

CENTRAL ADMINISTRATIVE TRIBUNAL,**JODHPUR BENCH**

OA No. 201/2013
Rahat
 ORDERS PRONOUNCED ON: 03-11-2016
 (ORDERS RESERVED ON: 27.09.2016)

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MS. PRAVIN MAHAJAN, MEMBER (A)**

Lekhraj Gujar S/o Sh. Narayan Lal Gujar,

Aged 30 years,

R/o Shiv Mandir Street,

Near Gor Chowk, Outside Chandpol,

Jodhpur, Rajasthan.

Applicant

1. Union of India

Through the Secretary, Government of India,
 Ministry of Railways, New Delhi.

2. The Chairman,

Railway Recruitment Board, 2010,
 Nehru Marg, Near Ambedkar Circle,
 Ajmer-305028.

3. The Assistant Secretary,

Railway Recruitment Board, 2010,
 Nehru Marg, Near Ambedkar Circle,
 Ajmer-305028.

Respondents

Present: Mr. Dilip Sharma, Advocate, for the applicant.
 Mr. Kamal Dave, Advocate, for the respondents.

O R D E R
HON'BLE MR. SANJEEV KAUSHIK , MEMBER (J)

1. By means of the present Original Application, the applicant has sought issuance of writ of mandamus directing the respondents to appoint him on the post of Jr. Engineer Estimator/Drawing/Design (Civil/Drawing Civil) (Track Mechanic).
2. The facts which led to filing of the present Original Application are that respondent-Railway Recruitment Board, issued an advertisement dated 10.03.2012 in the Central Employment notice inviting applications to fill the different categories of vacancies including 98 vacancies of category no. 28 namely Junior Engineer/Estimator/Drawing/Design (Civil/Drawing Civil) (Track Mechanic) for North Western as well as West Central Railways. Out of 98 vacancies, 47 were unreserved, 17 were reserved for SC, 8 were reserved for ST and 26 were reserved for OBC. The applicant, who belongs to SG category and being eligible in terms of advertisement, applied for the said post. He was subjected to a written examination held on 06.09.2012 where he was declared successful on 18.02.2013. As many as 98 candidates were called for documents verification and total 29 candidates were put in extra category. The applicant was called for documents verification on 11.03.2013 at RRB, Ajmer. Final result of the selection was declared on 21.03.2013 where name of the applicant did not find a mention. While declaring the final result, they had declared the result of 86 candidates and result of four candidates was withheld, meaning thereby, result of 8 candidates was neither declared nor withheld.

Thereafter, the applicant submitted an application under Right to Information Act, 2005 on 04.04.2013 which was never replied to by the respondents. Hence, the present O.A.

3. The respondents while resisting the claim of the applicant filed a detailed written statement wherein they admitted this fact that the applicant appeared in pursuant to an advertisement and also cleared the written examination and called for document verification. It is submitted that while checking documents, the respondents found that the applicant had annexed provisional certificate/degree of one Sh. Mahesh Kumar S/o Sh. Manohar Lal and had not submitted his certificate of passing Bachelor of Engineering (Civil), thus, in absence of applicant's degree of B.E, his candidature for the post of Junior Engineer was rejected. It is submitted that in terms of clause of advertisement, the respondents had reserved their right to cancel the candidature of a candidate, if they found any discrepancy later on. It is also submitted that at the time of verification of documents on 11.03.2013, the applicant failed to enclose documentary evidence with form namely self attested copy of degree of Bachelor of Engineering as mentioned in column 12(b) of his application forum. With regard to vacancy position, they have submitted in para 11 of the reply to O.A which reads as under:

11) That in reply to contents of para 4.11, it is respectfully submitted that candidates provisionally selected for the category no. 28 namely Jr. Engineers were placed on panel subject to fulfillment of other requisite condition. In the panel roll no. of 86 candidates, (+ withheld 4) amongst which UR-42, SC-14, ST -8 and OBC 22, were found placed in the provisional selected list for the category 28 of Jr. Engineer. Result of 4 candidates was withheld due to deficiencies (UR-1, SC-2 and OBC-1 and 8 candidates failed

to present them for document verification (UR-4, SC-1 and OBC-3). In furtherance of the provisions guiding such situation notices to 8 candidates who failed to appear for document verification were issued giving them time to report for document verification failing which candidates available as 30% extra of the wait list equivalent to absentee candidates (08) shall be considered for provisional selection and empanelment subject of fulfillment of other requisite condition."

4. The applicant has also filed a rejoinder contradicting the averments made in the written statement.
5. We have heard Sh. Dilip Sharma, learned counsel for the applicant and Sh. Kamal Dave, learned counsel for the respondents.
6. Sh. Dilip Sharma, learned counsel for the applicant vehemently argued that action of the respondents in not issuing appointment order in favour of the applicant is illegal because at the time of verification of documents, the applicant had already shown provisional certificate/degree issued by the recognized University to this effect. Once, the applicant had established his right to the post in question then the respondents cannot be allowed to cancel his candidature on the ground that at the time of submission of form, he had not annexed his certificate/degree and had annexed that of someone else. He argued that once the respondents were satisfied at the time of verification of documents that the applicant possessed the degree of Bachelor of Engineering (Civil) which is essential qualification for the post in question then they have to issue appointment letter to him otherwise verification would be of not more than empty formality. If a candidate is able to prove before authority that he is having qualification before cut-off date, then for one or another

reason, if same was not annexed but shown at the time of verification, then his candidature could not be cancelled as very purpose of document verification is to find out the truth. He, therefore, prayed that a direction be given to the respondents to issue appointment letter because this court has already directed them to keep one post, out of eight notified vacancies, while issuing interim direction in his favour.

7. Per contra, Sh. Kamal Dave, learned counsel for the respondents vehemently opposed the prayer of the applicant by arguing that once the applicant failed to annex the relevant document regarding eligibility of his candidature then in terms of clause as mentioned in advertisement, the respondents have rightly cancelled his candidature.
8. We have given our thoughtful consideration to the entire matter and have perused the pleadings as available on record.
9. A conjunctive perusal of the pleadings makes it clear that the applicant is otherwise eligible for the post in question. His candidature was solely rejected on the ground that while annexing the provisional certificate/degree of Bachelor of Engineering, he annexed the certificate of another candidate instead of his own. At the time of document verification, the applicant had shown provisional degree which has also been annexed as Annexure R-1 with the written statement. There is no dispute that the applicant acquired the minimum qualification as prescribed for the post, before cut off date. Merely, because the applicant has wrongly annexed the certificate of other persons cannot deprive him for appointment because the applicant was able to prove before the respondents

during document verification that he did possess the minimum qualification, therefore, we are of the considered view that objection raised by the respondents in this regard is not tenable.

10. A last ditch effort was made by learned counsel for the respondents to plead that since the selection has already been finalized, it would not be proper to offer appointment to the applicant. It is not in dispute that the applicant had approached this Tribunal well in time and vide order dated 20.5.2013, while issuing notice of motion, the Court had directed, as an interim measure "to keep one post vacant out of the 08 posts, which were not filled up by the said process of recruitment". This order has continued to be operation till date. Thus, the selection and appointment to one post kept reserved has not materialized as yet. Thus, there is no merit in the plea taken by the respondents. The reliance placed by the respondents on decision of Hon'ble High Court in D.B. CWP No. 13916/2013 - Imran Khan Vs. UOI etc. decided on 16.9.2016 is also of no help to the respondents. In that case, the Court has specifically recorded that if someone has been allowed to appear in the exam due to mistake, his candidature can always be rejected on discovery of such a mistake. That is not the case here and as such decision is distinguishable on facts and law.

11. Considering the fact that the respondents were directed to keep one post vacant, therefore, we direct the respondents to reconsider the case of the applicant in the light what we have narrated above. If the applicant is found to be otherwise

eligible, then issue him appointment letter for the post in question expeditiously.

12. Accordingly, the present O.A stands allowed in above terms.

No costs.


(SANJEEV KAUSHIK)
MEMBER (J)


(PRAVEEN MAHAJAN)
MEMBER (A)

Place: Jodhpur.

Dated: _____

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R/C
HMB
9/11

PK
16.11.10