

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA**

O.A. No. 431/2006

Date of Order : 12/5/2010

C O R A M

**HON'BLE MR. JUSTICE ANWAR AHMAD, MEMBER[J]
HON'BLE MR. SHANKAR PRASAD, MEMBER[A]**

1. Anand Kumar Akela , Son of Shri Tapsi Mahto, Resident of Village- Dadhapabigha, P.O. Amba, Kutumba, District- Aurangabad
2. Bablu Kuiar, Son of Late basudeo Prasad, Resident of Mohalla- Jamaludin Chak, P.O.- Khagaul, P.S.- Danapur, District- Patna.
3. Ratan Kumar, Son of Late Hazari lal, Resident of Mohalla- Jamaludin Chak, P.O.Khagaul, P.S.- Danapur, District- Patna.
4. Akhilesh Kumar, Son of Sri Bishwa Mohan Kumar Singh, resident of Shivjee Chowk, R.K. Nagar, P.O. Dhelwa, P.S.- Phulwari, District- Patna.
5. Rajiv Kumar, Son of Shri Chhathoo Prasad, Resident of Mohalla- Golaghat Shahtoli, P.O. /P.S.- Danapur, District- Patna.
6. Pankaj Kumar, Son of Sri Dasrath prasad, Resident of Mohalla- Alamganj, P.O./Distt.- Sasaram(Bihar).

.... Applicants

[Advocate for the Applicant : Shri M.P. Dixit]

-Versus-

1. The Union of India through the General Manager, .C. Railway, Hazipur.
2. The Chairman, Railway recruitment Board, Mahendrughat, Patna.
3. Assistant Secretary, Railway recruitment Board, Patna.
4. The Secretary, Bihar Intermediate Education Council, Budh Marg, patna-1.
5. Shri Shiv Kumar Mishra, Dy. Secretary, Vocation Education, Bihar Intermediate Education Council, Budh Marg, Patna-1.

...Respondents

[Advocate for the respondents: Shri A.K. Choudhary]

ORDER

Shankar Prasad, Member[A]:- By this OA, the applicants seek a direction to the respondents , RRB Organisation to declare their result on the basis of the test conducted by them.

2. The facts lie in a narrow compass.

[a] The RRB,Patna/Muzaffarpur issued a joint Employment Notice dated 01.05.2004 inviting applications for the various posts mentioned therein. The RRB, Patna, among others, invited applications for the post of Assistant Driver (Diesel/Electrical) for 160 posts in NFR and 670 posts in ECR. The qualifications are as under:-

[1] Matriculation Pass + (i) ITI in specified trade/Act Apprenticeship OR (ii) Diploma in Electrical/Mechanical/Electronics in lieu of ITI (The relevant trades have also been mentioned.) Para- 9(a) and (h) of Mode of Selection and para 10(xii) of the General Instructions are as under:-

(a) {i} For RRB/Patna

For Category No. 9(Assistant Driver): There will be single Written examination followed by Psychological Test and Vision Test. Selection will be made in order of merit on the basis of the marks contained in the written examination but to qualify in Psychological Test is mandatory. There shall be no interview.

For Category No. 6,7,8 & 10: There shall be two stages written examinations – Preliminary Test and Main Written Examination only and there shall be no interview.

For Category No. 1 to 5 and 11 to 24: There shall be single written examination and no interview.

{ii} FOR RRB/MUZAFFARPUR

For Category No. 1,2,3,4,6,7& 8 : There shall be single written

examination. There shall be no interview

For Category No.5 : There shall be two stage written examinations- Preliminary Test and Main Written Examination only and there shall be no interview.

(h) Verification : Successful candidates in the Written Examination will be called for verification of Original certificates and their identity.

10(xii) . The candidature and conditions specified here are subject to amendment at any stage by the Railway Administration or by this RRB's orders subsequently issued having retrospective test Such amendments will be notified in Employment News/Rojgar Samachar in Hindi/English/Urdu and the same will be binding on all concerned.”

[b] Annexure A/5 to the OA is the result of the written test and asking the respondents to participate in the Aptitude Test. The result states that it is subject to verification of original certificates and fulfillment of the conditions mentioned in the Employment Notice. Sample notice issued in favour of one of the applicants shows that in case he does not fulfill all the terms and conditions prescribed in the Employment Notice mentioned above, call ^{letter A} ~~list~~ should be ignored and the applicant should not participate in the Aptitude Test.

[c] Annexure A/8 is the result of the Aptitude Test and it indicates that the same is subject to verification of original certificates and fulfillment of conditions in their Employment Notice Annexure A/9 series is the notice issued for verification of original certificates as well as identity and vision test and incorporates the conditions that in case he does not fulfill all the terms and conditions prescribed in the Employment Notice, the letter should be ignored and ^A

the applicant should not come for verification.

[d] Annexure A/10 is the final result. It says that result of some of the candidates is not verified. The respondents have admitted in para 13 of the reply that after the Aptitude Test, verification of certificates and vision test, the result of some of the candidates including the applicants have been kept in abeyance.

3. It is contended by the applicants that they have successfully competed the Intermediate Vocational Course of the Bihar Intermediate Education Council, and were, therefore eligible in terms of the selection notification. They have placed reliance on a letter issued by the Advisor, All India Council For Technical Education dated 17.12.2003 which provides for vertical mobility of ITI passouts and 10+2 (Vocational Students). They have also produced a certificate granted by the Dy. Secretary, Vocational Education, Bihar Intermediate Education Council, Patna indicating that the Intermediate Vocational course of District Education Council is equivalent to the course of ITI in the state.

4. Annexure R/1 to the reply is the letter of Secretary, RRB, Patna to the Chairman, Bihar Intermediate Educational Council, Patna seeking clarification as to whether the course conducted by the organisation is equivalent to ITI and to make available concerned circulars/Govt. Orders in this regard. Annexure R/2 is the reply to the aforesaid letter. Annexure R/3 is a letter to Bihar Intermediate Council to the Bihar Intermediate Education Council informing that this subject relates to Labour and Employment Department of Govt. of Bihar and the

correspondence has ^{been} made with them " You would be informed after a final decision has been taken." Annexure R/4 is a letter dated 19.10.2005 of the RRB, Patna to the Director, Labour and Employment seeking clarification on this point. Annexure R/5 is a letter to the Director General, Employment and Training, Ministry of Labour, Govt. of India. Annexure R/6 is the reply given by the D.G. E&T to the RRB which reads as under:

" Refer to your letter No. RRB/Pat./Recruitment/Tech. Dated 02.01.2006 regarding the subject mentioned above.

In this regard I am directed to inform you that the certificates issued by different State Council for Vocational Training or any other Vocational Institute is not equivalent to certificate issued by National Council for Vocational Training and cannot be treated at par with National Trade Certificate. This is for your kind information."

It is stated by the respondents in the sur-rejoinder that RRB is taking action as per the decision of the Govt. of India, being a higher body.

5. It is contended by the learned counsel for the applicants that as the applicants have been permitted to participate in the selection, the respondents cannot be allowed to raise the question that they were not educationally qualified. Reliance is placed on the decision of the Apex Court in the case of Jahar Singh Vs. Union of India & Ors.; 1997 SCC(L&S) 84. The applicant therein was an employee of the Savings Bank Control Organisation (SBCO), UP Circle. He was allowed to participate in the examination held for appointment of Accountants in the Post offices and . He qualified, but did not receive a letter. He was informed that as he was working as LDC his candidature was being cancelled. The A

applicant preferred OA before CAT, Allahabad Bench stating that though he was appointed as LDC, he was in fact working as Postal Assistant and the permission that was granted to him to appear in the examination for appointment as an Accountant was not provisional. The Tribunal quashed the impugned order rejecting his candidature, but did not grant any relief as it held that "he had become ineligible for promotion to the post of Accountant by virtue of separation of cadres of Assistants of SBCO from those of PO and RMS. Review Application was also rejected. It is thereafter the appeal was preferred. The Apex Court in para 9 of the decision noted the contentions of an affidavit filed in the Apex Court that the applicant was a Postal Assistant in SBCO and hence, the decision for cancelling his candidature was bad in law. Another ground that had been advanced was that he was inadvertently permitted to participate and he could not have participated even if he was a Postal Assistant. Para 12 of the decision reads as under:-

"The above additional grounds of the respondents so far it seeks to justify the cancellation of the candidature of the appellant as an Accountant even after he was given permission to appear in the examination in which he came successful is also without any substance. The averment in the above-quoted paragraph that the permission was 'inadvertently' granted because the appellant had written in the application form that his designation was PA, SBCO is patently incorrect for on the showing of the respondents (as discussed earlier), the appellant was holding that post. Besides, in spite of the above Rules and circular, two PAs of SBCO, Auraiya Office, namely Satya Prakash and H.C. Ram were permitted to appear in the PO and RMS examination held in the year 1993 for appointment of Accountants as will

be evident from the supplementary affidavit filed by the appellant on 23.2.1996. It is pertinent to mention here that in the affidavit that Shri Kaushal filed later on 29.03.1996, he did not dispute the above assertion of the appellant, nor give any explanation as to why such permission was granted to them in spite of the above Rules and circular."

6. We have extracted the relevant extracts from the notice and the results in para-2 above, and find that the applicants had been put to notice at each stage of selection that the same is subject to fulfillment of eligibility criteria. The Constitutional Bench of the Apex Court in the case of Md. Shujat Ali Vs. Union of India, AIR 1974 SC 1631, has amongst others, held below Head Note 'A' as under:-

"The question in regard to equivalence of educational qualifications is a technical question based on proper assessment and evaluation of the relevant academic standards and practical attainments of such qualifications and where the decision of the Government is based on the recommendation of an expert body which possesses the requisite knowledge, skill and expertise for adequately discharging such a function, the Court, uninformed of relevant data and unaided by the technical insights necessary for the purpose of determining equivalence would not lightly disturb the decision of the Government. It is only where the decision of the Government is shown to be based on extraneous or irrelevant considerations or actuated by malafides or irrational and perverse or manifestly wrong that the Court would reach out its lethal arm and strike down the decision of the Government."

7. The educational qualifications of the post for appointment in the Railways are laid down by the Railway Board. The RRB, Patna is only a recruiting agency in terms of the eligibility prescribed by the Railway Board. We think that the ends of justice will be met if we direct the Chairman, RRB, Patna to forward

all the materials relating to the controversy to the Chairman, Railway Board within a fortnight of the receipt of this order and the Railway Board/Chairman, ^{or A} Railway Board, whosoever is the competent authority, shall take a decision within two months thereafter. The final decision with regard to the above applicants will be declared within one month thereafter. We have not addressed on the question of grant of seniority and payment of arrears in case of such clarification, and these issues are, therefore, kept open. The OA is, disposed of accordingly. No order as to costs.

Shankar Prasad

[SHANKAR PRASAD]
MEMBER[A]

srk.

Anwar Ahmad

[ANWAR AHMAD]
MEMBER[J]