

14

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.405/2012

Jodhpur this the 05th day of September, 2013

CORAM

**Hon'ble Mr. Justice Kailash Chandra Joshi, Member (J),
Hon'ble Ms. Meenakshi Hooja, Member (A)**

1. Radha Kishan S/o Shri Laxman, aged about 32 years, Post Trackman, R/o Trackman C/o SSE/PW/Mathania (under ADEN), Railway Colony, Mathania, Tehsil-Osian, District Jodhpur, Rajasthan.
2. Banwari Lal S/o Shri Babu Lal, aged about 29 years, Post Trolleyman, R/o Trolleyman (under ADEN Samdari) Railway Colony Samdari, District Barmer, Rajasthan.
3. Ramavtar Mahavar S/o Shri Ramjilal Mahavar, aged about 27 years, Post Trolleyman, R/o Trolleyman (under ADEN NWR Jaisalmer) Railway colony Jaisalmer, District Jaisalmer, Rajasthan.

.....Applicant

Mr. Ankur Mathur, counsel for applicant.

Versus

1. Union of India, through the General Manager, North-Western Railway, Jaipur, Rajasthan.
2. The Divisional Railway Manager, North-Western Railway, Jodhpur.
3. The Senior Divisional Personnel Officer, North-Western Railway, Jodhpur.

.....Respondents

Mr. Kamal Dave, counsel for respondents.

ORDER (Oral)

Per Justice K.C. Joshi, Member (J)

The present OA has been filed by three applicants namely Radha Kishan, Banwari Lal and Ramavtar, against the respondents

17

under Section 21 of the Central Administrative Tribunals Act, 1985, for the following reliefs:-

- “(i) That record of the case may kindly be called for*
- (ii) That the order dated 07.08.2012 issued by the respondents may be quashed and set aside.*
- (iii) That the order dated 21.08.2012 issued by the respondents may be quashed and set aside.*
- (iv) That the respondents may kindly be directed to fill the advertised posts in pursuance of the advertisement dated 13.01.2010.*
- (v) Any other relief, which this Hon’ble Tribunal deems fit and proper in favour of the applicant may be granted. The original application may kindly be allowed with costs and all consequential benefits may be granted in favour of the applicants.”*

2. The three applicants of this OA seek permission for pursuing the matter jointly. The same is allowed.

3. The short facts of the case as averred by the applicants are that the applicants are initially working on the post of Trackman and Trolleyman in the respondent department. It has been averred that under the rules the post of Senior Supervisors are to be filled from 25% of the direct recruitment, 25% from the Limited Departmental Competitive Examination (LDCE) and from 50% by way of promotion. It has been further averred in the OA that on 01.01.2003, the respondents advertised the vacancy for the year 2002-2003 for all the three categories and the advertised posts were filled in accordance with the rules. Thereafter, the respondent department again advertised the vacancies for all the three categories and stated that the same to be filled up in accordance with the revised rules. The revised conditions were issued by the respondents on 01.01.2003 by which qualification of passing of 10+2 with subject of Science and Mathematics has been added. However, the respondent department cancelled the above

mentioned advertisement, and in the year 2008 also issued an advertisement for filling up the vacancies for both the promotional posts. That advertisement again stood cancelled and the advertised vacancies could not be filled. It has been averred that after a long gap, the respondent department on 13.01.2010 advertised 32 vacancies under the quota reserved for 50% candidates desirous of getting promotion and 17 vacancies under the quota reserved for 25% candidates desirous of getting promotion through LDCE. The applicants being eligible candidates again applied in pursuance of the advertised vacancy under the quota of 25% reserved reserved for LDCE. The department without taking the Limited Department Competitive Examination issued another advertisement on 07.08.2012 declaring the advertisement issued on 13.01.2010 as cancelled to the extent of the vacancies reserved under the 25% for the candidates applying through LDCE. Thereafter, on 21.08.2012, the respondents issued another advertisement for filling up the vacancies under the reserved quota of 25% through the channel of LDCE and, therefore the applicants have filed this OA for the relief as stated in para no.1.

4. The respondents by way of reply denied the rights of the applicants as they do not possess the requisite qualification of 10+2 with subject of Science and Mathematics, therefore, the applicants are not eligible for promotion to the post of Senior Supervisors under recruitment of 25% LDCE quota. It has been further averred that cancellation of the advertisement was in order in view of the

administrative requirement and also in view of the fact that after the advertisement of the year 2010, number of candidates gained the experience to compete against the 25% LDCE quota. It has been further averred that the advertisement dated 13.01.2010 was not for fulfillment of 25% LDCE quota in respect of which the applicants raised the grievance and further averred that Annexure-A/6 is an advertisement in respect of 50% of promotion quota. It has been also averred that the revised notification is having no adverse affect as regard the right of the applicants who admittedly are not eligible in view of failure to fulfill the requirement of education qualification. Hence, the respondents, by way of reply pray to dismiss the OA.

5. By way of rejoinder, the applicants while reiterating the same facts, has averred that the educational qualifications of the applicant No.1 (Radha Kishan) is of BA + B.Ed., applicant No.2 (Banwari Lal) is of BA, and the applicant No.3 (Ramavtar Mahavar) of Senior Secondary. It has been further averred that the Railway Board issued a circular prescribing the minimum eligibility to a person who have the qualification of 10+2 in Science +Mathematics along with 3 years of minimum service. However, in case, any posts lie vacant and suitable candidates of such qualification are not available then the vacant posts may be filled up from the employees who have the qualification of passing 10th standard along with an experience of 3 years. It has been further

averred that in these circumstances the minimum eligibility is 10th standard and not 10+2 as per the said circular.

6. Heard both the parties. Counsel for the applicant contended that without assigning any reason the advertised vacancy cannot be cancelled and further it has been contended that after review advertisement of the vacancies more persons have gained the eligibility, therefore, the competition becomes more tough. He further contended that latest notification issued by the respondents is, therefore, required to be quashed. In support of his arguments, the learned counsel for the applicant has relief upon the following judgments:-

- (i) *Onkar Lal Bajaj & Ors v. Union of India & Anr., reported in (2003) 2 SCC 673.*
- (ii) *Chairman, All India Railway Recruitment Board & Anr. vs. K. Shyam Kumar & Ors., reported in (2010) 6 SCC 614.*
- (iii) *Union of India & Ors. v. Rajesh P.U., Puthuvalnikathu & Anr. reported in (2003) 7 SCC 285.*

7. Per contra, counsel for the respondents contended that as a policy decision, the respondents cancelled the advertisement and such policy decision cannot be subject matter in the scrutiny of the Tribunal/Courts and further it is well settled that merely because a candidate is eligible when the advertisement was issued or that a candidate's name is included in the selection list does not confer any right to the candidate to be appointed, and it is for the rule-making authority or the appointment authority to prescribe the qualifications for recruitment and the courts will not interfere with

the qualifications prescribed by such authority. In support of his arguments, the learned counsel for the respondents relied upon the judgment of *Secretary, Board of Basic Education Uttar Pradesh v. Rajendra Singh & Ors.*, reported in (2009) 17 SCC 452.

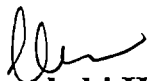
8. We have considered the rival contention of both the parties and also perused the judgment cited by both the counsels. The facts of the case of *Union of India & Ors. v. Rajesh P.U., Puthuvalnikathu & Anr* (supra) are not applicable in the present case because in that case the list of the eligible candidates were ordered to be cancelled, and the Hon'ble Apex Court has held that where from out of the selectees it was possible to weed out the beneficiaries of irregularities or illegalities, there was no justification to deny appointment to those selected candidates. In the instant case, only the advertisement has been issued and no selection process was started. In the case of *Chairman, All India Railway Recruitment Board & Anr. vs. K. Shyam Kumar & Ors* (supra), there was a vigilance report indicating leakage of question paper and other irregularities and in this case the Hon'ble Supreme Court has upheld the cancellation of the examination. Therefore, the facts of that case are also not applicable to the present case. In the case of *Onkar Lal Bajaj & Ors v. Union of India & Anr.*, (supra), the Hon'ble Apex Court has held that the expression public interest or probity in governance cannot be put in a straitjacket. The circumstances in each case would determine whether government action was taken in public interest or was taken to uphold probity in

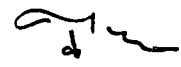
792

governance. But the facts of this case are also different from the facts of the present case

9. In the instant case, the minimum qualification has been revised by the Railway Board and as the Hon'ble Apex Court in the case of *Secretary, Board of Basic Education Uttar Pradesh v. Rajendra Singh & Ors.* (supra) has held that the appointing authority and the rule making authority has all the powers to prescribe the minimum qualification for recruitment and the Courts/Tribunal should not interfere in such cases. In this case no malafide has been established in cancelling the advertisement, and simply the earlier advertisements were cancelled and a revised advertisement issued and therefore, no rights of the applicants can be said to have been infringed by the said advertisement.

10 Accordingly, the applicants are not entitled to get any relief as the OA lacks in merit and therefore, the same is dismissed with no order as to costs.


(Meenakshi Hooja)
Administrative Member


(Justice K.C. Joshi)
Judicial Member