

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 12th day of January, 2011

ORIGINAL APPLICATION NO. 07/2011

CORAM

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Girraj Prasad Balai son of Shri Gila Ram Balai, aged about 38 years, resident of Nangal Dharmu Post Balupura, Tehsil Rajgarh, District Alwar.

.....Applicant

(By Advocate: Mr. Nand Kishore)

VERSUS

1. Union of India through General Manager, North Western Railway, Jawahar Circle, Jagatpura, Jaipur.
2. The Assistant Personnel Officer (Recruitment), North Western Railway Recruitment Room, Durgapura, Jaipur.

.....Respondents

(By Advocate: -----)

ORDER (ORAL)

The applicant has filed this OA thereby praying for the following relief:-

- (i) the entire record may be called from the respondents and respondents letter dated 5/2008 (Annexure A/1) may be declared bad in law, arbitrary, quashed and set aside.
- (ii) they may be further directed to appoint the applicant on the strength of successful in the examination and arrears of the delayed by the respondents may be arranged alongwith 12% interest.
- (iii) Any other direction and order, which are deem proper in the facts and circumstances of the case may kindly be allowed to the applicant."

2. Briefly stated, facts of the case are that pursuant to the advertisement dated 28.07.2007 for selection to the post of Group 'D',

the applicant submitted his application within the prescribed period. It is the case of the applicant that in the physical examination held on 15.02.2008, he was declared successful and thereafter, written examination was held on 04.05.2008. The applicant had obtained 120.33 marks out of 150 marks. It is also an admitted case of the applicant that his candidature was rejected vide impugned order dated May, 2008 (Annexure A/1) on the ground of Item no. 10 i.e. "under aged/over-aged candidates/without proof of age certificate." The applicant has further averred that thereafter he sought information from the respondents to supply certified copy of the mark sheet as well as how much marks he had got in the qualifying examination. Vide order dated 21.07.2008 (Annexure A/7), he was informed that it is not possible to supply original mark sheet and he had obtained only 18 marks out of 150 marks. The applicant has further averred that he submitted an application dated 21.10.2010 under the Right to Information Act and in pursuance of the information so supplied; the applicant was informed that he had obtained 120 marks out of 150 marks and cut off marks in the case of SC candidate was 115.33/150. The copy of the information so received has been placed on record as Annexure A/8. It is on the basis of these facts, the applicant has filed this OA.

3. The applicant has also moved a Misc. Application for condonation of delay in filing the Original Application in which the case projected by the applicant in this MA is that he was misled by the Department by giving wrong information that he had secured only 18 marks out of 150 marks and when he had sought information under the Right to Information Act and when such information was supplied to him vide

letter dated 11.11.2010, he immediately filed the OA. Thus according to the applicant, the aforesaid facts will constitute sufficient ground to condone the delay. This OA was filed on 06.01.2011.

4. We have heard the learned counsel for the applicant at admission stage. The question which requires our consideration is whether the applicant can be granted relief, as prayed for, at this stage. As can be seen from the prayer clause, the applicant has challenged the validity of the order dated May, 2008 (Annexure A/1) whereby his application was rejected on the ground that he had failed to furnish the proof of age certificate and thus whether he was under aged or over aged could not be judged. The applicant should have approached this Tribunal immediately when his application was rejected. The submission made by the applicant is that he did not challenge the validity of the said order as at the first instance as he wants to satisfy himself whether he had qualified the written examination or not and for that purpose, he sought information from the respondents vide his letter dated 03.07.2008 and he was informed vide letter dated 21.07.2008 that he had secured only 18 marks out of 150 marks. The applicant did not take up the matter immediately thereafter by seeking information under the Right to Information Act as was done by him vide letter dated 21.10.2010 after a lapse of about more than two years. The fact remains that the name of the applicant was not included in the select list for the vacancy advertised on 28.07.2007 and selection process was over the in the year 2008. Thus in view of this inordinate delay on the part of the applicant in challenging the order dated May, 2008 (Annexure A/1), no relief can be granted to the applicant.



5. Even on merit, it is not disputed that in personal data sheet submitted by the applicant, date of birth has been mentioned as 10.08.1973 where in transfer certificate, date of birth was shown as 08.10.1973. Thus admittedly there was discrepancy between the date of birth as shown in the personal data sheet submitted by the applicant along with the application and proof of age submitted by him in the form of transfer certificate. Thus it cannot be said that the rejection of the application of the applicant by the respondents is arbitrary and without any basis. Simply because the applicant had qualified the test and obtained more marks than the selected candidate belonging to SC category is no ground to grant relief as the application of the applicant was defective and his application was rejected by the Department and his name was not incorporated in the select list. Simply because he was provisionally allowed to appear in the written examination will not give him any right to be selected, when his candidature had been rejected by the respondents. Law on this point is no longer res-integra. At this stage, we wish to refer to the decision of the Apex Court in the case of **T. Jayakumar vs. A. Gopu and Another**, 2008 (2) SCC (L&S) 919, whereby the Apex Court has held that a candidate can be excluded from consideration at interview stage also, on account of defect in his application and calling of a candidate for interview does not operate as estoppel. In the case before the Apex Court, respondent no. 1 was called for interview but his candidature was rejected on the ground that his first application did not bear his signature and second application was received after closing date and thus both the applications were invalid. In the aforesaid case, the candidature of the applicant was rejected by the

Department. However, Administrative Tribunal and High court intervened the matter. The matter was carried to the Apex Court. Under these circumstances, the Apex court has held that the decision of the authority in rejecting the candidature of the applicant was neither arbitrary nor unreasonable. There was no valid ground for the Administrative Tribunal and High Court to interfere with the matter. The ratio as laid down by the Apex Court in the case of **T. Jayakumar** (supra) is squarely applicable in the facts & circumstances of the case.

6. That part, in this case selection was over and select list has already been prepared by the Department in the year 2008. The name of the applicant has not been included in the panel. Thus at this stage, it is not permissible for us to give direction to the respondents especially when the name of the applicant has not been included in the select list ~~to give direction~~ to give appointment, more particularly, when the applicant has not made out any case for our interference even on merit on the ground that his candidature was wrongly rejected by the Department. Fact remains that the applicant had mentioned date of birth in the application so submitted by him as 10.08.1973 whereas as per transfer certificate, his date of birth was 08.10.1973. Thus, it is the applicant, who is responsible for mentioning the wrong date of birth in the application form. Under these circumstances, it cannot be said that the action of the respondents in rejecting the candidature is arbitrary and in exercise of power of judicial review, it is not permissible for us to substitute the decision so taken by the authorities and to substitute the same by giving finding to the effect that date of birth as indicated by the applicant in the application form be ignored and candidature of the applicant be considered as ^{per} date of _{10.08.1973}

birth indicated in the transfer certificate more particularly after a lapse of about more than three years.

7. For the foregoing reasons, we are of the view that the applicant has not made out any case for our interference. Accordingly, the OA is ^{as well as MA No 3} dismissed at admission stage with no order as to costs.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

M.L. Chauhan
(M.L. CHAUHAN)
MEMBER (J)

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