

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR**

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**ORDERS OF THE TRIBUNAL**

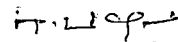
22/05/2014


O.A. No. 729/2012

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)  
Member (J)

  
(Anil Kumar)  
Member (A)

Vv

28/5/14.

order pronounced  
today in the open  
court by the aforesaid,  
Bench

28/5/14.

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**CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR**

**Original Application No. 729 of 2012**

**This the 28 day of May, 2014**

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

Praveen Kashyap Son of Shri Netram Kashyap,  
Resident of 299-C, Shanti Nagar-B, Gurjar Ki Thadi,  
Gopalpura Baipass, Jaipur (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

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

**ORDER**

The grievance of the applicant in this O.A. is as to rejection of his candidature for the post of Junior Engineer-II (Electrical) 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

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Headquarters, Jagatpura, Jaipur issued an advertisement inviting applications for various posts including Junior Engineer-II (Electrical). 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.

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 Junior Engineer-II (Electrical). 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 Junior Engineer-II (Electrical) 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. 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-

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2012. The applicant claims that rejection of his candidature by the respondents by 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 Junior Engineer-II (Electrical) 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 of 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 scribe respectively at Annexure A1 to 6 of the said notification. Though they have specified the specific format in which a candidate is required to furnish the application form seeking selection and

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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. 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

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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 appointing scribe. In each of the format prescribed the authority competent to issue such certificate was also mentioned. 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 form 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

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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. Bearing in mind, the principles laid down by the Hon'ble Supreme Court in the case of Bedanga Talukdar (supra), we have perused the employment notification bearing No.1/2012 dated 25-6-2012 (Annexure-A/2) in the instant case. 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, which is not in the format prescribed in the said employment notification dated 25-6-2012, since the same is impermissible in law in view of mandate of equality in Articles 14 and 16 of the Constitution of India.

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 Bharat Vikas Parisad, Dausa.

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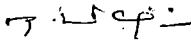
The applicant was examined by a Board of Doctors. We have carefully examined and perused the said certificate at Annexure-A/4. On perusal of the said certificate, we find that nowhere in the said certificate the percentage of disability is mentioned. At para 12.03 of the said employment notification dated 25-6-2012 it is specifically provided that a candidate must have a minimum disability of 40%. By looking to the photograph affixed to the said certificate at Annexure-A/4 even if we presume that the applicant is an otherwise abject person with locomotor disability, the percentage of disability cannot be ascertained in view of the fact that the particulars relating to the percentage of disability is totally absent in the said certificate at Annexure-A/4. Hence, even if it has to be construed that the said certificate at Annexure-A/4 can be treated as a certificate issued by the competent authority, though not in the prescribed form even then the same cannot be accepted for the reason that the percentage of disability is totally absent. The percentage of disability is one of the essential eligibility criteria for being considered for selection to the post.

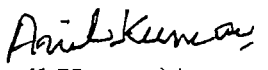
10. At the end we may add that India is a Signatory to the proclamation on the Full Participation and Equality of people with Disabilities in the Asia and the Pacific region and in pursuance of the same enacted a suitable legislation called "(The) Persons with Disabilities (Equal opportunities Protection of Rights and Full Participation) Act 1995 which provided for equalization of

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opportunities for persons with disabilities in employment under Chapter VI of the said Act. As such 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 only in the event of non-availability of any other candidate in the vertical reservation category in which the applicant is entitled to be considered for selection and appointment subject to the condition that the applicant produces a certificate in the prescribed format at Annexure-5 of the notification dated 25-6-2012 in view of the fact that the applicant has passed the said written examination and qualified by writing the examination on the strength of the interim order of the Tribunal dated 31-10-2012.

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

  
(M.Nagarajan)  
Member (J)

  
(Anil Kumar)  
Member (A)

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