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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A. No.643 of 2012
Cuttack, this the 14th day of May, 2015

Muna Singh Applicant

-Versus-

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? ✓

2. Whether it be referred to PB for circulation? ✓


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

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CUTTACK BENCH: CUTTACK

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CORAM
HON'BLE MR. A.K. PATNAIK, MEMBER (J)
HON'BLE MR. R.C. MISRA, MEMBER (A)

1. Muna Singh,
Son of Naresh Singh,
Village-Rupastolebukhura Singh,
Po-Athamalgola,
Dist-Patna, Bihar-803211.

..... Applicants

(Advocates: Ms. C. Padhi)

VERSUS

Union of India Represented through

1. The Chairman,
Railway Recruitment Cell,
East Coast Railway,
Chandrasekharpur,
Bhubaneswar-751017,
Dist. Khurda.
2. The Division Railway Manager,
East Coast Railway,
East Coast Railway Sadan,
Chandrasekharpur,
Bhubaneswar-751017,
Dist. Khurda.
3. The Deputy Chief Personnel Officer (Gaz and Rect.)
Railway Recruitment Cell,
2nd Floor, South Block,
E.Co. R. Sadan, Samail Vihar,
P.O.-Mancheswar,
Bhubaneswar-751 017.

..... Respondents

(Advocate: Mr. S.K. Ojha)



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ORDER

A.K. PATNAIK, MEMBER (J):

The case in nut shell is that the applicant was a candidate for the post of Jr. Trackman and Helper II against Category Nos. 1 & 2 of Employment Notice No. ECoR/RRC/D/2006/01 dated 28.10.2006 of Railway Recruitment Cell, East Coast Railway, Bhubaneswar. He was given Roll No. 1186975 for the said test/examination. He was called for Written Examination held on 16.09.2007 and thereafter to the Physical Efficiency Test (PET) conducted during 24.03.2008 to 06.04.2008 after which vide letter dated 20.01.2012 [Annexure-A/4], the applicant was intimated as under:

"1) You were an applicant for the posts of Jr. Trackman and Helper-II against Category No.1 & 2 of Employment Notice No.ECoR/RRC/D/2006/01 dtd. 28.10.2006 of Railway Recruitment Cell, East Coast Railway, Bhubaneswar.

2) You were called for Written Exam held on **16.09.2007** and Physical Efficiency Test (PET) conducted during 24.03.2008 to 06.04.2008 with Roll No.**1186975** for the above mentioned recruitment.

3) While verifying the applications submitted by you, the following deficiency(ies) is/are noticed:

i) **Photocopies of the certificates enclosed with the application not attested by Gazetted Officer.**

4) As per Para-15 of the employment notification, applications with the above deficiencies are liable to be rejected. Therefore, your candidature for recruitment against the above employment notification is being cancelled. You are being given an

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opportunity to explain in writing as to why your candidature should not be cancelled.

5) Your explanation, if any, in writing should reach this office by 21.02.2012 addressed to "The Dy. Chief Personnel Officer, Railway Recruitment Cell, 2nd Floor, South Block, ECoR Sadan, Samant Vihar, Bhubaneswar-751017". If no explanation is received from you by 21.02.2012, it will be presumed that you have accepted the decision of Railway Recruitment Cell, East Coast Railway, Bhubaneswar and no further correspondence will be entertained."

2. In pursuance of the notice as above, the applicant submitted appeal dated 10.02.2012 and 15.02.2012 to the Respondent No.3. Alleging no response on the said appeal the applicant preferred this OA with prayer to quash the order of rejection of his candidature dated 20.01.2012 [Annexure-A/4] and direct the Respondents to appoint him to the post of Junior Trackman/Helper II against category Nos. I & II with grant of all service and financial benefits retrospectively.

3. Respondent-Railway filed their counter in which it has been stated that after written and PET test, to find out the genuineness of the candidates/documents, it becomes necessary to verify the documents in original as a precondition stipulated in the advertisement. During the process of verification, it was found that the documents submitted by the applicant in support of his age and educational qualification did not carry the attestation of gazetted officer as a precondition provided in the advertisement. Hence his candidature was rejected after giving an



opportunity to show cause. Subsequently he submitted representation dated 10.02.2012 and 15.02.2012. During the course of considering the same, he sought information under RTI through one Shri Nithesh Srivastaa. It was replied that the application of the applicant had been rejected for want of attestation of certificates by a gazetted officer. Further case of the Respondents is that the administration is not bound to offer employment ^{to} all eligible persons. Even if, for the sake of argument it is accepted that the applicant was eligible but he should come through a proper way to get the public employment. Since the application of the applicant was found to be defective the rejection of his candidature cannot be found faulted with as the authority has acted within the parameter of the recruitment rules as well as conditions stipulated in the notification. Accordingly, the Respondents have prayed for dismissal of this OA.

4. Ms.C.Padhi, Learned counsel for the Applicant submitted that upon being found eligible, the Respondents called him to appear at the written examination and when the applicant came out successful in the written examination he was called to appear at the PET. Thereafter, without giving the applicant any opportunity, if there was any doubt on the genuineness of the documents enclosed by him along with the application, the Respondents should not have suddenly issued the impugned letter, which is unjust and highly illegal being against the sound principle of natural justice. It has been submitted that once the applicant was allowed to take examination based on his application and documents, rejection of candidature showing infirmity in the application at a later stage is not sustainable and to fortify the aforesaid stand, Ms. Padhi has placed reliance on the decision of the Hon'ble Apex

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Court in the case of **Shri Krishna Vrs The Kurukshetra University, Kurukshetra**, AIR 1976 SC 376. Next contention of Ms.Padhi is that similar matter came up for consideration before this Tribunal in OA No. 10/2013 (**Sudhir Kumar Sahoo Vrs Union of India and others**) which was disposed of by this Tribunal on 5.4.2013 directing the Respondents to follow~~ing~~ the findings laid down by the Hon'ble Apex Court, quoted above and, therefore, the applicant in the present case is also entitled to the same relief as has been granted in the aforesaid OA.

(ii) On the other hand, Mr.S.K.Ojha, Learned panel Counsel for the Railway-Respondent has heavily contested the aforesaid arguments advanced by the learned counsel for the applicant. According to Mr.Ojha, selection notification was of the year 2006 and process of selection came to an end after offering appointment to the selected candidates in 2010. Persons so eligible from all aspects offered with the appointment and posts so advertised have already been filled up. In pursuance of the impugned order the applicant submitted his appeal dated 10.2.2012 and 15.2.2012 which was duly considered, rejected and communicated to the applicant but the applicant did not assail the same in this OA. In letter dated 20.01.2012 opportunity was granted to the applicant to submit his reply by 21.2.2012. Applicant submitted his appeal dated 10.2.2012 and 15.2.2012 and filed this OA on 8th August, 2012. As such, this OA is hit by the law of limitation. By stating so, Mr.Ojha prayed for dismissal of this OA both on merit, limitation and not challenging the order of rejection of his appeal/representation.

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5. We have considered the arguments advanced by the respective counsel and perused the pleadings and materials placed in support thereof. We find that the applicant was allowed opportunity to show cause by 21.2.2012 vide letter dated 20.1.2012 and the applicant submitted his reply on 10.02.2012 and 15.2.2012. In paragraph 6 of the counter, it has been stated by the Respondents that **"during the course of considering the same, he sought information under RTI through Shri Nithesh Srivastava. It was replied that the application of the applicant had been rejected for want of attestation of certificates by a gazetted officer"**. It is the specific case of the applicant that he has not received any communication on his representation dated 10.2.2012 and 15.2.2012. The Respondents have also not enclosed any final order passed on the representation of the applicant or the RTI application and reply made on the same to Shri Nithesh Srivastava to prove the stand that the RTI application so submitted was on behalf of the applicant. In absence of such proof, the stand of the Respondents that the RTI application submitted by the said Shri Nithesh Srivastava was on behalf of the applicant is nothing but misnomer and cannot be accepted. In view of the above the stand of the Respondents that ^{because of} non challenge of the order of rejection this OA is liable to be dismissed falls flat.

6. In so far as the point of limitation is concerned, it is noticed that the notice to show cause is dated 20.01.2012. The applicant submitted his reply to the said show cause notice on 10.02.2012 and 15.2.2012 and, thereafter, filed this OA on 08.08.2012 i.e. after passing of six months which cannot be said to be hit by the provision of Section 21 of the

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Administrative Tribunals Act, 1985 and, therefore, this argument of the Respondents' counsel is hereby overruled.

7. In so far as merit of the matter is concerned, it is noticed that the candidature of the applicant has been rejected after he was allowed to take part in the written as well as PET test on the ground that photocopies of the certificates enclosed with the application were not attested by Gazetted Officer. According to the Respondents that the rejection of the candidature of the applicant is justified as it was specifically indicated in the selection notification that any deviation from the notification warrants rejection of the candidature. This stand of the Respondents was objected to by the learned counsel for the applicant by stating that if it is so then the applicant should not have been called to face the test and when after going through the rigors of the test the applicant came out successful, he has been debarred from appointment so as to earn his livelihood merely on the ground of non-attestation of documents. Therefore, the action of the Respondents is not only highly illegal and arbitrary but also hit by the provisions enshrined under Articles 14, 16 and 21 of the Constitution of India. Further stand of Ms.Padhi is that if there was any doubt on the certificates the applicant should have been given an opportunity to produce the original ones for verification but before verification of the documents the candidature of the applicant has been cancelled which is against the principles of natural justice. For the purpose, we have gone through the verification notification inviting application placed by the Respondents with their counter as at Annexure-R/1. In clause 15 of the said notification it has been mentioned that "applications found to be having any



deficiencies discrepancies or irregularities will be **summarily rejected**". If it is so, calling upon the applicant to participate in the written and PET tests, necessarily shows the callous~~ness~~ attitude of the Officers/Authorities entrusted with the task of conducting the selection in a free and fair manner. But it is not the case of the Respondents that any action has been taken against such Officers/Authorities who were not vigilant of their duties leading to this controversy. We strongly depreciate such action of the authorities manning the Department and hope that they will be careful in future. Now coming to the question as to whether, after coming out successful any right has been conferred on the applicant to claim appointment and how far rejecting his candidature on the ground that photocopies of the certificates enclosed with the application were not attested by a gazetted officer is justified, we may observe that the Law is well settled in the case of **Shri Krishan v. The Kurukshetra University, Kurukshetra**, AIR 1976 SC 376 that once the candidate is allowed to take the examination, rightly or wrongly, then the statute which empowers the University to withdraw the candidature of the applicant has worked itself out and the candidate cannot be refused admission subsequently for any infirmity which should have been looked into before giving the candidate permission to appear. Relevant portion of the order is quoted herein below:

6. Mr. Sibbal learned counsel for the appellant submitted two points before us. In the first place it was argued that once the appellant was allowed to appear at LL.B. Part II Examination held on May 19, 1973 his candidature could not be withdrawn for any reason whatsoever, in view of the mandatory provisions of Clause 2 (b) of the Kurukshetra University Calendar Vol.I, Ordinance X under which the candidature could be withdrawn before the candidate took the examination. Secondly it was argued that the order of University was mala fide because the real reason for cancelling the candidature of the appellant was the insistence of the District Education Officer that the appellant should not have been admitted to the Law Faculty unless he had obtained the permission of his superior officers. In order to appreciate the first contention it

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may be necessary to extract the relevant portions of the statute contained in Kurukshetra University Calendar Volume I, Ordinance X. Clause 2 of this Ordinance runs as follows :

"2. The following certificates, signed by the Principal of the College/Head of the Department concerned, shall be required from each applicant:-

(a) that the candidate has satisfied him by the production of the certificate of a competent authority that he has passed the examinations which qualified him for admission to the examination; and

"(b) that he has attended a regular course of study for the prescribed number of academic years. Certificate (b) will be provisional and can be withdrawn at any time before the examination if the applicant fails to attend the prescribed course of lectures before the end of his term".

The last part of this statute clearly shows that the University could withdraw the certificate if the applicant had failed to attend the prescribed course of lectures. But this could be done only before the examination. It is, therefore, manifest that once the appellant was allowed to take the examination, rightly or wrongly, then the statute which empowers the University to withdraw the candidature of the applicant has worked itself out and the applicant cannot be refused. Admission subsequently for any infirmity which should have been looked into before giving the appellant permission to appear. It was, however, submitted by Mr. Nandy learned counsel for the respondent that the names of the candidates who were short of percentage were displayed on the Notice Board of the College and the appellant was fully aware of the same and yet he did not draw the attention of the University authorities when he applied for admission to appear in LL.B. Part II Examination. Thus the appellant was guilty of committing serious fraud and was not entitled to any indulgence from this Court. Before issuing the admission card to a student to appear at Part I Law Examination in April 1972 it was the duty of the University authorities to scrutinise the admission form filled by the student in order to find out whether it was in order. Equally it was the duty of the Head of the Department of Law before submitting the form to the University to see that the form complied with all the requirements. If neither the Head of the Department nor the University authorities took care to scrutinise the admission form, then in not disclosing the shortage of percentage in attendance the question of the candidate committing a fraud did not arise. Similarly, when the candidate was allowed to appear at the Part II Law Examination in May 1973, the University authorities had no jurisdiction to cancel his candidature for that examination. If the University authorities acquiesced in the infirmities which the admission form contained and allowed the candidate to appear in the

Examination, then by force of the University Statute the University had no power to withdraw the candidature of the candidate.

7. It appears from the averments made in the counter-affidavit that according to the procedure prevalent in the College the admission forms are forwarded by the Head of the Department in December preceding the year when the Examination is held. In the instant case the admission form of the appellant must have been forwarded in December 1971 whereas the examination was to take place in April/May 1972. It is obvious that during this period of four to five months it was the duty of the University authorities to scrutinise the form in order to find out whether it was in order. Equally it was the duty of the Head of the Department of Law before submitting the form to the University to see that the form complied with all the requirements of law. If neither the Head of the Department nor the University authorities took care to scrutinize the admission form, then the question of the appellant committing a fraud did not arise. It is well settled that where a person on whom fraud is committed is in a position to discover the truth by one diligence, fraud is not proved. It was neither a case of suggestio falsi, or suppressio veri. The appellant never wrote to the University authorities that he had attended the prescribed number of lectures. There was ample time and opportunity for the University authorities to have found out the defect. In these circumstances, therefore, if the University authorities acquiesced in the infirmities which the admission form contained and allowed the appellant to appear in Part I Examination in April 1972, then by force of the University Statute the University had no power to withdraw the candidature of the appellant. A somewhat similar situation arose in *Premji Bhai Ganesh Bhai Kshatriya v. Vice Chancellor, Ravishankar University, Raipur*, AIR 1967 Madh Pra 194 at p.197 where a Division Bench of the High Court of Madhya Pradesh observed as follows :

"From the provisions of Ordinances Nos. 19 and 48 it is clear that the scrutiny as to the requisite attendance of the candidates is required to be made before the admission cards are issued. Once the admission cards are issued permitting the candidates to take their examination, there is no provision in Ordinance No. 19 or Ordinance No. 48 which would enable the Vice-Chancellor to withdraw the permission. The discretion having been clearly exercised in favour of the petitioner by permitting him to appear at the examination, it was not open to the Vice-Chancellor to withdraw that permission subsequently and to withhold his result".

We find ourselves in complete agreement with the reasons given by the Madhya Pradesh High Court and the view of law taken by the learned Judges. In these circumstances, therefore,



once the appellant was allowed to appear at the Examination in May, 1973, the respondent had no jurisdiction to cancel his candidature for that examination. This was not a case where on the undertaking given by a candidate for fulfillment of a specified condition a provisional admission was given by the University to appear at the examination which could be withdrawn at any moment on the non-fulfillment of the aforesaid condition. If this was the situation then the candidate himself would have contracted out of the statute which was for his benefit and the statute therefore would not have stood in the way of the University authorities in cancelling the candidature of the appellant."

(ii) In the case of **Sanatan Gauda, v. Berhampur University and others**, AIR 1990 Supreme Court 1075 have held that once as candidate has been permitted to take admission based on his application the authority is estopped from refusing to declare the results preventing him from pursuing his final year course. In this connection it is also relevant to quote the decision of the Hon'ble Apex Court in the case of **Guru Nanak Dev University V. Sanjay Kumar Katwal and Anr**, (2009) 1 SCC 610 which reads as under:

"18. However, on the peculiar facts of the case, the first respondent is entitled to relief. The first respondent was admitted through a common ⁸¹⁷entrance test process during 2004-2005. He was permitted to take the first semester examinations by the University. He is not guilty of any suppression or misrepresentation of facts. Apparently, there was some confusion in the appellant University itself as to whether the distance education course attended by the first respondent was the same as the correspondence course which was recognised.

19. The first respondent was informed that he was not eligible only after he took the first semester examination. He has, however, also been permitted to continue the course and has completed the course in 2007. He has succeeded before the High Court. Now after four years, if it is to be held that he is not entitled to admission, four years of his career will be irretrievably lost. In the circumstances, it will be unfair and unjust to deny the first respondent the benefit of admission which was initially accepted and recognized by the appellant University.

20. This Court in *Shri Krishnan v. Kurukshetra University*¹ has observed that before issuing the admission card to a student to appear in Part I Law examination, it was the duty of the university authorities to scrutinize the papers; and equally it was the duty of the Head of the Department of Law before submitting the form to the university to see that it complied with all requirements; and if they did not take care to scrutinize the papers, the candidature for the examinations cannot be cancelled subsequently on the ground of non-fulfillment of requirements.

21. In *Sanatan Gauda v. Berhampur University*² this Court held where the candidate was admitted to the Law course by the Law College and the university also permitted him to appear for Pre-Law and Intermediate Law examinations, the college and the university were estopped from withholding his result on the ground that he was ineligible to take admission in the Law course.

22. Having regard to the above we are of the view that irrespective of the fact that MA (English) (OUS) degree secured by the first respondent from Annamalai University through distance education, may not be recognized as an equivalent to the Master's degree of the appellant University, his admission to the law course should not be cancelled. The appellant University is directed to treat the admission as regular admission and permit the first respondent to appear for the law examination, and if he has already appeared for the examination, declare his result. The appeal is disposed of accordingly."

(iii) If there was any deficiencies in the application, as in the instant case, the application of the applicant should have been rejected "summarily" but after allowing him to participate in the process of selection rejection of his candidature on the ground that photocopies of the certificates enclosed with the application were not attested by gazetted officer shocks to the judicial scrutiny being contrary to the law laid down by the Hon'ble Apex Court in the cases referred to above more so submission of attested copies of the certificates are for the purpose of giving prima facie satisfaction to the authorities that the candidates fulfilled the conditions so as to be called to face the interview and after his selection if, on verification of the documents in original with the copies submitted by the candidate at



the time of application, any deficiencies is found then certainly the said candidate has no right to claim appointment which is not the present case. Last but not the least, we may observe that it is again absolutely basic to our system that justice must not only be done but must manifestly be seen to be done. The state action indisputably must be fair and reasonable. Non arbitrariness on its part is a significant facet in the field of good governance. The discretion conferred upon the state yet again cannot be exercised whimsically or capriciously as has been noticed to have been done in the instant case.

8. Judging on the anvil of the aforesaid premises, the irresistible conclusion is that the decision taken by the Respondent-Department is totally unwarranted and unsustainable and hence, the notice dated 20.01.2012 is hereby quashed. Resultantly by applying the law laid down by the Hon'ble Apex Court in the case of **Badrinath v. Govt. of Tamil Nadu & Ors.**, AIR 2000 SC 3243 wherein it has been held that once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle of consequential order which is applicable to judicial and quasi-judicial proceedings is equally applicable to administrative orders, we hold that the decision, if any, taken on the representations of the applicant is held to be non est in the eyes of law. Consequently, the Respondents are directed to take further action, as per the procedure, to consider the candidature of the applicant for appointment to the post in question. The entire exercise shall be completed within a period of 90(ninety) days from the date of receipt of a copy of this order.



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9. In the result, with the aforesaid observation and direction this
OA stands allowed. There shall be no order as to costs.


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

