

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH 'GULESTAN' BUILDING NO:6
PRESCOT ROAD, BOMBAY:1

Original Application No. 916/97 and 1030/97.

Friday the 22nd day of January 1999.

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman

Hon'ble Shri D.S. Baweja, Member (A)

Ashish Kumar
C/o Suresh Kumar
Advocate, Flat No.51
Bldg. No.4,
Sion Koliwada Mumbai.

... Applicant in
OA 916/97

By Advocate Shri Suresh Kumar.

V/s.

Union of India through
General Manager,
Western Railway
H.Q. Churchgate,
Mumbai.

Sr. Divisional Medical
Officer, Jagivanram Hospital
Mumbai Central,
Mumbai.

Chief Medical Director
Western Railway
Churchgate
Mumbai.

Chief Medical Superintendent
Jagivanram Hospital
Mumbai Central, Mumbai.

Shri Ram Prakash
Director SC/ST
Railway Board,
Rail Bhavan, New Delhi.

Chairman
Railway Recruitment Board,
Mumbai Central, Mumbai.

... Respondents in
OA 916/97.

By Advocate Shri V.S.Masurkar.

Vijay Singh Patel
C/o S.R.Kirar
Lal Bungalow No.5
Railway Goods Yard,
Wadibunder, Mumbai.

... Applicant in
OA 1030/97.

By Advocate Shri G.S.Walia.

V/s.

Union of India through
General Manager, Western
Railway, Headquarters Office
Churchgate, Mumbai.

Secretary,
Railway Recruitment Board,
D.R.M.'s Office Compound
Western Railway
Bombay Central
Mumbai.

Chief Personnel Officer
Western Railway
Headquarters office
Churchgate,
Mumbai.

... Respondents in
OA 1030/97.

By Advocate Shri V.S.Masurkar.

O R D E R (ORAL)

¶ Per Shri Justice R.G.Vaidyanatha, Vice Chairman ¶

These are two applications filed by the applicants under Section 19 of the Administrative Tribunals Act 1985. The respondents have filed reply. Since the point involved is short and common to both the O.As, we are disposing of both the O.As at the admission stage.

2. Both the applicants responded to the notification of the Railway Recruitment Board dated 27.5.1995, employment notice No.1/95. When applied for the post of Chemist which is category No.1 in that notification, both the applicants came to be selected by the Railway Recruitment Board. The select list was sent to the General Manager, Western Railway for issuing appointment orders. It appears that in O.A. 916/97 appointment order was also issued and the applicant was directed to go for medical examination. But subsequently there was no communication to him for joining the post and hence he has approached this Tribunal. In O.A. 1030/97 the applicant's name was in the select list but he was not issued appointment order and therefore he approached this Tribunal.

According to the applicants they have all the qualifications and experience necessary for the post of Chemist. Hence direction should be given to the respondents to appoint them.

3. In the reply the respondents have stated that both the applicants do not answer the required qualification as per notification and as per rules. Therefore their selection has been cancelled by the appropriate authority and hence both the applicants are not entitled to any of the reliefs prayed for.

4. The short point for consideration is whether the cancellation of selection of the applicants by the concerned authority is proper or not.

5. According to the notification in respect of Chemist the required qualification is as follows:

B.Sc with Chemistry plus one year training in a recognised Public Health Laboratory
(We need not go to the preference qualification given there after).

Same qualification is found in para 163(5)(1) of the Indian Railway Establishment Manual. The applicant in OA 916/97 has now produced a certificate before us said to have been issued by Private Factory and it does not show that it is Public Health Laboratory. Similarly in OA 1030/97 the applicant has produced two certificates issued by M/s. Kabra Agro Industries Limited and M/s. Kocher Oil Mills Limited.

We see that the three certificates issued are not by a Public Health Laboratory. Therefore on the face of it both the applicants do not answer the required qualification and training as mentioned in the Rules and notification. If in these

circumstances the competent authority has cancelled the selection list it cannot be said that the order is bad and illegal. We cannot give any direction to the Railway Administration to do something contrary to rule. If as per the rules certain qualification is fixed for a post and if a particularly selected candidate does not answer to the required qualification, this Tribunal cannot give mandatory order that he should be appointed contrary to the rules.

5. The learned counsel for the applicant contended that there is no such training provided in Public Health Laboratory. Therefore it is stated that the respondents have introduced a non existing qualification. In our view this argument has no merit for the simple reason that the applicant does not have any right for being appointed to the post for which he does not answer the required qualification as per rules and notification. If there is any mistake in mentioning the qualification then it is for the Railway Administration to look into the matter and find out whether there is such a training course in any of the recognised public Laboratory and if such a course is not there then the administration to amend the rule, if so advised and issue fresh notification. But it will not give any right to the applicants to get them appointed to the post for which they do not answer the required qualification as mentioned in the rules and notification.

6. As rightly contended on behalf of respondents that mere inclusion in the selection list does not give any vested right to the applicants, as observed by the Apex Court in 1998(5) SCALE 226. No doubt the

appointment order has been issued but it has not become complete since the applicant has not joined the post. As rightly pointed out on behalf of the respondents that in para 22 of the notification it is stated that candidates found ineligible at any stage of selection or thereafter are liable to be disqualified. Therefore, if the applicants have been selected wrongly then they have no right particularly when both the applicants have not joined the service.

7. We are not also impressed by the arguments that the respondents have raised the question of qualification at a later stage. As already stated still it is in the stage of selection and the applicants have not joined the post and the administration has come to know that the applicants do not have the required qualification, there is nothing illegal or irregular on the part of the respondents in issuing the cancellation order. Hence we cannot interfere and direct the administration to do something which is contrary to the Rules.

8. Since an argument has been advanced that there is no one year training at any of the Public Health Laboratory, we expect the Railway Administration to apply their mind to the question whether really there is a training provided in Public Health Laboratory. If the administration feels that the rules are correct, they can proceed to issue fresh notification, but if the administration finds that there is some mistake in mentioning the qualification and there is no such one year training provided in Public Health Laboratory, then the Railway administration may amend the rule and issue fresh

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notification as per the amended rules for filling up of the post of Chemist. In case fresh notification is issued as per the amended rules and the applicants answer to the required qualification, then it is open to the applicants to apply for the post and in such a case the Railway administration should accept their application by relaxing the age, since they have already applied in time in response to the impugned notification. But, as things stand today, the applicants are not entitled to any relief in the present O.As.

9. In the result both the O.As are disposed of at the admission stage, subject to above observations. No costs.

(D.S. Bawejay)
Member (A)

(R.G.Vaidyanatha)
Vice Chairman

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