

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORIGINAL APPLICATION NO. 291/683/2013

Order reserved on 01.10.2021

DATE OF ORDER: 12.10.2021

CORAM

**HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER
HON'BLE MRS. HINA P. SHAH, JUDICIAL MEMBER**

Harendra Gawaria S/o Shri Khinwa Ram, aged about 23 years, resident of Village Jasrana, Tehsil Nawa, District Nagaur (Rajasthan).

....Applicant

Shri Davendra Sharma, counsel for applicant.

VERSUS

1. Union of India through the General Manager (Personnel), North Western Railway, Headquarter's Office, Near Jawahar Circle, Jaipur (Rajasthan).
2. The Assistant Personnel Officer (Rectt.), North Western Railway, Durgapura, Jaipur.

.... Respondents

Shri Y.K. Sharma, counsel for respondents.

ORDER

Per: Hina P. Shah, Judicial Member

The present Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 for the following reliefs:-

- "a. That, action of the respondents regarding denial of appointment of the applicant on

the post of Track Man/Helper/Khallasi etc. etc. (Group-D) may kindly be declared arbitrary and illegal,

- b. That, impugned order dated 29.07.2013 (Annexure-A/1) issued by the respondent no. 2 may kindly be quashed and set aside.
- c. That, the respondents may kindly be directed to give appointment to the applicant on the post of Track Man/Helper/Khallasi etc. etc. according to his merit w.e.f. similarly situated candidates are given appointment.
- d. That, cost of the litigation may kindly be awarded in favour of the applicant, as he has been dragged in litigation by the respondents.
- e. That, any other appropriate order or direction, which this Hon'ble Tribunal deem fit and proper may kindly be passed in favour of the applicant. "

2. The brief facts of the case, as stated by the applicant, are that the respondents had issued an advertisement No. 02/2010 dated 16.12.2010 for recruitment on several Group 'D' posts i.e. Track Man, Traffic Khallasi, Helper, Cleaner, Cook, etc., and Applicant who belonged to OBC category had applied for the same in Grade Pay Rs. 1800/- as he fulfilled all the requisites for the said appointment. After being issued a call letter, he appeared for the written examination held on 10.06.2012 and after qualifying the written examination, he appeared for physical eligibility test and thereafter called for medical test, in

which also he was found fit. But subsequently vide order dated 29.07.2013, Annexure A/1, candidature of the Applicant was cancelled for the reason that postal order submitted by the Applicant was not within the limitation. Whereas, it is to submit that the postal order submitted by the Applicant was well within the parameters and amount of said postal order has been received by the Respondents but inadvertently in the application form wrong year of postal order has been mentioned and, therefore, his candidature was cancelled. Thereafter, he personally approached the office of Respondents and submitted that the amount of postal order was adequate, but inadequately the year of the postal order has been mentioned wrongly, which can be corrected, because amount of the postal order has been received by the Respondents but his candidature for recruitment has been cancelled. Therefore, being aggrieved by the inaction of the Respondents in non inclusion of the name of the Applicant in the final result for the Group 'D' post, he has approached this Tribunal for redressal of his grievance.

3. This Bench of the Tribunal vide its order dated 01.10.2013 had issued notices to the respondents and

had passed interim orders to the extent that respondents were directed to keep one post of Track Man/Helper/Khallasi (Group 'D') vacant till the next date and the said interim relief continued till date.

4. Respondents filed their reply and stated that the Applicant is not entitled for getting appointment in view of provisions contained in para 8.11 of the Notification dated 16.12.2010. The Applicant has mentioned detail of postal order No. 87F 980777/78 issued on 20.01.2010 in the application form. As per sub para (XV) of para 8.11 of the Notification, which enumerates that the application form was liable to be rejected on being found any wrong information. Also as per condition No. 7.4 of the advertisement dated 16.12.2010, it has been clearly mentioned that the postal order/bank draft/pay order for payment of requisite fee issued prior to date of advertisement or beyond the validity of six months will not be accepted. Thus, in view of the conditions mentioned above, the application form of the Applicant has been rightly rejected vide letter dated 29.07.2013 and, therefore, there is no illegality in rejecting the application of the Applicant. The stand taken by Applicant that he had qualified at all stages and, thus, he is eligible to be

appointed cannot hold good. Therefore, the Applicant has no claim for the said post and the present O.A. deserves to be dismissed on the said ground itself and the interim order dated 01.10.2013 be vacated as their action is in consonance with the rules.

5. The applicant has not filed any rejoinder denying the submissions of the respondents.

6. We have heard learned counsels for the parties at length and examined the pleadings minutely as well as the judgments cited by the parties.

7. The applicant and the respondents reiterated their submissions as stated earlier.

8. The question which requires to be considered is whether the candidature of the applicant ought to have been cancelled on the ground of human error/ bonafide mistake only because the postal order submitted by the applicant was not within limitation i.e. 06 months of the date of notification and when he has already been protected by the interim directions and when no third party rights are affected.

9. After hearing the parties and perusing the pleadings, the factual matrix of the case is that the applicant being an OBC candidate had applied for the Group 'D' post in pursuance to the Employment Notice No. 02/2010 dated 16.12.2010 and after fulfilling the criteria as required, applicant applied for the said post. He was given a call letter and had appeared in the written examination and had passed in the same and thereafter he appeared in physical eligibility test which also he cleared and he subsequently also cleared the medical test in which he was found fit but vide order dated 29.07.2013, (Annexure A/1), candidature of the Applicant was cancelled only for the reason that the postal order submitted by the Applicant was not within limitation. The Applicant has submitted postal order of proper amount bearing No. 87F 980777/78 dated 20.01.2010. It is not the case of the respondents that he has not annexed the postal order or that the amount of postal order was inadequate but only for the reason that the postal order was dated 20.01.2010 whereas it should have been within six months of the date of notification / advertisement dated 16.12.2010 and that the postal order beyond the validity of six months will not be accepted.

10. After going through the case of the applicant, we see that the further stand taken by the respondents is that the OBC certificate dated 05.09.2006 so submitted by the applicant was not for the purpose of Central Govt. Services and, therefore, the applicant was given an opportunity to produce fresh caste certificate as per the proforma annexed in the notification dated 16.12.2010. Respondents further state that as per condition No. 7.4 of the advertisement, it was clearly mentioned that the IPO/DD issued prior to the date of notification will not be accepted. As per condition No. XV of para No. 8 of the advertisement dated 16.12.2010, the application form of the applicant was liable to be rejected on being found wrong and false information about the postal order dated 20.01.2010 bearing No. 87F 980777/78 as evident from the application form ticket no. 33047981 and as such there is no illegality in rejecting the application form of the applicant.

11. As it is seen that the applicant belongs to OBC category and he is not that educated to understand that he has to produce the postal order within limitation i.e. only within six months of the date of notification. For him it is only the postal order and

amount which should be proper and inadvertently he has failed to check the date of the postal order. The respondents failed to accept the said Postal order submitted by the Applicant of appropriate amount but only because the date of the said postal order was beyond the requisite date, his candidature could not have been cancelled. In fact, it was not the case of the respondents that any fraud has been committed by the applicant in procuring the said postal order but it was his inadvertent mistake while submitting his application form as he failed to check the date of the postal order.

12. As seen, when the Govt. itself provides for special reservation in the case of SC/ST/OBC candidates and that they require help and support of the State and there are several schemes and concessions provided to them and, thus, a practical approach should have been adopted by the respondents as the applicant was possessing the postal order of adequate amount but only the date of the postal order was beyond the time prescribed as per the advertisement but instead he should have been considered for appointment. Also in the present case, no third party rights are affected as the applicant is having interim protection in his favour

vide order dated 01.10.2013 wherein one post of Track Man/Helper/Khallasi (Group 'D') under the advertisement is kept vacant for him.

13. It is trite law that even in administrative matters, if decision adversely affects a person's legal right or interest, the decision must be taken fairly and reasonably. Even in absence of any provisions for giving an opportunity, the principles of natural justice is inbuilt. Though it is true that the advertisement clearly stated the candidates to be cautious in filling application forms and any mistake/error would debar such candidates, but due to the bonafide mistake on the part of the applicant that the date of postal order was beyond the time limit as prescribed in the advertisement, the respondents should have allowed the said correction, but the same was not done. It is clear that human error cannot be completely ruled out and the applicant, therefore, should not be penalised so harshly for such an error. A candidate whose marks are above cut off marks or is in merit deserves an opportunity before his candidature is rejected only on some error. As such, in the present case, the bonafide mistake committed by the applicant in merely submitting the postal order beyond the time

prescribed deserves to be accepted and he should be appointed on the Group 'D' post in pursuance to the notification dated 16.12.2010.

14. We are in agreement with the judgments/orders, as produced by the applicant, especially in the case of **Ram Kumar Gijroya vs. Delhi Subordinate Services Selection Board & Anr.**, [Civil Appeal No. 1691/2016 (Arising out of SLP (C) No. 27550/2012, decided on February 24, 2016, wherein the Hon'ble Supreme Court has held that the object of providing reservation to the SC/ST and educationally and socially backward classes of the society is to remove inequality in public employment, as candidates belonging to these categories are unable to compete with the candidates belonging to the general category as a result of facing centuries of oppression and deprivation of opportunity.

15. It is clear that a human error can be rectified provided no third party right is affected and we are in agreement with the judgment, as relied by the applicant, in the case of **Kavita Choudhary vs. Registrar (Exam)** in D.B.C.S.A.(W) No. 1700/2017 decided by Hon'ble High Court of Rajasthan at Jaipur

on 01.11.2017, wherein it has been held that a bonafide mistake which does not affect a third party right should be allowed to be cured and rectification of a mistake would cause no prejudice. In the said judgment, reliance was placed on several judgments including **State of Rajasthan vs. Datar Singh** (D.B.S.A.W.No.875/2012) dated 11.10.2017, **Dinesh Kumar Mahawar vs. RPSC & Ors.** (S.B.C.W.P. No. 7159/2017) dated 27.01.2017. Reliance was also placed in an identical matter of **Shimla Jat vs. State of Rajasthan & Ors.** in S.B.C.W.P. No. 906/2017, wherein in a similar matter, the Hon'ble High Court had considered it appropriate to grant indulgence in the case of the petitioner since it was not going to affect the rights of either party or third party in view of the interim protection given to the applicant and directed the respondents to carry out the correction as desired by the petitioner and consider her case in further process of selection.

16. In view of the observations made herein-above, the action of the respondents calls for interference and, therefore, the respondents are directed to pass appropriate orders in respect of acceptance of application of the applicant and also in view of the

interim protection granted to the applicant vide order dated 01.10.2013 and also as no third party rights are effected, therefore, the applicant be given appointment on the said post with all consequential benefits, if otherwise he is found suitable for the post of Group 'D'. The said exercise be carried out within three months from the date of receipt of a certified copy of this order. Accordingly, Original Application is allowed. No order as to costs.

(HINA P. SHAH)
JUDICIAL MEMBER

(DINESH SHARMA)
ADMINISTRATIVE MEMBER

/nlk/