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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O. A. No. 751 of 2013

Cuttack the 11th day of November, 2013

CORAM

HON'BLE MR. A.K. PATNAIK, MEMBER (J)

.....

Balaram Kumar, aged about 26 yeaers, S/o.Kapildev Paswan, Vill. Harijan Kalyan Tola, PO.Bariarpur, Dist. Munger (Bihar)-811211.

...Applicant

(Advocates: Mr.D.K.Mohanty)

VERSUS

Union of India Represented through –

1. General Manager, East Coast Railway, Samant Vihar, PO-Mancheswar, Bhubaneswar, Dist. Khurda.
2. The Chief Personnel Officer, East Coast Railway, Samant Vihar, PO. Mancheswar, Bhubaneswar, Dist. Khurda.
3. The Senior Divisional Personnel Officer, East Coast Railway, Khurda Road, Jatni, Khurda.
4. Deputy Chief Personnel Officer, Recruitment, East Coast Railway, Railway Recruitment Cell, 2nd Floor, South Block, ECoR Sadan, Samant Vihar, PO-Mancheswar, Bhubaneswar, Dist. Khurda.

.....Respondents

(Advocate:)

O R D E R

Oral

A.K. PATNAIK, MEMBER (JUDL.)

A Resolution has been made and communicated by the CAT Bar Association in letter dated 4.11.2013 to the extent as under:

“In continuation to our earlier resolution dated 27.9.2013, 1.10.2013, 03.10.2013, 07.10.2013

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10.10.2013, 22.10.2013, 25.10.2013 and 31.10.2013, the General Body meeting of CAT Bar Association unanimously resolved to abstain from Court work till 11.11.2013”

2. In view of the above, no counsel is present for either of the sides. Perused the records. The case of the Applicant, in nutshell, is that the East Coast Railway administration through Employment Notice dated 28.10.2006 invited applications from eligible candidates for filling up of 5200 posts of Group ‘D’ category. The Applicant belongs to SC community. He applied, appeared at the written test and on being qualified at the Physical Efficiency Test (PET). Though he has qualified in the PET instead of appointing him to the post, he was issued a show cause dated 21.2.2012 calling upon him to explain as to why his candidature shall not be cancelled on the ground that “application without proper certificates obtained from the competent authority in prescribed format in respect of SC/ST candidates”. It is the case of the Applicant that though he has submitted reply to the said show cause notice on 19.3.2012 followed by reminder dated 5.12.2012 till date he has neither received any reply nor order appointing him to the post in question. In this case the grievance of the Applicant

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is that if the SC/ST certificate was not in the prescribed format could have been pointed out before calling him to appear at the selection and after having qualified for appointment debarring him to get the appointment on this score is not sustainable being illegal, arbitrary and violative of Articles 14, 16 and 21 of the Constitution of India.

3. Law is well settled in the case of **Shri Krishan v. The Kurukshetra University, Kurukshetra**, AIR 1976 ^{(SC) 376} ~~Court~~ ^{Supreme} ~~376~~ ^{Al} 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. Sibal 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

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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 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

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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*

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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."

Further 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 ^{lsc 1075}
~~ad~~ 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

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of the Hon'ble Apex Court in the case of **GURU NANAK DEV UNIVERSITY Vrs SANJAY KUMAR KATWAL AND ANTHR**, (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 ⁶¹⁷entrance 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.

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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."

4. Be that as it may, since no decision has been taken on the reply submitted by the applicant on 19.3.2012 followed by reminder dated 5.12.2012 to the show cause notice dated 21.2.2012, Respondent No. 4 is directed to take a decision on the reply submitted by the Applicant to the show cause notice dated 21.2.2012 keeping in mind the law laid down by the Hon'ble Apex Court, quoted above, and communicate the decision in a reasoned order to the Applicant within a period of 45 days from the date of receipt of copy of this order. It is made clear that if in the meantime, decision has already been taken the Respondent No.4 is directed to communicate the result of to the applicant within a period of fifteen days from the date of receipt of copy of this order. Till a reasoned order is communicated to the applicant, as directed above, one post for which the applicant applied and appeared shall

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be kept vacant. With the aforesaid observation and direction this OA stands disposed of. There shall be no order as to costs.

5. Applicant is at liberty to produce copy of the order before the Respondent No.4, who on receipt of the order, shall do well to comply with the order within the stipulated period as directed above.


(A.K. Patnaik)
Member (Judicial)