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O.A.No. 510 of 2008

B.Lakshmana Rao ....Applicant

Versus

Union of India & Ors. ....Respondents

Order dated - 16/1/2009

The issue for adjudication is whether non-declaration of the result of the examination conducted by the Respondents for filling up of the 25% direct recruitment vacancies of the posts of Health and Malaria Inspector -III in the scale of Rs.5500-9000/- in respect of the Applicant is justified keeping in view he did not possess the qualification of Diploma in Sanitary Inspector Course.

2. Fact of the matter is that Applicant is a Jr. Trolley Man under the Senior Section Engineer (P. Way), E. Co. Railway, Muniguda. Vide notification dated 20.4.2007(Annexure-A/1), for filling up of 25% direct recruitment vacancies in various grades including the grade of Health and Malaria Inspector, the Respondents invited applications from the in-service regular railway employee within a fixed date. For the post of Health and Malaria Inspector, the qualification prescribed as "Bachelor of Science (Chemistry) from a recognized university and one year Diploma in Health/Sanitary Inspector. Applicant having applied for the post was allowed to appear at the test held on 26.08.2007. When his result was not declared, on enquiry he was intimated vide letter under Annexure-A/3 that as he had only acquired the Certificate course in stead of one year Diploma in Health/Sanitary Inspector, he was not even eligible to appear at the test. By enclosing copy of the certificate of Andhra Pradesh Para

Medical Board (Annexure-A/6) wherein it has been specified that the certificate course obtained by the Applicant is equivalent to any other Diploma course with one year duration, the Applicant represented to the authority for declaration of his result of the test conducted on 26.08.2007. As he has not heard about the fate of the said representation he has approached in the present Original Application seeking the following relief:

- "(i) To quash the letter under Annexure-A/3 dated 06.12.2007 canceling the candidature of Applicant even after facing the necessary test;
- (ii) To hold that the Applicant was rightly permitted to face the test as per the letter of the educational authority (Annexure-A/6);
- (iii) To direct the Respondents to publish the result of the Applicant and take further course of action on the basis of his result as has been taken in case of other candidates who had appeared similar in earlier selections;
- (iv) To direct the Respondents to pay the Applicant all his service and financial benefits retrospectively."

3. Heard Learned Counsel for the Applicant and Mr. S.K.Ojha, Learned Standing Counsel for the Railways; on whom copy of this OA has already been served and perused the materials placed on record.

4. During the course of submission, it was argued by Learned Counsel for the Applicant that on earlier occasion with the qualification as that of the Applicant, one Shri C. Narsima Rao was selected/appointed and has now been continuing in the post of Health Inspector, Titlagarh, Sambalpur Division. As such non-declaration of the result on the ground that the applicant lacks qualification is gross

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discrimination/in violation of Article 14 of the Constitution of India. His further stand is that on scrutiny, the applicant having been found eligible was allowed to appear at the test. He having appeared the test withholding the result on the ground that the applicant was not eligible to appear the test is neither in accordance with principles of natural justice nor is in accordance with the judge-made-laws of the Hon'ble Apex Court in the case of Guru Nanak Dev University v Sanjay Kumar Katwal and Another in Civil Appeal No. 2252 of 2006. According to him, as there been gross injustice in the decision making process of the matter, it needs examination after filing of the counter by the Respondents; for which notice needs to be issued to them.

5. After giving our thoughtful consideration to the submissions made above, we have perused the materials placed on record. We see no *prima facie* case to issue notice to the Respondents calling upon them to file counter; as it is an admitted fact that the applicant does not possess the qualification of one year Diploma course as required in the rules and made known to the candidates. It is the well recognized principle of law that the authorities are bound by the promise made through the advertisement. It was specifically made known to the candidates that one must possess the qualification of "Bachelor of Science (Chemistry) from a recognized university and one year Diploma in Health/ Sanitary Inspector" so as to be eligible to appear for the post in question. Whereas, admittedly, the Applicant does not have that qualification at the time of applying and appearing

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the test, he was only having the qualification of one year Certificate course. Further more, one cannot claim any estoppel more so when he/she does not have the necessary educational qualification merely because he/she was permitted to appear at the test. Rather it is the settled law that while filling up of the posts the authorities is under obligation to adhere to all norms of the Rules. We have gone through the decision relied on by the Applicant. In that case the candidates having been admitted continued study for four years where after the authority of the institution held that they are not eligible to appear the examination as they were not eligible to take admission. The Hon'ble Supreme Court held that it will be unfair and unjust to do so after four years of their admission and continuance in the institution. Whereas in the present case the applicant was allowed to appear at the test and subsequently he having been found ineligible, the result of the test was withheld. The fact of that matter is totally different and distinct in this case and hence the Hon'ble Apex Court judgment cited by the Applicant is hardly of any help to him.

6. In view of the above, we see no *prima facie* case to issue notice and ask the Respondents to file their reply. Hence, this OA stands dismissed by leaving the parties to bear their own costs.

7. Copies of this order be given to learned counsel for both sides and send to the Respondents along with copy of this OA.

1/29/0197  
(JUSTICE K. THANKAPPAN)  
MEMBER (JUDICIAL)

C.R. MOHAPATRA  
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MEMBER (ADMN.)