

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

11-7-08

Mr. Shatlendra Srivastava - Counsel for
the applicant -

Heard the learned Counsel for
the applicant.

For the reasons dictated separately,
the OA stands disposed of.

(B.L. KHATRI)
Member (A)

R/

(M.L. CHAUHAN)
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 11th day of July, 2008

ORIGINAL APPLICATION No.143/2008

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR. B.L.KHATRI, MEMBER (ADMINISTRATIVE)

Vijay Parashar
s/o Shri I.P.Sharma
r/o 223, Jiwaji Nagar,
Thatipur,
Grwalior,
M.P.

.. Applicant

(By Advocate: Shri Shailendra Shrivastava)

Versus

1. Union of India through General Manager, North Western Railway, in front of Railway Hospital, Hasanpura Road, Jaipur
2. Divisional Railway Manager, Ajmer Division, North Western Railway, Ajmer
3. Chief Personal Officer, North Western Railway, Jaipur
4. Chairman, Railway Recruitment Board, 2010 Nehru Marg, Ajmer.
5. Chairman, Railway Board, Rail Bhawan, New Delhi.

... Respondent

(By Advocate:)

O R D E R (ORAL)

In this case the applicant has filed this OA thereby praying for the following reliefs:-

- i) That this Hon'ble Tribunal may graciously be pleased to quash and set aside the impugned order (Annexure A-1) dated 10.8.07 by which respondents have cancelled the appointment order issued exactly two years back on 10.08.2005.
- ii) That respondents may further be directed to appoint the petitioner on any other alternative post of equivalent grade in class III category if they are not willing to post the petitioner as "Assistant Chemist" for which petitioner is ready to except.
- iii) Any other order in favour of the petitioner, which may be deemed fit and proper by this Hon'ble Tribunal.
- iv) Award the cost of petition.

2. Briefly stated, facts of the case are that pursuant to advertisement No.01/04 published in the Employment News Paper dated 22.5.2004 for filling up various posts of Group-C category including the post of Assistant Chemist, the applicant applied for the post of Assistant Chemist. The applicant was declared successful in the written test and after verification of documents, he was offered appointment letter dated 10.8.2005 by the DRM, Ajmer. It is further stated that thereafter the applicant was also subjected to medical test and he was declared fit by the competent authority. Since the applicant was not permitted to

join pursuant to offer of appointment, he filed OA No.486/06 before this Tribunal which was disposed of by this Tribunal on 20.12.2006 at admission stage with direction to the respondents to dispose of representation of the applicant dated 22.5.2006 by passing speaking and reasoned order. In compliance of the aforesaid direction, the respondents have passed the impugned order dated 10.8.2007 (Ann.A1). It is this order which is under challenge before this Tribunal.

3. We have heard the learned counsel for the applicant. The learned counsel for the applicant submits that as per the impugned order representation of the applicant has been rejected solely on the ground that the applicant do not possess the requisite educational qualification for recruitment to the post of Assistant Chemist, which is matriculation with science Plus Diploma in Medical Lab Technolony w.e.f. 12.11.2001 and such a course was not permissible for the respondents especially when the educational qualification for the said post as per the advertisement issued by the Railway Recruitment Board, Ajmer was Matriculation with Science and one year's experience in Pathological or Biochemical Laboratory. As such, the applicant cannot be made to suffer on account of lapse on the part of the respondents.

19.

4. We have given due consideration to the submissions made by the learned counsel for the applicant. We are of the view that the applicant is not entitled to any relief as the matter is squarely covered by the ratio laid down by the Hon'ble Apex Court in the case of Malik Mazhar Sultan and Anr. Vs. U.P. Public Service Commission and Ors., 2006 (3) SLR 71 whereby the Hon'ble Apex Court in para 21 has held that error in advertisement cannot ~~be~~^{be} override the rule and create a right in favour of a candidate, if not otherwise eligible as per rules. At this stage, it will be useful to quote para 21 of the judgment, which thus reads:-


"The present controversy has arisen as the advertisement issued by PSC stated that the candidates who were within the age on 1st July, 2001 and 1st July, 2002 shall be treated within age for the examination. Undoubtedly, the excluded candidates were of eligible age as per the advertisement but the recruitment to the service can only be made in accordance with the rules and the error, if nay, in the advertisement cannot override the rules and create a right in favour of a candidate if otherwise not eligible according to the rules. The relaxation of age can be granted only if permissible under the rules and not on the basis of the advertisement. If the interpretation of the rules by PSC when it issued the advertisement was erroneous, no right can occur on basis thereof. Therefore, the answer to the question would turn upon the interpretation of the rules.


5. In view of the ratio laid down by the Hon'ble Apex Court and the fact that the applicant did not fulfill the requisite qualification for the post of Assistant Chemist, we are of the view that no relief

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can be granted to the applicant. As can be seen from the impugned order dated 10.8.2007 (Ann.A1) the requisite qualification for recruitment to the post of Assistant Chemist as per recruitment rules is 'Matriculation with Science Plus Diploma in Medical Lab Technolony' whereas in the advertisement, copy of which has been shown to this Tribunal by the learned counsel for the applicant, the qualification of 'Diploma in Medical Lab Technology' has not been mentioned. Further from perusal of the impugned order, it is also evident that the respondents have not selected any candidate who did not fulfill the requisite qualification pursuant to the aforesaid advertisement.

6. For the foregoing reasons, the OA is bereft of merit, which is accordingly dismissed at admission stage.


(B.L. KHATRI)
Admv. Member


(M.L. CHAUHAN)
Judl. Member

R/