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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O. A. No. 819 of 2013

Cuttack the 12th day of December, 2013

CORAM

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

Joharilal Meena, aged about 41 years, Son of Shankar Lal Meena, At/Po.Baglai Bypiloda, The. Gangapur City, Dist. Sawalmadopur, Rajasthan-322205.

....Applicant

(Advocates: Mr.D.K.Mohanty)

VERSUS

Union of India Represented through -

1. The 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. Dy. Chief Personnel Officer, Recruitment, Railway Recruitment Cell, 2nd Floor, South Block, ECoR Sadan, Samant Vihar, PO- Mancheswar, Bhubaneswar, Dist. Khurda.

....Respondents

(Advocate: Mr.T.Rath)

O R D E R

(Oral)

A.K.PATNAIK, MEMBER (J):

The case of the Applicant, in nut shell, is that the East Coast Railway administration through Employment Notice dated 28.10.2006 invited applications from eligible candidates for filling up of certain posts of Group 'D' category. The applicant applied for the post of Jr. Trackman and

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Helper -II against category No.1&2 of the said Employment Notice. The applicant was called along with others to appear at the Written examination held on 07.10.2007 and Physical Efficiency Test conducted during 24.3.2008 to 06.04.2008. The applicant came out successful in the PET also. But instead of issuing offer of appointment, after verifying documents, vide letter dated 24.07.2012 the applicant was called upon by the Respondent No.3 as to why his candidature shall not be cancelled due to deficiency in the application submitted by the applicant. The deficiency as pointed out in the said letter is that the application submitted by the applicant was without the 'declaration'/with partial declaration (as given in Column-14 of the Personal Data Sheet) written in running script in English. It is the positive case of the applicant that in response to the said show cause notice dated 24.07.2012, the Applicant sent his reply on 16.1.2013. But till date neither he has received any reply nor the offer of appointment as has been given to others who were selected along with him. Mr.Mohanty's contention is that the rejection of the candidature on flimsy/hypertechnical grounds that too after the Applicant qualified in the written test etc, are nothing but mala fide exercise of power. His contention is that if there was any deficiency in the application his candidature should have been rejected at the threshold. Having allowed him to go through the rigors of the selection and when he came out successful rejecting his candidature is in violation of Articles 14, 16 and 21 of the Constitution of India.



2. Heard Mr.D.K.Mohanty, Learned Counsel appearing for the Applicant and Mr.Trilochan Rath, Learned Standing Counsel for the Railway-Respondents and perused pleadings and materials placed in support thereof. Mr.Rath accepts notice for the Respondents. Registry is directed to hand over copies of the notices to Mr.Rath.

3. Mr.T.Rath, Learned Standing Counsel appearing for the Respondents submitted that the selected candidates have meanwhile joined and unfilled vacancies have ~~again~~ been re-notified. He further submitted that ~~all~~ though he has no immediate instruction but in the meantime decision might have been taken after receipt of reply of the applicant. Besides, it has been submitted by him that in the advertisement, the Administration reserved the right to cancel the candidature at any point of time if any discrepancy (ies) was/were found out in the application. Therefore, rejection of the candidature of the applicant cannot be faulted with, nor qualifying in the test will confer any right on him to claim appointment when his application was not found in order.

4. 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

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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 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

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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".

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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."

5. Further in the case of Sanatan Gauda, v. Berhampur University and others, AIR 1990 SC 1075, the Hon'ble Apex Court have held that once a 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 Vrs Sanjay Kumar Katwal and Another, (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 ~~617~~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 University¹ has observed that before issuing the admission card to a student to appear in

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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."

6. Be that as it may, it has been submitted by Mr. Mohanty, Learned Counsel for the Applicant that no reply has yet been received by the Applicant though it has been stated by Mr. Rath, Learned Standing Counsel appearing for the Respondents that in the meantime final view on the show cause reply of the applicant might have been taken by the competent authority. But it is not known as to why if any decision is taken has not been communicated to the Applicant till date and prior to communication the unfilled vacancies have been re-notified by the authority. In view of the above, following the earlier Division Bench order of this Tribunal, without going to the merit of the matter this OA is disposed of with direction to the Respondent No.3 (Dy. Chief Personnel Officer, Recruitment, Railway Recruitment Cell, 2nd Floor, South Block, ECoR Sadan, Samant Vihar, PO-Mancheswar, Bhubaneswar, Dist. Khurda) to take a decision on

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the reply dated 16.1.2013 of the Applicant submitted by him to the show cause notice dated 24.7.2012 and communicate the decision in a well-reasoned order to the Applicant within a period of 60 days from the date of receipt of copy of this order. However, in the meanwhile, if any decision has already been taken, the result thereof shall be communicated to the applicant within a period of two weeks. Till a reasoned order is communicated to the applicant, as directed above, one post for which the applicant applied and appeared shall be kept vacant. There shall be no order as to costs.

7. As prayed for by Mr.D.K.Mohanty, Learned Counsel for the Applicant copy of this order be sent to Respondent No.3 by speed post for compliance at his cost for which he undertakes to furnish the postal requisite within three days hence.


(A.K.PATNAIK)
Member (Judl.)