

(Reserved)

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD

(THIS THE 16 DAY OF 9 2009)

PRESENT

HON'BLE Mr. A.K. Gaur, MEMBER (J)
HON'BLE Mr. D.C. LAKHA, MEMBER (A)

ORIGINAL APPLICATION No. 1176 OF 2005.
(Under Section 19, Administrative Tribunal Act, 1985)

Bhupendra Kumar Pathak, Son of Sri R.C. Pathak, Resident of B-34/154-C.H. 15, Amarawati Nagar Colony, Sarainadan, Sunderpur, District-Varanasi.

.....Applicant.

By Advocate: Sri C.K. Parekh

Versus

1. Union of India, through Secretary, Ministry of Railways, New Delhi.
2. Railway Recruitment Board, Allahabad through its Chairman, D.R.M. Annexie Building, Nawab Yusuf Road, Allahabad.
3. Diesel Locomotive Workshop through its General Manager, Varanasi.
4. The Principal, D.L.W Inter College, Varanasi.
5. Ravi Shanker son of Abhai Kumar (Roll No. 9800034) through Railway Recruitment Board, Allahabad.

..... Respondents.

By Advocate: Shri Avanish Tripathi
Shri J.B. Singh

ORDER

(Delivered By: Mr. A.K. Gaur, Member-Judicial)

The applicant through this OA filed under section 19 of Administrative Tribunals Act, 1985 has prayed for following main relief(s):-

“I. To issue order or direction to quash impugned selection/result dated 31.08.2005 item No. 16 declared by Railway Recruitment Board, Allahabad and published on 3.9.2005 in the news paper ‘Dainik Jagran’ for the post of Trained Graduate Teacher (Drawing) for D.L.W. inter College, Varanasi (Annexure No. 1 to the compilation No. 1);

II. Respondent Nos. 1 to 4 be directed to give benefit of teaching experience which is one of minimum qualification to the applicant and further direct the respondent Nos. 1 to 4 to select him and accordingly appoint him as the applicant possess, all the minimum qualification whereas the respondent No. 5 who does not possess all the minimum qualifications.

III. The respondent No. 1 to 4 may be directed not to issue letter of appointment in pursuance to the impugned result/selection dated 31.08.2005.

IV. Respondent may be directed to reconsider the claim for appointment on the post of Trained Graduate Teacher Drawing Teacher of the applicant.

V. Respondents be directed not to give effect to the impugned result/selection of respondent No. 5 as declared on 31.8.2005 and published on 3.9.2005 in the news paper Dainik Jagran.”

2. The fact of the case, in brief, are that a common advertisement No. AG/1/2002 -2003 dated 01.01.2003/Annexure-III of OA, was published by Railway Recruitment. The applicant applied for the post of Drawing Teacher (Sl. No. 43 of the advertisement). The minimum requisite qualification for the Drawing Teacher, as mentioned in the advertisement, was as under:-

“1. Post Graduate in Drawing and Painting/Fine Arts or B.Ed in Art Education with Honour, or Full time Diploma with Second Class Graduate Degree in Painting/Fine Art or Full time Diploma in Painting or Fine Art or Part time Diploma with Higher Secondary/Intermediate;

2. Having competency of teaching through medium/media.

3. two years training for teaching from recognized institute or two years teaching experience.

Note:Exemption can be given from Post Graduate Degree in Second Division, if the promotee candidate, who had teaching experience as Primary Teaching for five years.”

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3. According to the applicant, he fulfilled all the qualifications and also disclosed his experience of teaching of two years in Delhi Public School, Aligarh in his application form whereas the respondent No. 5 was not having the aforesaid minimum qualification including experience of two years teaching. The applicant appeared in the Written Examination in which he and also the respondent No. 5 were declared successful and were called for interview, wherein the applicant was asked to draw the sketch of Mahatma Gandhi, which he successfully completed with full characteristics, but the respondent no.5 failed to achieve the same. The grievance of the applicant is that as regards the qualification prescribed at Sl. No. 2, the respondent No. 2 asked both the candidates to draw sketch of Mahatma Gandhi, which he also successfully completed with full characteristics and the respondent No. 5 could not be able to draw the same. Learned counsel for the applicant further submitted that before interview Board the applicant also produced the certificate issued by the Delhi Public School. Aligarh having teaching experience from 03.09.2001 to 26.03.2004 and also produced proof of his working of teaching of five years as Assistant Teacher in reputed schools whereas the respondent No. 5 has no such teaching experience in this field, therefore, the

declaration of the respondent No. 5 as successful candidate is totally irregular and illegal as the Selection Committee has no power or jurisdiction to grant exemption in qualification.

4. On notice, respondent Nos. 1 to 4 as well respondent No. 5 filed their Counter Affidavit Sri A. Tripathi, learned counsel for respondent No. 1 to 4 submitted that in interview, both the candidates i.e. the applicant and respondent No. 5, were simultaneously asked to draw a pencil sketch of a portrait of Mahatma Gandhi within 30 minutes, which the respondent No. 5 successfully completed with full characteristic, whereas the applicant failed to achieve the same. Learned counsel for respondents 1 to 4 further submitted that the respondent No. 5 secured more marks than the applicant in the written test as well as in interview. Learned counsel further submitted that the applicant is misinterpreting para 2 of qualification required for the post in question and submitted that there are two parts of the requisite qualification- (a) Essential Qualification and (b) desireable qualification. Learned counsel would contend that a candidate must possess the essential educational qualification so that he may become eligible to appear for the said examination, whereas desirable

educational qualification becomes relevant only when two or more candidates secure equal marks and in that eventuality the candidate having desirable educational qualification will have the preference over others. He further submitted that the respondent No. 5 obtained Degree in Fine Arts from B.H.U. in the year 1999 in 1st Division. He also passed Mater of Fine Arts Painting Examination (final) in the year 2001 in 1st Division and based on his overall performance in the written as well as in interview and also based on the essential educational qualification produced by the respondent No. 5, he was declared successful. In support of his contention, learned counsel for the respondents placed reliance on a decision rendered by Hon'ble Supreme Court reported in 2006 SCC (L&S) 1418 – State of U.P. & Ors. Vs. Om Prakash and another and 2003 SCC (L&S) 681 – Secretary, A.P. Public Service Commission Vs. Y.V.V.R Srinivasulu and others.

5. The applicant filed Rejoinder to the Counter Affidavits filed by the official respondent Nos. 1 to 4 as well as respondent No. 5 reiterating the submissions made in the OA and nothing new has been added therein.

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6. We have heard learned counsel for both sides and perused the pleadings as well.

7. Having gone through the pleadings , we find that in the present written examination of eligible candidates for the post in question was held on 10.07.2005 in which three candidates against one post were declared successful and they were called for interview on 25.08.2005. Both the applicant and the respondent No. 5 were asked to draw a pencil sketch of a portrait of Mahatma Gandhi within 30 minutes, which the respondent No. 5 successfully completed with full characteristic within specified period, whereas the applicant failed to achieve the same. The respondent No. 5 also secured more marks than the applicant in the written test as well as in interview. We are not satisfied with the arguments advanced by the learned counsel for the applicant that any relaxation has been granted to the respondent No. 5. The selection of the respondent No. 5 has been made strictly on the basis of over all performance in the written test as well as in the interview. Learned counsel for the applicant has utterly failed to demonstrate the description of 'Essential Qualification' and 'Desirable Qualification' in right perspective. It has been held by the Hon'ble Supreme

Court in the case of **State of U.P. & Ors. Vs. Om Prakash and another (Supra)** that when a selection is made on the basis of merit assessed through the competitive examination and interview, preference to additional qualification would mean other things being qualitatively and quantitatively equal, those having additional qualification would be preferred.

(Underlined to lay emphasis)

We may also refer to the decision rendered by Hon'ble Supreme Court in the case of **Secretary, A.P. Public Service Commission Vs. Y.V.V.R Srinivasulu and others (Supra)** in which Hon'ble Apex Court has also held that when selection is made on the basis of merit assessed through competitive examination and interview, preference to additional qualification would mean other things being qualitatively and quantitatively equal, those having additional qualification would be preferred. It does not mean en bloc preference irrespective inter se merit and suitability.... It cannot work as a reservation or complete precedence.

(Underlined to lay emphasis)

8. We have carefully considered the arguments advanced by either sides and in our considered opinion

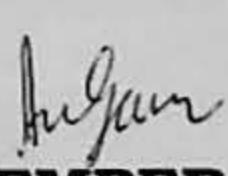


the competent authority after a careful analysis of overall performance in the written examination as well as in interview found the respondent No. 5 most suitable candidate. In view of the decision of Hon'ble Apex Court reported in **2007 (1) SCC (L&S) 548 – Retired Armed Forces Medical Association Vs. U.O.I & Ors. And 2005 (10) SCC 456 – K.S.R.B.C Vs. Kavalit India Company**, the judicial review does not convert the Tribunal as Appellate Forum over the decision of administrative authority.

9. In the result, in view of the settled principle of law, we do not find any illegality or irregularity in the action of the official respondents in declaring respondent No. 5 as successful candidate on the basis of over all performance in the written examination and interview. Accordingly the O.A is dismissed being devoid of merits.

8. There will be no order as to costs.


(MEMBER-A)


(MEMBER-J)

/Anand/