

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDERS OF THE TRIBUNAL

22/05/2014
O.A. No. 728/2012

Mr. Munesh Bhardwaj counsel for the applicant.
Mr. M.K. Meena counsel for the respondents.

Heard the learned counsel for the parties.

Order Reserved.

M. Nagarajan
(M. Nagarajan)
Member (J)

Anil Kumar
(Anil Kumar)
Member (A)

VV

At 30/5/2014

Order pronounced today in the open
Court by the Hon'ble Bench.

Anil Kumar
30/5/14

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORIGINAL APPLICATION NO. 728 OF 2012

Date of Reserved : 22-05-2014

Date of Decision : 30.5.2014

Rajaram Meena
Son of Shri Badri Prasad Meena : Applicant(s)
Mr.Munesh Bhardwaj : Advocate for the Applicant(s)

VERSUS

Union of India & Ors. : Respondent(s)
Mr.M.K.Meena : Advocate for the Respondent(s)

**Coram : Hon'ble Shri Anil Kumar, Administrative Member
Hon'ble Shri M.Nagarajan, Judicial Member**

O R D E R

1. Whether reporters of local paper may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether it needs to be circulated to other Benches of the Tribunal?

(OA/728/2012 - CAT, Jaipur Bench)

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

Original Application No. 728 of 2012

This the day of 30.5. , 2014

**CORAM : HON'BLE SHRI ANIL KUMAR, MEMBER (A)
HON'BLE SHRI M.NAGARAJAN, MEMBER (J)**

Rajaram Meena Son of Shri Badri Prasad Meena,
Resident of Gullana Ki Jhopdi Dhabala,
Post Gullana, Tehsil Basuwa,
District Dausa (Raj.).

... Applicant

By Advocate : Mr.Munesh Bhardwaj

V/s.

1. Union of India, through General Manager, North Western Railway Headquarters, Jagatpura, Jaipur.
2. Deputy Chief Personnel Officer, North Western Railway Headquarters, Jagatpura, Jaipur.
3. Assistant Personnel Officer (R & T), Railway Recruitment Cell, North Western Railway, Durgapura Railway Station, Jaipur – 302 018.

... Respondents

By Advocate : Mr.M.K.Meena

ORDER

PER : HON'BLE SHRI M.NAGARAJAN, MEMBER (J)

The grievance of the applicant in this O.A. is as to rejection of his candidature for the post of Technician-III (Diesel Mechanic) in response to notification No.1/2012 dated 25-6-2012. By the said notification dated 25-6-2012 the Deputy Chief Personnel Officer, North Western Railway Headquarters, Jagatpura, Jaipur issued an advertisement inviting applications for various posts including Technician-III (Diesel Mechanic). It is a special recruitment taken up by the said Deputy Chief Personnel Officer for making recruitment of various posts inviting applications only from physically challenged persons.

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2. According to the applicant he has a physical disability of locomotor. In view of the fact that he is a physically challenged person in response to the said notification dated 25-6-2012 he applied for the post of Technician-III (Diesel Mechanic). The written examination was scheduled to be held on 04-11-2012. In the meanwhile, the applicant was in receipt of letter dated 03-10-2012 (Annexure-A/1) by which he was informed that his application seeking selection and appointment to the post of Technician-III (Diesel Mechanic) in response to the said notification dated 25-6-2012 has been scrutinised and was rejected for the reason that the disability certificate produced by him is not in the prescribed Form.. The applicant claims that he has submitted the disability certificate issued by a competent authority after necessary medical examination by the Medical Board on permanent disability, Medical & Health Department, Government of Rajasthan. According to the applicant earlier the Railway Recruitment Board, Mahendrughat Patna, Railway Recruitment Cell, Lajpatnagar-I, New Delhi had accepted the certificate, which is submitted by him along with his application in response to the said notification dated 25-6-2012. The applicant claims that rejection of his candidature by the respondents in issuing impugned letter dated 03-10-2012 is arbitrary and illegal. Hence, aggrieved by the action of the respondents in rejecting his candidature for the post of Technician-III (Diesel Mechanic) in response to notification dated 25-6-2012, the applicant has presented the O.A. with the prayer to quash the impugned letter dated 03-10-2012 and for a direction to the respondents to permit him to appear in the

examination for the said post by treating him a person with disability and to give him appointment on the aforesaid post with all the consequential benefits, if he succeeds in the examination.

3. Pursuant to the notice of the O.A., the respondents entered appearance and filed their reply. The respondents in their reply have taken a specific stand that in the notification No.1/2012 dated 25-6-2012 (Annexure-R/1) they have prescribed the format in which the application seeking selection and appointment has to be made, the format in which the SC/ST and OBC certificate is to be furnished, the format of non-creamy layer in case of OBC, the format in which a certificate certifying the fact that a candidate has physical disability and the format of declaration by blind candidates and candidates whose speed of writing is affected appointing their respective scribes respectively at Annexure A1 to A6 of the said notification. Though they have specified the specific format in which a candidate is required to furnish the application for seeking selection and appointment, the applicant has not furnished the medical certificate (disability certificate) in the prescribed format as per Annexure-5 of notification dated 25-6-2012. The respondents have not disputed any other facts pleaded by the applicant relating to the qualifications, the caste to which he belongs, etc.

4. The applicant admitted the fact that he has not produced the medical certificate (disability certificate) as prescribed in Annexure-5 of the notification dated 25-6-2012 (Annexure R-1). In view of the

stand taken by the respondents in their reply as to their action in rejecting the candidature of the applicant and in view of the position that the applicant admitted the fact that he has not produced a copy of the disability certificate in the prescribed format at Annexure-5 of the notification dated 25-6-2012, the controversy which is required to be resolved in this O.A. is "whether the certificate produced by the applicant which is not in prescribed format can be accepted by the respondents for considering him as a candidate with physical disability or not."

5. Heard Mr.Munesh Bhardwaj, learned counsel for the applicant and Mr.M.K.Meena, learned counsel for the respondents. Perused the pleadings and documents annexed to the pleadings of both parties.

6. It is an admitted fact that the applicant has not filed the disability certificate in the prescribed format as per Annexure-5 of the notification dated 25-6-2012. In the employment notification dated 25-6-2012 necessary instructions were given to the candidates prescribing the format in which they are required to furnish the necessary certificates such as caste certificate for the purpose of claiming reservation, non-creamy layer certificate, disability certificate and declaration for appointing scribe. In each of the format prescribed it is also mentioned the authority who is competent to issue such certificates. Since the employment notification dated 25-6-2012 itself prescribes the format of certificates which are required to be produced by a candidate in support of each of his claim, production of

certificates along with application seeking selection and appointment to the post in the prescribed format is a mandatory one. Admittedly the applicant has not produced the disability certificate in the prescribed format which is a mandatory instructions of the employment notification dated 25-6-2012.

7. Recently an issue arose before the Hon'ble Supreme Court in the case of *Bedanga Talukdar v. Saifudaullah Khan & Ors.* (2011) 12 SCC 85 whether strict adherence to stipulated selection procedure is required to be followed or can it be relaxed. In this case as per the advertisement a candidate with locomotor disability must produce the supporting documents in the office of the Assam Public Service Commission or in the examination hall before the commencement of the examination. The candidature of the respondent no.1 therein was rejected by the selecting authority on the ground that the required document was not submitted within the stage the same was required to be submitted. In the said case the Hon'ble Supreme Court has held as under:

“Selection process has to be conducted strictly in accordance with stipulated selection procedure which needs to be scrupulously maintained. There cannot be any relaxation in terms and conditions of advertisement unless such power is specifically reserved in relevant rules and/or in advertisement. Even where power of relaxation is or is not provided in relevant rules it must be mentioned in advertisement. Such power, if exercised should be given due publicity to ensure that those candidates who become eligible due to relaxation are afforded equal opportunity to apply and compete. Relaxation of any condition in advertisement without due publication is contrary to mandate of equality in Articles 14 and 16 of the Constitution.”

8. We have perused the employment notification bearing No.1/2012 dated 25-6-2012 (Annexure-A/2) in the instant case in the light of the

principles in the case of *Bedanga Talukdar (supra)*. It clearly shows that there was no power of relaxation. Hence, the candidature of the applicant cannot be considered as a candidate with physical disability by relying upon the documents produced by him since the same is not in the format prescribed in the said employment notification dated 25.6.2012.

9. It is argued by the learned counsel for the applicant Mr.Munesh Bhardwaj that the applicant has produced the certificate at Annexure-A/4 in support of his claim that he is a candidate with locomotor disability. It is submitted that the said certificate at Annexure-A/4 was issued by the Medical Board on Permanent Disability, Medical & Health Department, Government of Rajasthan. We have carefully perused the said certificate at Annexure-A/4. On perusal of the said certificate, we find that in the said certificate the percentage of disability is mentioned as 40%. However, it is not in the prescribed format as per Annexure-5 of notification dated 25-6-2012. At para 12.03 of the said employment notification dated 25-6-2012 it is specifically provided that a candidate must have a minimum disability of 40%. In view of this, though the certificate at Annexure A/4 is not in the prescribed Form and in view of the fact that the certificate at Annexure A/4 was issued by the competent authority i.e. the Medical Board on Permanent Disability, Medical & Health Department, Government of Rajasthan, we are of the opinion that the failure in not producing the disability certificate as per Annexure A/5 of the notification dated 25.06.2012 is a curable defect.

IT. U. A. P.

10. We also observe that India is a Signatory to the proclamation on the Full Participation and Equality of people with Disabilities in the Asia and the Pacific region and in pursuance of the same enacted a suitable legislation called “(The) Persons with Disabilities (Equal opportunities Protection of Rights and Full Participation) Act 1995 which provided for equalization of opportunities for persons with disabilities in employment under Chapter VI of the said Act. In view of this and in the peculiar facts and circumstances of the case i.e. production of the certificate at Annexure A/4 which is not in the prescribed form being a curable defect, the reason being that the certificate at Annexure A/4 was issued by an authority competent to issue the same and by recording the submission of both the counsels for the parties that the examination is yet to be held, we are of the view that though the applicant has failed to establish his claim, the respondents are directed to consider the candidature of the applicant for the post in question by permitting him to participate in the process of selection subject to the condition that the applicant produce a certificate in the proper format at Annexure A 5 of the said notification within 10 days from date of this order before the selecting authority.

11. Accordingly, the O.A. is disposed of with aforesaid observations. No order as to costs.

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(M.Nagarajan)
Member (J)

Anil Kumar
(Anil Kumar)
Member (A)

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