

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

**ORIGINAL APPLICATION NO. 161/2008
JODHPUR THIS DAY 30 July, 2009**

CORAM:

**HON'BLE MR. JUSTICE SYED MD. MAHFOOZ ALAM, JUDICIAL MEMBER
HON'BLE MR. S.P. SINGH, ADMINISTRATIVE MEMBER.**

Om Prakash S/o Shri Bhiya Ram,
By caste Jat (O.B.C.), aged about 21 years,
Resident of Barnau, Karni Nagar,
Tehsil Shergarh, District Jodhpur (Raj.).

.... Applicant

**For Applicant : Mr. R.K. Soni, proxy counsel for
Mr. I. R. Choudhary, Advocate.**

VERSUS

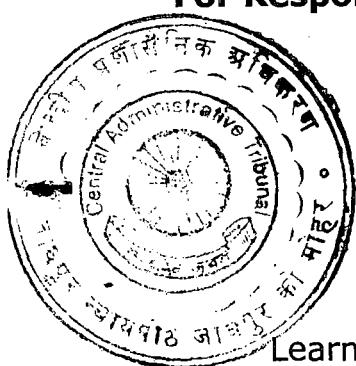
1. Union of India through,
The General Manager, North Western Railway,
Jaipur (Raj.).
2. The Assistant Personal Officer,
(Recruitment) Railway Recruitment Cell,
Northern Western Railway,
Jaipur (Raj.).

.... Respondents.

For Respondents 1 &2 : Mr. Manoj Bhandari, Advocate.

ORDER

[PER Mr. S.P. SINGH, MEMBER (A)]



Learned Counsel Mr. I.R. Choudhary, for applicant has filed this
O.A. seeking following reliefs:-

"(i) the impugned order No.740-E/RRC/Group on 'D'/Rejection dated Nil-05-2008 passed by Assistant Personal Officer (Recruitment), respondent No.2 (Annex.A/1) may kindly be quashed and set aside and the respondents may be directed to fairly consider and appoint the applicant on Group D post in pursuance of advertisement Annex.4 in

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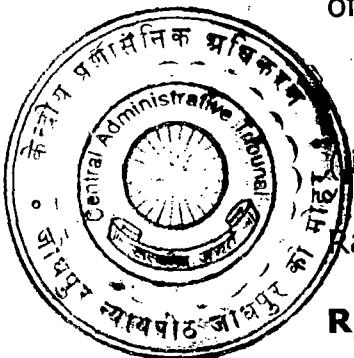
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accordance with law and his merit with all consequential benefits.

(ii) Any other appropriate relief which this Hon'ble High Court deems just and proper in favour of the applicant may kindly be granted to the applicant."

2. Facts stated in brief are as under:-

(i) Detailed notification was issued by Railway Recruitment Cell, North Western Railway through an open advertisement [Employment notice no.1/07 (NWR Gr.D)] for filling of 4787 posts of 'Group D' categories through the process of direct recruitment.



(ii) The advertisement was published in the newspaper called Rajasthan Patrika in their Jaipur edition on 28.07.2007 (**Annexure-R/2**). Further vide publicity to the detailed notification was given by publishing it in 'Employment News' and other prominent Local Newspapers (**Annexure-R/1**). One copy of the detailed notification was also placed on the Notice Board of North Western Railway. Candidates were also advised to log on to North Western Railway website www.northwesternrailway.gov.in and go to "Recruitment Group D" for downloading application form with further advice that the site as mentioned above may also be referred in future by candidates for any information/updates.

(iii) In pursuance of the said advertisement, the applicant submitted his application. The applicant has submitted copy of the

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advertisement (**Annexure-A/4**), which he relied upon while filing his application form. However, after detailed scrutiny, his application was rejected (**Annexure-A/1**). The cause of rejection of the application form is mentioned clause (09) of the impugned order as under:-

"(09) Without proper certificates in respect of SC/ST/OBC and/or Ex-Servicemen/Physically handicapped."

The application has filed this O.A. against rejection of his application form.

(iv) Rejoinder was filed on 27.01.2009.

3. The learned counsel for the applicant drew our attention to the information received by the applicant vide letter dated 19.08.2008. Sent by Public Information officer, North Western Railway, Jaipur in response to his letter dated 14.08.2008 (**Annexure-A/9**). The information is reproduced below:-



प्रार्थी के प्राप्तांक 128.67/150 है।
ओबीसी के कट ऑफ मार्क्स 122/150 है।

प्रार्थी द्वारा मूल आवेदन पत्र के साथ लगाया गया जाति प्रमाण पत्र तहसीलदार द्वारा जारी किया गया है जबकि विज्ञप्ति के पैरा 8.11(11)3 के अनुसार जाति प्रमाण पत्र तहसीलदार से नीचे के अधिकारी के द्वारा जारी किया नहीं होना चाहिए था। अतः प्रार्थी का आवेदन निरस्त कर दिया गया था। ”

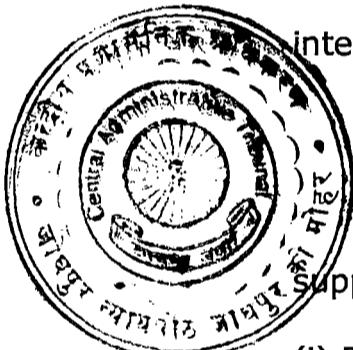
The learned counsel for the applicant further submitted that this rejection of application form is not in order when it is seen in light of circulars issued by Government of Rajasthan authorizing the officials

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mentioned in Schedule 'ka' (Annexure-A/10 at Page 71 to Page 76).

The applicant prayed for allowing his Original Application considering his application form initially submitted by him alongwith his caste certificate issued by Nayab Tehsildar who is duly authorized by State Government of Rajasthan for issue of such certificates in Rajasthan.

The applicant has recently approached the Tehsildar, Shergarh and requested for issuance of his OBC certificate duly signed by the Tehsildar whereupon he could get the two OBC certificates both dated 16.01.2009 (one in Hindi and another in English) duly signed by Tehsildar Shergarh, the copies whereof are produced herewith and marked as Annexure A/11 and A/12 respectively. Under the circumstances, this original application deserves to be allowed in the interest of justice.

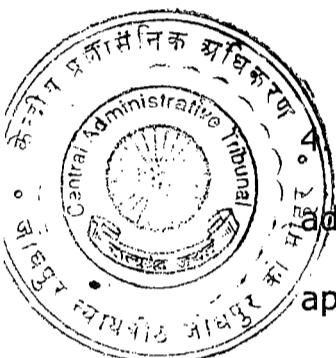


The learned counsel for the applicant cited following case laws in support of his submissions:-

- (i) Purushottam Vs. Chairman MSEB & anr. : 1999 AIR SCW 4747.
- (ii) Sarnam Singh & anr. Vs. Dy. Director Of Consolidation & ors. : 1999 AIR SCW 4749.
- (iii) Ashwani Kumar & ors. Vs. State of Bihar & ors. : AIR 1997 SC 1628.
- (iv) U.P. State Sugar Corporation Vs. M/s Sumac International Ltd. : AIR 1997 SC 1644.
- (v) Charles K. Skaria & ors. Vs. V.C. Mathew & ors. : AIR 1980 SC 1230.
- (vi) Shaitan Singh Vs. State of Raj. & ors. : DB CSA No. 370/1995 decided on 12.05.2003.

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We do not find that anyone of the above case laws cited by the learned counsel for the applicant is going to help the applicant. These can be clearly distinguished based on the facts and the laws in the present case. In the present case, the applicant has not followed the detailed notification issued for the selection as prescribed and circulated widely through the advertisement in the print as well as electronic media. The principles of in this regard have been laid down by catena of decisions of the Apex Court in this regard.



The learned counsel for respondents submits that a copy of advertisement which had been relied upon and annexed by the applicant is not correct copy of the advertisement which was published in the Dainik Bhaskar newspaper. A correct copy of advertisement, which was published in the Rajasthan Partika newspaper, is produced herewith and same marked as **Annexure-R/2**. The detailed notification dated 27/28.07.2007 clearly mentions as under:-

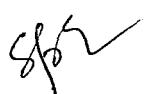
"The candidates are required to obtain caste certificates in the proper proforma from the appropriate authority and produce the original certificate at the time of verification, failing which he/she may be disqualified. This is strictly required vide Chapter 13 of the Brochure (Published by Govt. of India, Ministry of Personnel, Public Grievances & Pensions Department of Personnel Training, New Delhi). As large number of candidates are producing certificates issued by authority different from the appropriate authority, they are advised to strictly comply with the instructions."

So far the applicant concerned, his application form was rejected by the competent authority on the ground that he annexed other backward caste certificate with his application which was issued by the Sub-Tehsildar who is below from the rank of Tehsildar. It is

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specifically mentioned in the advertisement and clause 8.11 (ii) of notification dated 27/28 .07.07 read with Annexure II therein that all the certificates with regard to caste must be issued by the revenue officer not below the rank of Tehsildar and application form will be rejected if applicant did not file proper certificate with regard to his caste. It will not be out of place to mention here that pamphlet published in the Rajdeep Employment Centre, Jodhpur applicant applied for the Group-D post without seeing advertisement and instructions laid down in the advertisement and now when he failed to submit application form without requisite certificates he cannot saddle his liability on the respondent by saying that respondent department neither mentioned or printed prescribed certificate in the advertisement.

(6) Learned counsel for respondents further submitted that the applicant approached this Tribunal when selection process was over. In this regard it is most respectfully submitted that 5,61,386 candidates were called for Physical Efficiency Test i.e. PET and same was conducted from dated 08.12.2007 to 31.03.2008. After physical Efficiency Test 88622 candidates were qualified for written test and they were called for written test which was held on 04.05.2008. The result of written examination was declared on 22.05.2008 and provisional panel of 2422 candidates has been done from 23.06.2008 to 11.07.2008 and after that 2037 candidates were sent to Division/workshop & 385 candidates were sent for re-verification. Out of 2037 candidates 1748 have been sent for medical and after medical



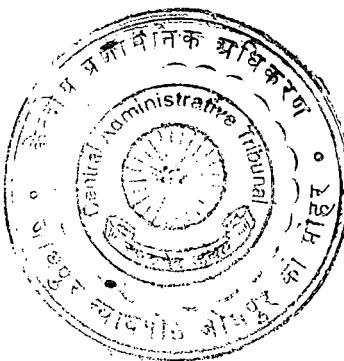
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353 have been posted up to 25.07.2008. Subsequently, further posting has already been made by the answering respondents of various newly selected process made by the answering respondents dated 25.07.2008 is enclosed herewith and same marked as **Annexure-R/3.** Therefore, the grievance of the applicant is redundant and hence the original application is liable to be dismissed with cost.

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(iii) Ex.party Interim Relief dated 12.08.2008 by this Tribunal was given as under:-

"It is seen from advertisement at AnnexureA/4 that format of prescribed certificate for OBC category was not given. In the interest of justice, the respondent no.2 is provisionally for group 'D' post in the OBC category in view of the OBC certificate submitted by the applicant vide Annexure A/8 and proceed further as per law. This interim relief will be in operation till further order(s)."



After Interim Relief, his case was considered by the concerned authorities once again and rejected.

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(iv) It may be stated that the original application deserves to be dismissed on the ground that the selection process which had already been completed, cannot be disturbed at the instance of the applicant. Suffice it to say that when once selection process had already been completed and all eligible candidates who has fulfilled all the requisites conditions had been granted appointment then selection process cannot be disturbed at the instance of the applicant without impleading all the selected persons as party to the litigation. These selected

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persons are not only proper but also necessary parties to the litigation therefore, the original application is not maintainable and same is liable to be dismissed on the ground of non-implementation of necessary parties. It is further submitted that 32 candidates' applications have been rejected after detailed scrutiny as was done in the case of the applicant.

(v) As per notification issued by the Railway Authority vide notification no.740E/RRC/Gr.'D'/notification dated 27/28.07.07 and as per para 17 of advertisement given in news paper, it is clearly mentioned that any legal dispute pertains to recruitment, the jurisdiction will be at Central Administrative Tribunal, Jaipur only. Thus this Hon'ble Tribunal have no jurisdiction to decide the present controversy. A copy of the notification dated 27/28.07.07 is already produced herewith and same marked as **Annexure-R/1**.

(vi) The learned counsel for the respondents cited the following cases as under:-

(i) Km. Rashmi Mishra vs. M.P. Public Service Commission and ors.
: (2006) 12 SCC 724.

In this case, as all the selected candidates were not impleaded as a party in the writ petition, no relief was granted to the appellant by the Apex Court.

(ii) Union of India & ors. Vs. S. Vinodh Kumar and Ors.
: (2007) 8 SCC 100.



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In this case, those candidates who had taken part of the selection process knowing fully well the procedure laid down there were not entitled to question the same. In the above case para 19 is reproduced below:

"19. In Chandra Prakash Tiwari v. Shakuntal Shukla, it was held: (SCC p.148, para32)

"32. In conclusion, this court recorded that the issue of estoppel by conduct can only be said to be available in the event of there being a precise and unambiguous representation and it is on that score a further question arises as to whether there was any unequivocal assurance prompting the assured to alter his position or status- the situation, however, presently does not warrant such a conclusion and we are thus not in a position to lend concurrence to the contention of Dr. Dhavan pertaining to the doctrine of estoppel by conduct. It is to be noticed at this juncture that while the doctrine of estoppel by conduct may not have any application but that does not bar a contention as regards the right to challenge an appointment upon due participation at the interview/selection. It is a remedy which stands barred and it is in this perspective in *Om Prakash Shukla v. Akhilesh Kumar Shukla* a three-Judge Bench of this court laid down in no uncertain terms that when a candidate appears at the examination without protest and subsequently found to be not successful in the examination, question of entertaining a petition challenging the said examination would not arise." It was further observed: (SCC p.149, para34)

"34. There is thus no doubt that while question of any estoppel by conduct would not have arise in the contextual facts but the law seem to be well settled that in the event a candidate appears at the interview and participates therein, only because the result of the interview is not 'patable' to him, he cannot turn round and subsequently contend that the process of interview was unfair or there was some lacuna in the process."



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5. We have heard counsels of parties, perused records in the file and assessed the rival submissions in this regard.

6. (i) We have taken note of status of recruitment process as on 25.07.2008 as submitted by the learned counsel for respondents.

(ii) Applications of 32 candidates have been turned down on detailed scrutiny carried out after written examination on various grounds in the same manner as was done in case of the applicant.

(iii) The note at the end of written notification dated 27/28.07.2007 explaining the process of Recruitment and after heading syllabus & Examination reads as under:-

"Mere issue of call letter for appearing in PET/Written Exam by RRC-NWR does not confer any right for subsequent stages of recruitment process or placing name on the panel."



(iv) The Supreme Court in case of *Rajasthan Public Service Commission Vs. Kaila Kumar Paliwal & anr.* Where the only question which arose for consideration in these appeals was as to whether the High Court was correct in opining that the experience gained by the respondents while working as Laboratory Assistants or Teacher Grade III satisfies the requirements laid down in the said advertisement dated 07.03.2002.

"21. Recruitment to a post must be made strictly in terms of the Rules operating in the field. Essential qualification must be possessed by a person as on the date of issuance of the notification or as specified in the Rules and only in

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absence thereof, the qualification acquired till the last date of filing of the application would be the relevant date."

(v) After Supreme Court judgment in the *Indira Sawhney's case*, Government of India of Personnel & Training issued O.M. No. 36012/22/93-Estt.(SCT), dated 22-10-1993, OM of even number dated 15-11-1993 and 29-12-1993, regarding issue of caste certificate and reservation for Other Backward Classes in Civil posts and Service under the Government of India, para 5 of the said circular is reproduced below:-

"5. For the purpose of verification of the castes/communities, the certificate (for model form, See Appendix-3) furnished by the candidates for the purpose of benefit of reservation to OBCs from the following authorities only will be accepted:-

- (a) **District Magistrate / Additional District Magistrate /Collector /Deputy commissioner/Additional Deputy Commissioner/ Deputy Collector/ I Class stipendiary Magistrate/ Sub-Divisional Magistrate/ Taluka Magistrate/ Executive Magistrate/Extra-Assistant Commissioner (not below the rank of I class Stipendiary Magistrate).**
- (b) **Chief Presidency Magistrate/Additional chief Presidency Magistrate/Presidency Magistrate.**
- (c) **Revenue Officer not below the rank of Tehsildar; and**
- (d) **Sub-Divisional Officer of the area where the candidate and/or his family normally resides.**

The same authorities which are notified as competent to certify OBCs status should also be authorized to certify that the candidate in question does not belong to the persons/section (Creamy Layer) mentioned in the Column 3 of the Schedule to this Department's OM, dated 08-09-1993."



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(vi) The procedure laid down in the detailed notification dated 27/28.07.2007, it was clear that the candidate have to submit his caste certificate in the model form as prescribed by a competent authority who was notified for issuing such certificates both by Government of India as well as by authorities of North Western Railway which merely adopted the followed Government of India in issuing the detailed notification in this regard. Procedure for submission of application, including Personal Data Sheet, para 8.2 of the detailed notification dated 27/28.07.2007 is reproduced as below:-

"8.2 It is important to note that following para (Declaration) should be copied out by candidate in his/her own handwriting in the space provided at column no.06 of the application form.

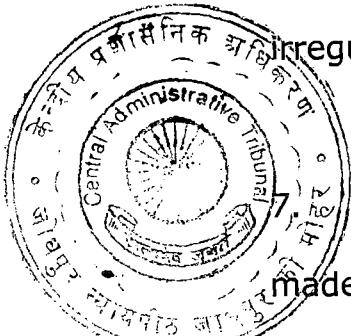
"I hereby declare that the facts and evidences given by me in the above application are true, complete and correct to the best of my knowledge and belief. In the event of any mis-statement/discrepancy in the particulars being detected at any stage, my candidature/ service may be cancelled/terminated without any notice."



Thus, the certificate submitted by the applicant was not in accordance with para 8.2 of the detailed notification dated 27/28.07.2007 and also not in accordance with *Government of India of Personnel & Training, O.M. No. 36012/22/93-Estt.(SCT), dated 22-10-1993, OM of even number dated 15-11-1993 and 29-12-1993*, on the subject of reservation for Other Backward Classes in Civil posts and Service under the Government of India. The authorities were right in rejecting his certificate as the same was submitted not in accordance with the detailed notification dated 27/28.07.2007 nor in accordance with *Government of India of Personnel & Training, O.M. No.*

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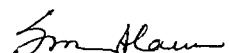
36012/22/93-Estt.(SCT), dated 22-10-1993, OM of even number dated 15-11-1993 and 29-12-1993. We did not find any illegality or irregularity in impugned order **Annexure-A/1**.



In light of the Apex Court decisions cited above and submissions made by the learned counsel for the respondents and also the facts and circumstances stated in para 6 above, we did not find any merit in this Original Application.

8. The Original Application is liable to be dismissed and is dismissed. No order as to costs.


[S. P. SINGH]
ADMINISTRATIVE MEMBER


[JUSTICE S. M. M. ALAM]
JUDICIAL MEMBER

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Received copy
Given to Mr. Adh 4/8/09
for M. Bhandari
Adh

Part II and III destroyed
in my presence on 8/8/09
under the supervision of
section officer (J) as per
order dated 07/07/15

Section officer (Record)