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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO. 290/00267/17

RESERVED ON : 06.04.2018

JODHPUR, THIS THE 2ND DAY OF MAY, 2018

CORAM

HON'BLE MR SURESH KUMAR MONGA, JUDICIAL MEMBER

MUJAFFAR HUSSAIN SHAIKH S/O SHRI HAMID HUSSASIN, BY CASTE MUSLIM, AGED 32 YEARS, RESIDENT OF PLOT NO. 647, GARIB NAWAJ COLONY, LANE NO. 2, MULLA TALAI, UDAIPUR (RAJ) – APPLICANT'S FATHER WAS WORKING ON THE POST OF LOCO PILOT (MALE) UNDER KIND CONTROL OF CHIEF CREW CONTROLLER, NORTH WESTERN RAILWAY, UDAIPUR CITY, UDAIPUR.

.....APPLICANT

BY ADVOCATE: MR S.K. M. VYAS.

VERSUS

- 1. UNION OF INDIA THROUGH THE GENERAL MANAGER, NORTH WESTERN RAILWAY, JAIPUR.**
- 2. DIVISIONAL RAILWAY MANAGER, NORTH WESTERN RAILWAY, AJMER.**
- 3. DIVISIONAL RAILWAY MANAGER (ESTABLISHMENT), AJMER.**
- 4. CHIEF CREW CONTROLLER, NORTH WESTERN RAILWAY, UDAIPUR CITY, UDAIPUR.**

.....RESPONDENTS

BY ADVOCATE : MR GIRISH SANKHLA.

ORDER

THE PLEADED CASE OF THE APPLICANT HEREIN IS THAT HIS FATHER WAS WORKING AS LOCO PILOT WITH THE RESPONDENTS. SINCE HE WAS DECLARED MEDICALLY DECATEGORIZED BY THE RESPONDENTS, THEREFORE, HE SOUGHT VOLUNTARY RETIREMENT AND EMPLOYMENT ON COMPASSIONATE GROUNDS FOR HIS SON (APPLICANT HEREIN) IN VIEW OF THE POLICY GUIDELINES ISSUED BY THE RESPONDENTS. THE APPLICATION SUBMITTED BY THE APPLICANT'S FATHER SEEKING VOLUNTARY RETIREMENT WAS ACCEPTED AND HE WAS ALLOWED TO RETIRE FROM THE SERVICES. IN ALTERNATIVE, A SANCTION WAS ALSO ACCORDED BY THE RESPONDENTS TO GRANT EMPLOYMENT TO THE APPLICANT ON COMPASSIONATE GROUNDS VIDE ORDER DATED 22.07.2015 (ANNEX. A/2). IT HAS FURTHER BEEN PLEADED THAT IN COMPLIANCE OF ORDER DATED 27.02.2015, THE APPLICANT SUBMITTED THE ATTESTATION

ALONGWITH ALL THE REQUISITE INFORMATION DESIRED BY THE RESPONDENTS ON 19.08.2015. THEREAFTER, VIDE LETTER DATED 09.10.2015 (ANNEX. A/4) IT WAS CONVEYED TO THE APPLICANT THAT SANCTION TO HIS APPOINTMENT ON THE POST OF HAMMAL KHALASI HAS BEEN ACCORDED ON THE RECOMMENDATIONS OF THE SCREENING COMMITTEE AND THE SAID DECISION HAS BEEN TAKEN IN COMPLIANCE WITH THE DIRECTIONS ISSUED BY THE RAILWAY BOARD, AS WELL AS THE DIVISIONAL RAILWAY MANAGER. IT HAS FURTHER BEEN AVERRED THAT THOUGH THE ORDER WAS COMMUNICATED TO THE APPLICANT WAY BACK ON 09.10.2015 BUT NO ACTION WAS TAKEN BY THE RESPONDENT AUTHORITIES TO PROVIDE HIM THE APPOINTMENT IN TERMS OF SAID ORDER. THEREFORE, HE MOVED A REPRESENTATION BEFORE THE RESPONDENTS ON 03.10.2016 AND REQUESTED THEM TO PROVIDE THE APPOINTMENT IN TERMS OF ORDER DATED 09.10.2015. THE SAID REPRESENTATION WAS FOLLOWED BY ONE MORE REPRESENTATION DATED 04.10.2016 (ANNEX. A/6). INSTEAD OF GRANTING HIM APPOINTMENT IN TERMS OF ORDER DATED 09.10.2015, THE ORDER DATED 08.05.2017 (ANNEX. A/1) HAS BEEN PASSED BY THE RESPONDENTS DECLINING THE APPOINTMENT TO THE APPLICANT ON THE GROUND THAT A CRIMINAL CASE WAS REGISTERED AGAINST HIM IN THE YEAR 2012 IN WHICH HE WAS CONVICTED AND BENEFIT OF PROBATION UNDER PROBATION OF OFFENDERS ACT, 1958 WAS GRANTED. AGGRIEVED BY THE SAID ORDER, THE APPLICANT HAS INVOKED THE JURISDICTION OF THIS TRIBUNAL U/S 19 OF THE ADMINISTRATIVE TRIBUNALS ACT, 1985.

2. THE RESPONDENTS BY WAY OF FILING JOINT REPLY HAVE JOINED THE DEFENCE AND OPPOSED THE CLAIM OF THE APPLICANT PRIMARILY ON THE GROUND THAT THE APPLICANT IS NOT FIT FOR GRANT OF THE BENEFIT OF APPOINTMENT UNDER THE VOLUNTARY RETIREMENT SCHEME BECAUSE OF HIS CONVICTION U/S 341, 323 AND 34 OF THE INDIAN PENAL CODE BY A COMPETENT COURT OF LAW AND THE SAID FACT REVEALED DURING THE PROCESS OF POLICE VERIFICATION. IT HAS FURTHER BEEN AVERRED THAT THE APPLICANT HAD WRONGLY MENTIONED IN HIS APPLICATION FORM THAT HE WAS NEVER PROSECUTED NOR BOUND DOWN WHEREAS, HE WAS CONVICTED IN A CRIMINAL CASE NO. 434/20111 FOR THE OFFENCES U/S 341, 323 AND 34 OF THE IPC BY THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, CITY (SOUTH), UDAIPUR. WITH THESE ASSERTIONS, THE ORDER DATED 08.05.2017 (ANNEX. A/1) HAS BEEN SOUGHT TO BE JUSTIFIED BY THE RESPONDENTS AND PRAYER FOR DISMISSAL OF THE OA HAS BEEN MADE.

3. HEARD LEARNED COUNSEL FOR THE PARTIES.

4. SHRI S.K.M. VYAS, LEARNED COUNSEL FOR THE APPLICANT CONTENDED THAT THERE WAS NO MISREPRESENTATION ON THE PART OF THE APPLICANT WHILE FILLING UP THE PROFORMA ATTESTATION FORM ANNEX. A/3. HE HAD TRUTHFULLY ANSWERED QUESTION IN AFFIRMATIVE THAT HE WAS FINED BY COURT OF LAW. HE FURTHER CONTENDED THAT AFTER RECORDING CONVICTION U/S 341, 323 AND 34

OF THE IPC, THE LEARNED JUDICIAL MAGISTRATE, FIRST CLASS, UDAIPUR GRANTED HIM THE BENEFIT OF PROBATION U/S 41 OF THE PROBATION OF OFFENDERS ACT, 1958 AND THEREFORE, THE APPLICANT DID NOT SUFFER FROM ANY INFIRMITY. HE THUS ARGUED THAT THE ORDER ANNEX. A/1 CANNOT BE SUSTAINED AND THE SAME IS LIABLE TO BE SET ASIDE. TO SUPPORT HIS CONTENTION, LEARNED COUNSEL FOR THE APPLICANT RELIED UPON THE JUDGMENT OF HON'BLE HIGH COURT OF RAJASTHAN AT JODHPUR PASSED IN THE CASE OF RAM CHARAN NAYAK VS AJMER VIDYUT VITARAN LTD & ORS SBCWP NO. 8190/17 DECIDED ON 06.03.2018.

5. PER CONTRA, MR GIRISH SANKHLA, LEARNED COUNSEL FOR THE RESPONDENTS ARGUED THAT THE APPLICANT WAS CONVICTED BY A COMPETENT COURT OF LAW AND SINCE THERE WAS NO TRUTHFUL DISCLOSURE BY HIM ABOUT HIS PROSECUTION IN THE PROFORMA ANNEX. A/3, THEREFORE, THE RESPONDENTS ARE WELL WITHIN THEIR RIGHTS TO DECLINE HIM APPOINTMENT ON COMPASSIONATE GROUNDS.

6. CONSIDERED THE RIVAL CONTENTIONS OF BOTH THE PARTIES AND PERUSED THE RECORD.

7. ADMITTEDLY, THE APPLICANT'S FATHER WAS DECATEGORIZED MEDICALLY AND HE SOUGHT VOLUNTARY RETIREMENT AND AN ALTERNATE EMPLOYMENT FOR THE APPLICANT HEREIN IN VIEW OF THE POLICY GUIDELINES ISSUED BY THE RESPONDENTS. AFTER CONSIDERING HIS APPLICATION FOR GRANT OF VOLUNTARY RETIREMENT AND EMPLOYMENT TO THE APPLICANT HEREIN, THE RESPONDENTS ACCORDED APPROVAL TO HIS RETIREMENT AS WELL AS APPOINTMENT OF THE APPLICANT ON THE POST OF HAMMAL KHALASI VIDE ORDER DATED 09.10.2015 (ANNEX. A/4). A CATEGORIC DIRECTION WAS GIVEN IN THE SAID ORDER THAT THE PROCEEDINGS WITH REGARD TO THE APPOINTMENT TO APPLICANT BE COMPLETED WITHIN A PERIOD OF 10 DAYS. THEREAFTER, NO ACTION WAS TAKEN BY THE RESPONDENTS AND ON THE REPRESENTATIONS DATED 03.10.2016 AND 04.10.2016, THE RESPONDENTS PASSED AN ORDER DATED 08.05.2017 (ANNEX. A/1) DECLINING THE APPOINTMENT TO THE APPLICANT ON THE GROUND THAT A CRIMINAL CASE WAS REGISTERED AGAINST HIM AND HE WAS CONVICTED IN THAT CASE. WHILE PASSING THE ORDER DATED 08.05.2017, THE RESPONDENTS REMAINED OBLIVIOUS ABOUT THE FACT THAT AFTER RECORDING CONVICTION, THE LEARNED JUDICIAL MAGISTRATE, FIRST CLASS (CITY), UDAIPUR HAS GRANTED THE BENEFIT OF PROBATION UNDER SECTION 41 OF THE PROBATION OF OFFENDERS ACT, 1958 AND THUS THE APPLICANT HEREIN WAS NOT SUFFERING FROM ANY INFIRMITY TO TAKE UP THE APPOINTMENT PURSUANT TO ORDER DATED 09.10.2015 (ANNEX. A/4).

8. IN AN IDENTICAL SITUATION, THE HON'BLE HIGH COURT OF RAJASTHAN AT JODHPUR IN THE CASE OF RAM CHARAN NAYAK VS AJMER VIDYUT VITARAN LTD & ORS (SUPRA) WHILE INTERPRETING THE PROVISIONS OF SECTION 12 OF THE PROBATION OF OFFENDERS ACT, 1958 HAS HELD THAT ONCE A PERSON IS GRANTED BENEFIT OF PROBATION, HE

DOES NOT SUFFER DISQUALIFICATION IF ANY ATTACHED TO CONVICTION OF THE OFFENCE. THUS, IN VIEW OF THE LAW LAID DOWN BY THE HON'BLE HIGH COURT OF RAJASTHAN, THERE IS NO ESCAPE BUT TO HOLD THAT THE ORDER DATED 08.05.2017 (ANNEX. A/1) HAS BEEN PASSED BY THE RESPONDENTS ILLEGALLY AND THE SAME CANNOT BE SUSTAINED.

9. ACCORDINGLY, THE INSTANT OA IS ALLOWED AND THE ORDER DATED 08.05.2017 (ANNEX. A/1) IS HEREBY QUASHED. THE RESPONDENTS ARE DIRECTED TO OFFER APPOINTMENT TO THE APPLICANT ON THE POST OF HAMMAL KHALASI PURSUANT TO LETTER DATED 09.10.2015 (ANNEX A/4) WITHIN A PERIOD OF ONE MONTH FROM THE DATE OF RECEIPT OF A CERTIFIED COPY OF THIS ORDER.

(SURESH KUMAR MONGA)

MEMBER (J)

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