafter, she was allowed to participate in the process of selection and was also duly selected, but no order of appointment was issued in her favour although all other selected candidates were issued with appointment orders.

11. It is submitted that the Railway Board Circular vide Estt. Srl.No.124/13 being issued after the process of the selection is over and the same having not been retrospective effect, is not applicable in the instant case. Further the institution namely Nababharat Sikshya Parishad, from which the applicant has passed the Secondary examination (Matric) is an autonomous institution registered under Govt. of Odisha & NCT, Delhi, Govt. of India. Therefore, the plea of the respondents that the certificate obtained from the said institution is not acceptable as it is not a Member Boards of COBSE is not at all sustainable. It is further submitted that the order vide letter dated 19.02.15 in rejecting the representation of the applicant is not sustainable in the eye of law as because the reasons assigned in the said order is based on the Railway Boards Circular which is not applicable in the instant case and therefore, the said order is liable to be quashed.

12. It is submitted that the Railway Board Circular vide Estt. Srl.No.124/13 was issued on 21.11.2013 and by that time the written examination and viva voce test were already over and even after the said circular was issued the applicant was sent for medical examination on 04.02.14 and was also found fit in category 'A-2' and appointment orders were issued in favour of other selected candidates on 10.07.2014 except the applicant. Therefore, the candidature of the applicant was cancelled on the basis of a circular which was issued much later than the process of selection was started and that too after the applicant came out successful in all the tests viz. written test, viva- voce test and medical examination.

Further, there was also no such stipulation in the advertisement under annexure-A/1 that the educational certificate must be issued by an institution which is a Member Boards of Council of Boards of School Education in India (COBSE). So the cancellation of candidature of the applicant after the selection process is over on the plea of genuineness of the educational certificate which is beyond the stipulation of the advertisement is not at all sustainable in the eye of law and as such the impugned order vide Annexure-A/5 and letter at Annexure-A/9 are liable to be quashed.

In view of the above, the stands taken by the respondents in their counter are not sustainable in the eye of law and as such liable to be rejected and the OA be allowed with cost.

13. Respondents have filed their written note of submission, in which it is submitted that the applicant has not been finally selected for appointment. In terms of the Annexure-R/6 the applicant's final selection was subject to her fulfilling all stipulated eligibility conditions which includes a valid educational qualification, therefore, the railway administration cannot be forced to accept the educational certificates submitted by the applicant against the stipulation under Annexure-R/7. Moreover, the process of selection got completed only with the formation of the panel on 13.05.14, therefore, the contention of the applicant that the Boards instruction under Annexure-R/7 will have no application to her case, is not sustainable in law. To substantiate the above submission the respondents rely upon the judgment in the case of Union of India and Anther –V- Sarwan Ram and another SLP Number 706/2014 decided on 08/10/14. The operative portion which reads as follows:-

“ We have perused the record and noticed the submission made on behalf of the applicants and also the reasoning given by the High Court while allowing the writ petition.

Condition No.8.7(i) is one of the conditions mandate mentioned in the employment notice. We are of the view that in non-compliance of such condition, it was always open to the competent authority to reject such

application being incomplete. Respondent No.1 having failed to do so, the competent authority has rightly rejected the application. In such circumstances, it was not open to the High Court to direct the authorities to consider the case of respondent No.1 for appointment, sitting in appeal over the scrutiny of application by referring to certain certificate of length of service. High Court under Article 226 of the Constitution of India is not competent to scrutinize the applications filed for appointment and cannot substitute its own opinion based on some evidence to come to a conclusion whether the application form is defective.”

14. It is further submitted that the validity of the LARSGESS scheme had come up for consideration before the Principal Bench of Central Administrative Tribunal in O.A No.4138/16 and 3 other OAs. The said OAs have been disposed of in the light of the judgment of the Hon’ble Punjab and Haryan High Court rendered in CWP No.7714/16 decided on 27th April, 2016, in the case of Kala Singh and others-V-Union of India and others. The operative portions reproduce below:-

“We have heard learned counsel for the petitioners and are of the view that the very foundation of their claim, namely, the Safety Related Retirement Scheme, Prima facie, does not stand to the test of Articles 14 and 16 of the Constitution of India. This policy is a device evolved by the Railways to make back-door entries in public employment and brazenly militates against equality in public employment.

Since we have not called upon the Railways at this stage, suffice it would be to dismiss this writ petition with a direction to the Railway Authorities that hitherto before making any appointment under the offending policy, let its validity and sustainability be revisited keeping in view the principles of equal opportunity and elimination of monopoly in holding public employment.”

15. On the face of the above judgment of the Hon’ble High Court, the applicant’s contention that she should also be granted the benefit of the scheme as other similarly situated candidates have been granted benefit, ought to be rejected as it would amount doing negative equality, which is not permissible under law as has been held in the case of State of Punjab & Ors. V. Dr. Rajeev Sarwal, (1999 (9) SCC 240); Yogesh Kumar & Ors. V. Govt. of NCT Delhi & Ors., (2003 (3) SCC 548); Union of India & Anr. V. International Trading Company & Anr., (2003 (5) SCC 437).

In view of what has been stated above the OA ought to be rejected in lumine with cost.

16. Respondents' counsel relied on few citations including the following:

(1) Copy of judgment in the case of Union of India and Anther – V- Sarwan Ram and another SLP Number 706/2014 decided on 08/10/14.

(2) Copy of judgments in O.A. Nos.4138, 4145, 4147 and 4162 of 2016 by Principal Bench of CAT

(3) Judgement of the Hon'ble Punjab and Haryana High court rendered in CWP No.7714/2016 decided on 27th April, 2016 in the case of Kala Singh and Others-V-Union of India and others.

(4) Judgments in the case of State of Punjab & Ors. V. Dr. Rajeev Sarwal, (1999 (9) SCC 240); Yogesh Kumar & Ors. V. Govt. of NCT Delhi & Ors., (2003 (3) SCC 548); Union of India & Anr. V. international Trading Company & Anr., (2003 (5) SCC 437).

17. We have heard learned counsels for the applicant and the respondents, gone through the pleadings and citations relied upon by them. The citations relied upon by the applicant are not applicable to the facts and circumstances of this case.

18. With regard to the submission of learned counsel for the applicant that Railway Board Establishment Circular No. RBE No. 124/2013 dated 21.11.2013 can be applied retrospectively, it was submitted by learned counsel for respondents that the examination process was still in progress and no new clause was introduced. In fact it was mentioned in Annexure R/6 that candidates having qualified in the written test does not confer any right of employment on them and will be subject to fulfilling all stipulated eligibility conditions. Admittedly the applicant has not finally selected for appointment. In terms of Annexure R/6, the applicant's final selection was subject to her fulfilling all stipulated eligibility conditions, which includes valid educational qualifications. The railway authorities have intimated the applicant vide Annexure A/5 about the fact that educational certificate issued in favour of the applicant by the concerned educational institution is not acceptable for the purpose of employment in railway. There is no allegation of bias or malafide by the applicant against any particular

authority of the respondents. The mere plea that some of the similarly placed person have been given appointment cannot come to the rescue of the applicant on the principle of negative equality. Therefore the applicant cannot claim that she has been discriminated against under Article 14 of the Constitution. Besides that the very scheme itself as revealed from Annexure A/1 clearly stipulated that the voluntary retirement of the employee shall only be considered if the ward is found suitable in all respects. Recruitment of the employee and appointment of the wards should take place simultaneously.

19. In the present case the voluntary retirement application of the father of the applicant having not been accepted, he has retired after attaining the age of superannuation. Therefore, the applicant will not be entitled to any relief for claiming employment under LARSGESS scheme as there is no scope to do so at present. Besides that the scheme in question was also considered by Hon'ble Principal Bench, CAT, New Delhi by referring to decision of Hon'ble High Court of Punjab & Haryana in CWP No. 7714 of 2016 dated 27.04.2016 and the Principal Bench in OA No 4138/2016 "*in the light of the judgment of Hon'ble High Court of Punjab & Haryana in CWP No. 7714 of 2016 dated 27.04.2016, the Railway Board vide order dated 22.09.2018 decided to keep the LARSGESS scheme on hold w.e.f. 27.10.2017 and no appointment under the scheme is to be made except in cases where the employee concerned had been allowed to retire under the Scheme before 27.10.2017*" and in another analogous matter did not accept the claim of the applicants on the ground that the benefit under the scheme cannot be granted as it would amount to negative equality.

Accordingly the OA is dismissed being devoid of merit but in the circumstances without any order to cost.

(ANAND MATHUR)
MEMBER (A)

(SWARUP KUMAR MISHRA)
MEMBER (J)

