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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 101 of 2013

Cuttack the 5th day of April, 2013

CORAM

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

HON'BLE MR. R. C. MISRA, MEMBER (A)

Sudhir Kumar Sahoo,
Aged about 34 years,
S/o.Prafulla Kumar Sahoo,
At/Po.Bhutiar Bahal,
Via-Deogaon,
PS-Tusura,
Dist.Balangir.

....Applicant

(Advocates: Ms.Pami Rath, M/s.J.Mohanty,J.P.Behera)

VERSUS

Union of India Represented through -

1. The Secretary,
   Ministry of Railway,
   Railway Bhawan,
   New Delhi-110 001.

2. Chairman,
   Railway Board,
   Railway Bhawan,
   New Delhi-110 001.

3. The General Manager,
   East Coast Railway,
   Samant Vihar,PO-Mancheswar,
   Bhubaneswar,
   Dist. Khurda.

4. The Chief Personnel Officer,
East Coast Railway,
Samant Vihar,
Po.Mancheswar,
Bhubaneswar,
Dist. Khurda.

5. 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):

We have heard Ms.Pami Rath, 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.

2. 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 5200 posts of Group 'D' category. After scrutiny of the applications received from candidates, 4.5 lakh candidates were called for written test held in the month of September/October,

2007. The candidates who qualified in the written examination were called to appear at the Physical Efficiency Test (PET) held during March/April, 2008. The result of the said Physical Efficiency Test was published but medical examination and document verification could not be held because of declaration of General Election, 2009. Even after General Election was over the final merit list was not published. A similar advertisement was published by the North-Western Railway wherein after the final panel published candidates joined in their post. The applicant in the instant OA along with others submitted representation praying for going ahead with the process of selection. When the efforts proved futile, the applicant along with others approached this Tribunal in OA No. 531 of 2009. The said OA was disposed of by this Tribunal on 12.03.2010 by directing the Railway administration to commence the medical test of the candidates who have come out successful in the written test as well as Physical Efficiency Test and complete the same within a period of three months and publish the final result in consultation with the Railway Board.

3. The Railway-Respondent challenged the said order of this Tribunal dated 12.03.2010 in OA No. 531 of 2009 before the Hon'ble High Court of Orissa in WP (C) No. 10324 of 2010 but the same was dismissed on 08.12.2010. SLP Nos.7384/2011 filed by the Railway-Respondent was also dismissed by the Hon'ble Apex Court on 04.04.2011 where after, the Respondents published a list who qualified in the written examination to appear in PET, certificate Verification and Medical Examination. On the other hand the applicant was issued with a letter No.ECoR/RRC/D/2006/01 dated 24.7.2012 calling upon the applicant to reply which reads as under:

> "Sub: Rejection of the candidature.
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> 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 dated 28.10.2006 of Railway Recruitment Cell, East Coast Railway, Bhubaneswar.
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> 2) You were called for Written Exam. held on 16.09.2007 and Physical Efficiency Test (PET) conducted during 24.3.2008 to 6.4.2008 with Roll No.1188244 for the above mentioned recruitment.
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> 3) While verifying the application submitted by you the following deficiency (ies) is/are noticed:
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> (i) Photocopies of the certificates enclosed with the application not attested by Gazetted Officer.
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> 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 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 23.8.2012 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 23.8.2012 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."

4. It is further case of the Applicant that in response to the aforesaid show cause notice dated 24.7.2012 (Annexure-A/7), the Applicant sent his reply on 13.08.2012. But he has received no reply on the same till date while many of the candidates who had faced the selection along with Applicant had already joined their respective posts.

5. Ms.Pami Rath's contention is that rejection of the candidature on flimsy/hyperthenical grounds that too after the Applicant had qualified in the written test etc, are nothing but mala fide exercise of power. Her contention is that if the certificate was without attestations by a gazetted officer, genuineness of which can be ascertained at the time of verification of the original

document but rejection of the candidature at this stage on the ground that certificates was without attestation of a gazetted officer is illegal, arbitrary and violative of Articles 14, 16 and 21 of the Constitution of India.

6. On the other hand Mr.T.Rath, Learned Standing Counsel appearing for the Respondents submitted that the selected candidates have meanwhile already joined and the unfilled vacancies have again been renotified. He further submitted that meantime the reply submitted by the applicant has been considered and disposed of. 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. Further it was contended by him that since the applicant did not fulfill the conditions stipulated in the advertisement, cancellation of his candidature is in order which needs no interference. To strengthen his submission he has relied on the averments made in the show cause reply filed in a

Contempt Petition before this Tribunal. However, he has sought some time to obtain instruction and file a short reply.

7. Law is well settled in the case of **Shri Krishan v. The Kurukshetra University, Kurukshetra,** AIR 1976 SSupreme Court 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 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 :
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> "2. The following certificates, signed by the Principal of the College/Head of the Department concerned, shall be required from each applicant:-
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> (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."

8. 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 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 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 617 entrance 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.
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> **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.
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> **20.** This Court in Shri Krishnan v. Kurukshetra University1 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.
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> **21.** In Sanatan Gauda v. Berhampur University2 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."

9. Be that as it may, it has been submitted by Ms.Rath, 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 meanwhile final view on the show cause reply of the applicant has already been taken by the competent authority. But it is not known as to why if any decision has meanwhile been 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, without going to the merit of the matter this OA is disposed of with direction to the Respondent No.5 (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 the reply submitted by the Applicant to the show cause notice dated 24.07.2012 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.

10 If, in the meanwhile, decision has been taken since it has not been received by the applicant till date, the Respondent No.5 is directed to give a relook to the entire matter once again keeping in mind the law laid down by the Hon'ble Apex Court quoted above and communicate the decision within the stipulated period stated above.

11. 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.

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

13. Copy of this order along with OA be sent to the Respondent No.5 for compliance at the cost of the Applicant; for which Ms.Rath, Learned Counsel for the Applicant undertakes to furnish the requisite postal requisite within two days hence.

(R.C.MISRA)
Member (Admn.)

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