

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 594 of 2016

OA No. 645 of 2016

OA No. 843 of 2016

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

OA 594 of 2016 Dungar Singh Meena, aged about 38 years, S/o Late
Prasadi Lal Meena, At/PO-Kundala, PS – Tehla, Dist. –
Alwar, State Rajasthan.

OA 645 of 2016 Mohan Dnyaneshwar Raut, aged about 34 years, S/o
Raut Dnyaneshwar Shgankar, Vijaya Pathnagar near
Javvery Nursery Badnera Road, Dist. – Amaravati,
Maharashtra – 444607.

OA 843 of 2016 Devendra Kumar Fogu Borkar, aged about 46 years, S/o
Fogu borkar, residing at Bhim Nagar, Gondia (Tq), Dist. –
Gondia, Maharashtra-441601.

.....Applicants.

VERSUS

OA 594 of 2016

1. Union of India, represented through the General Manager, East Coast Railway, 2nd Floor, South Block, E.Co.R. Sadan, Samanta Vihar, PO- Mancheswar, Bhubaneswar-751017, Dist.-Khurda.
2. Chief Personnel Officer, East Coast Railway, 2nd Floor, South Block, E.Co.R. Sadan, Samanta Vihar, PO- Mancheswar, Bhubaneswar-751017, Dist.-Khurda.
3. Deputy Chief Personnel Officer (Recruitment), Railway Recruitment Cell, East Coast Railway, 2nd Floor, South Block, E.Co.R. Sadan, Samanta Vihar, PO- Mancheswar, Bhubaneswar-751017, Dist.-Khurda.

OA 645 of 2016 &

OA 843 of 2016

1. Union of India, represented through the General Manager, East Coast Railway, 2nd Floor, South Block, E.Co.R. Sadan, Samanta Vihar, PO- Mancheswar, Bhubaneswar-751017, Dist.-Khurda.
2. Chief Personnel Officer, East Coast Railway, 2nd Floor, South Block, E.Co.R. Sadan, Samanta Vihar, PO- Mancheswar, Bhubaneswar-751017, Dist.-Khurda.
3. The Sr. Divisional Personnel Officer, East Coast Railway, Khurda Road, Jatni, Khurda.
4. Deputy Chief Personnel Officer (Recruitment), Railway Recruitment Cell, East Coast Railway, 2nd Floor, South Block, E.Co.R. Sadan, Samanta Vihar, PO- Mancheswar, Bhubaneswar-751017, Dist.-Khurda.

.....Respondents.

For the applicant : Mr.B.P.Satpathy, counsel
 Mr.D.K.Mohanty, counsel

For the respondents: Mr.M.B.K.Rao, counsel (OA 594/2016 &

OA 645/2016)
Mr.N.K.Singh, counsel (OA 843/2016)

Heard & reserved on : 22.7.2019

Order on : 26.8.2019

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

Basic facts and circumstances of these three OAs being common, these were heard together and are being disposed of by this common order. The applicants have prayed for the following reliefs in the OA No.594/2016 :

- "(i) Let the rejection of the candidature of the applicant for the post of Jr. Trackman and Helper II vide letter dated 24.7.2012 under Annexure A/3 and confirmation of the same vide the impugned order dated 5.10.2015 under Annexure A/9 be declared as illegal and as such liable to be set aside.
- (ii) Let the respondents be directed to provide appointment to the applicant as against the post of Jr. Trackman and Helper II within a stipulated time;
- (iii) Let any other appropriate order(s) be passed as deemed fit and proper.

In the OA No. 645 of 2016, the reliefs prayed for are as under :

"Under these circumstances, it is humbly prayed that this Hon'ble Court may graciously be pleased to admit the present Original Application and issue notice to the respondents to show cause as to why the Original Application shall not be allowed and in the event if the respondents not filed any show cause or show insufficient cause, this Hon'ble Court may kindly be pleased to quash the letter dated 24.7.2012 under Annexure A/7 and allow the applicant to be considered and direct to the respondents be called for document verification and medical examination.

And further be pleased to direct the respondent No.4, if otherwise the applicant is found eligible to hold the post he shall be given appointment as per advertisement under Annexure A/1.

And further be pleased to pass any other order/orders as deemed fit and proper.

In the OA No. 843 of 2016, the reliefs prayed for are as under :

"Under these circumstances, it is humbly prayed that this Hon'ble Court may graciously be pleased to admit the present Original Application and issue notice to the respondents to show cause as to why the Original Application shall not be allowed and in the event if the respondents not filed any show cause or show insufficient cause, this Hon'ble Court may kindly be pleased to quash the letter dated 18.10.2012 under Annexure A/10 and allow the applicant to be considered and direct to the respondents be called for document verification and medical examination.

And further be pleased to direct the respondent No.4, if otherwise the applicant is found eligible to hold the post he shall be given appointment as per advertisement under Annexure A/1.

And further be pleased to pass any other order/orders as deemed fit and proper.

OA No. 594/2016

2. The applicant in OA No. 594/2016, had applied in response to the Employment Notice dated 28.10.2006 (Annexure A/2 of the OA) for the post of Junior Trackman and Helper II and the applicant was called for appearing in the examination. After he qualified in the written examination he was called for the physical efficiency test (in short PET) from 24.3.2008 to 6.4.2008. Then he was served with the copy of the letter dated 24.7.2012 (Annexure A/3) by which the respondents have issued a show cause notice for the following deficiencies identified in the application form – "Application without full signature in the box provided below the space for pasted photograph." It is stated in the notice that as per para 15 of the Employment Notification the applications with these deficiencies are liable to be rejected and accordingly his application was also proposed to be cancelled. The applicant submitted a reply dated 23.8.2012 (Annexure A/4) apologising for the said mistake. Thereafter the applicant was not informed about the decision of the respondents. The applicant applied for obtaining information under RTI Act and with the intervention of Central Information Commission he received the information on 1.5.2015 after which the applicant filed OA 500/2015 which was disposed of vide order dated 18.8.2015 granting liberty to the applicant to file a fresh representation before the respondent No.2 for consideration. Accordingly the representation was made by the applicant on 1.9.2015 (Annexure A/8) which has been considered and the said representation has been rejected vide order dated 5.10.2015 (Annexure A/9) which is challenged in this OA.

3. The counter has been filed in this OA No. 594/2016 by the respondents.

It is stated in para 6 of the counter as under :

"That now coming to the relevant facts of the case, the applicant was a candidate for the post of Junior Trackman/Helper II in Group D category against the Employment Notice No. ECor/RRC/D/2006/01 dated 28.10.2006. The applicant was allotted with Roll No. 4166983 and called to appear in the Written Test on 7.10.2007 and subsequently to Physical Efficiency Test (PET) conducted from 24.3.2008 to 6.4.2008. During final scrutiny of application prior to medical test, it was noticed that the applicant had not given his full signatures in running script at the relevant places of the application form submitted by him in violation of conditions of the Employment Notice dated 28.10.2006. Accordingly, impugned letter of rejection of the candidature of the applicant was issued.

It is further humbly submitted that the candidature of similarly situated candidates like the applicant were rejected due to deficiencies in their applications after completion of both written test and Pet. This was done

pursuance to report submitted by Vigilance wing of Indian Railways to prevent checks into the recruitment process. As such, any deviation in the case of applicant would have offended the equality clause enshrined under Article 14 of the Constitution of India."

It is also stated in the counter that the applicant has not adhered to the stipulations contained in the Employment Notice by not putting his full signature in the required places. It was also stated that 4,05,656 applications were rejected in terms of para 15 after preliminary scrutiny, 4,30,910 candidates were called for written test out of which 15661 candidates were successful and were called for PET. After PET, 12511 candidates qualified out of which candidature of 1274 candidates who were found to have impersonated in the written test, was cancelled. The respondents have also cited the judgment of Hon'ble Supreme Court in the case of Union of India & Ors. -vs- S.Vinod Kumar & Others [AIR 2008 SC 5] in support of their argument.

OA 645 of 2016

4. In this case the applicant was called for PET on 4.4.2008. It is stated that for non-consideration of other candidates who were similarly placed, OA 531/2009 was filed by some other candidates. This OA was disposed of on 12.3.2010 (Annexure A/4) with a direction to the respondents to complete the process. This order was confirmed by Hon'ble High Court by order dated 8.12.2010 (Annexure A/5). On 4.4.2011 (Annexure A/6) the same was upheld by Hon'ble Apex Court. Then vide order dated 24.7.2012 (Annexure A/7) the respondent No.4 issued a show cause notice to the applicant pointing out following deficiencies as stated in the notice :

"While verifying the application submitted by you, the following deficiency(ies) is/are noticed:

- i) Application is unsigned/application is with signatures that are not in running script/signature not in Hindi or English/signed in capital letters/signatures drastically different at different places.
- ii) Application without full signature in the box provided below the space for pasted photograph."

5. The reply dated 13.8.2012 was filed by the applicant (Annexure A/8). When no decision was forthcoming from the respondents, the applicant issued a legal notice dated 25.10.2012 (Annexure A/9) and also filed the OA 2232/2012 before Bombay Bench of this Tribunal which was dismissed vide order dated 10.2.2016 (Annexure A/10) on the ground of territorial

jurisdiction, giving liberty to the applicant to approach appropriate legal forum for redressal of his grievance. Accordingly the applicant has filed the present OA.

6. The counter in OA No. 645/2016 is on the similar grounds as in the counter in OA No. 594/2016.

OA 843 of 2016

7. In this case the applicant has been communicated an order dated 18.10.2012 (Annexure A/10) communicating the final decision cancelling the candidature of the applicant, which was challenged in the OA filed before Bombay Bench of this Tribunal, it was held that Bombay Bench does not have jurisdiction and liberty was given to the applicant to file fresh OA before appropriate forum. Thereafter the applicant has filed the present OA.

8. In this case the counter has been filed by the respondents in which following averments are relevant :

"The present applicant submitted an application for Group D recruitment in response to Employment Notification No.ECoR/RRC/D/2006/01 dt. 28.10.2006. The applicant was allotted with Roll No. 4180114 and called for to appear at the Written Exam held on 7.10.2007, and subsequently Physical Efficiency Test (PET) conducted during 24.3.2008 to 6.4.2008. As a matter of routine verification and scrutiny of almost all the application forms of the tentatively selected candidates, some discrepancies were detected in the application of many candidates including that of the present applicant. The defects found in the applicant's application was the violation of the mandatory Rules/Employment Notification and were i.e. (i) not giving his full signature in the application form in running script, (ii) without his full signature below the photograph and (iii) the (his) sample full signature was not in the running script. Thereafter, in compliance with the principle of natural justice, the applicant was issued with a show cause to submit his explanation on or before 23.8.2012 as to why his candidature should not be rejected/treated as cancelled. The applicant submitted his explanation and being found unsatisfactory, his candidature against the said employment notification was cancelled/rejected along with many other candidates having similar and otherwise defective applications. In this Original Application the applicant has impugned the said letter of rejection under Annexure A/10."

9. The applicant in OA No. 843/2016 has filed a reply to the counter. In the rejoinder following judgments have been cited :

- i) Sri Krishan -vs- Kurukshetra University, Kurukshetra [AIR 1976 SC 376]
- ii) Sanatan Gauda -vs- Berhampur University & Others [AIR 1990 SC 1075]
- iii) Guru Nanak Dev University -vs- Sanjay Kumar Katwal & Another [(2009) 1 SCC 610]
- iv) A.P. Public Service Commission, Hyderabad -vs- B. Sarat Chandra [(1990) 2 SCC 669]
- v) Union of India & Ors. -vs- Miss pritilata nanda [2010(IIO OLR SC 636]

- vi) S.K.Laxman Ghusakar -vs- Union of India & Ors. [OA No.526/2013]
- vii) WP(C) No.6268/2017
- viii) Dolly Chhanda -vs- Chairman, JEE & Ors. [(2005) 9 SCC 779]
- ix) M/s Kasturi Lal Lakshmi Reddy -vs- State of Jammy & IKashmir & Another [AIR 1980 SC 1992]

10. It is further stated by the applicant in the rejoinder that discrepancies can be detected at the time of scrutiny/ short listing of the application form but when the process of selection has already been going to an end, the rejection of the candidature on the ground of discrepancies in the application form in short signature is against the Article 14 and 16 of the Constitution of India. The rejection of the candidature after the written examination and PET on the ground of short signature is a preliminary ground which could be rectified at any moment and it was assumed that every infraction of the rule relating to submission of proof need not necessarily result in rejection of the candidature.

11. All three OAs were heard together. Learned counsel for the applicant in OA 594/2016 has filed a written submission broadly reiterating the grounds in the OA. Learned counsel for the applicant in OA 645/2016 has filed the copy of the following judgments in support of his contention :

- i) Subhendu Bhattacharjee -vs- Union of India & Ors. [WP(C) No. 2298/2018]
- ii) General Manager, East Coast Railway & Ors. -vs- Surendra Kumar Laxman Ghusakar [WP(C) No. 6268 of 2017]
- iii) Surendra Kumar Laxman Ghusakar -vs- Union of India & Ors. [OA No. 526/2013 of CAT, Cuttack Bench]

12. Learned counsel for the respondents in OA 843/2016 has filed his written note reiterating the submissions in the counter. The following judgments have been cited by the learned counsel for the respondents in support of the contention –

- i) Union of India & Anr. -vs- Sarwan Ram & Anr. (Civil Appeal (C) No.706/2014)
- ii) Union of India -vs- Miss Pritilata Nanda [2010 (11) OLR (SC) 636]
- iii) Maharashtra Public Service Commission, through its Secretary -vs- Sandeep Shriram Warade & Others [Civil Appeal No. 4597/2018]
- iv) Kabiraj Swain -vs- Union of India & Ors. [OA No. 574/2012]

13. It was also submitted by the learned counsel for the respondents that in a similar situation this Tribunal has dismissed another OA 574/2012, copy of which has been enclosed with the written submissions of the learned counsel

for the respondents. Copy of the application form of the applicant showing the fact that the applicant had not put his full signature, has been also enclosed along with the written notes.

14. Respondents' counsel in OA 645/2016 has also submitted a written submission reiterating the contentions in the counter and enclosing the following judgments :

- i) Union of India & Anr. -vs- Sarwan Ram & Anr. [Civil Appeal (C) No. 706/2014]
- ii) Maharashtra Public Service Commission, through its Secretary -vs- Sandeep Shriram Warade & Others [Civil Appeal No. 4597/2018]
- iii) Narendra Gopichand Deshbhratar -vs- Union of India & Ors. [WP(C) No. 25372/2017]
- iv) Union of India -vs- Miss Pritilata Nanda [2010 (11) OLR (SC) 636]

15. We have considered the submissions and pleadings and also have gone through the judgments filed by learned counsels for both the parties at the time of hearing. In WP(C) 2298/2018 Hon'ble High Court vide order dated 19.4.2018 has submitted that the order of the Tribunal rejecting the prayer of the applicant was successfully challenged. In this case the applicant was a physically challenged person and he qualified in the written test in the category "Hearing impaired". His candidature was cancelled on the ground that the copies of the certificate submitted by him in support of his date of birth and physical disability, were not attested by gazetted officer. The decision was challenged in the Tribunal in OA 413/2013 which was dismissed. Hon'ble High Court referred to the judgment of Hon'ble Apex Court in the case of Union of India & Ors. -vs- Ms. Pritilata Nanda [2010 (11) OLR SCC 636]. Hon'ble High Court referred to the judgment in the case of Union of India & Ors. -vs- Sarwant Ram & Another in SLP(C) 706/2014 which was cited on behalf of the respondents and it was observed that since the post was for a specific category of reservation, it was necessary to strictly comply with the conditions. Accordingly it was held by Hon'ble High Court that in the present case the advertisement was not for a specific category of candidates and the candidate was permitted to appear in the written test and PET and at the last stage his candidature cannot be cancelled on the ground that the certificates are not

attested. Therefore, direction was given to the authorities to take necessary follow up action in the matter.

16. In another case W.P.(C) No.6268/2017 (General Manager, East Coast Railway & Ors. –vs- Surendra Kumar Laxman Ghusakar), Hon'ble High Court considered a similar dispute in respect of the advertisement notice dated 28.10.2006 in which the candidate had not put the full signature in the box provided, like the case of the present applicant. The Tribunal in OA 526/2013 vide order dated 8.1.2013 came to a finding that the defect detected at a later stage was not to be considered serious enough to debar the candidate if he was selected on merit. This decision of the Tribunal was challenged by the Railways in the W.P.(C) 6268/2017 which was finally dismissed. In this case Hon'ble High Court observed as under :

"8. The Tribunal after hearing the parties and examining the materials available on record, came to a finding that the defect detected at a later stage would not be considered serious enough to debar a candidate from being appointed if he has been selected on the basis of his merit and passed through different stages of scrutiny by the competent authority. The Tribunal also found that name of the applicant is very long and the full signature cannot be accommodated in the small box provided. Nothing has been indicated in the application form and no instruction has been reflected therein, in such a case what remedy is available to the applicant. With the aforesaid finding, the Tribunal by the impugned order directed the petitioners to issue an offer of appointment to opposite party No.1, if he has been selected as per merit within a period of ninety days from the date of the order.

9. Considering the rival submission of the parties and after going through the materials available on record, it reveals that the name of the applicant being so long is not to be adjusted in the box provided in the application form. The application of opposite party No.1 was rooted through the Screening Committee and the same was not rejected at the time of screening. He was allowed to appear in the written examination as well as Physical Efficiency Test. There is no stipulation in the notification that in case the letters exceed the box provided in the application form, what will be the consequences. Since the Tribunal has passed a reasoned order and as there is no error apparent on the face of the record, this Court is not inclined to interfere with the same in exercise of the jurisdiction under Article 227 of the Constitution of India."

17. Learned counsel for the applicant has cited the judgment of Hon'ble Apex court in the case of Dolly Chhand (supra). She appeared in the Joint Entrance Examination for admission to medical course as a daughter of ex-serviceman and the required certificate was produced subsequently since the initial certificate was found to be not acceptable. During scrutiny, the mistake was found to be due to Zilla Sainik Board. Hence, it was observed by the Hon'ble Apex Court that taking into account the fact that she belonged to the reserved MI category and she comes from a very humble background, the appeal was

allowed and State was directed to give admission in one of the medical colleges by creating one extra seat, if required. The facts and circumstances of this case are clearly distinguishable.

18. The case of M/s Kasturi Lal (supra) related to extract of resins from forest in some of the regions in the State of Jammy & Kashmir. This case is also factually distinguishable and is not applicable to the present OA.

19. The case of Sanatan Gauda (supra) related to the dispute in admission in the law college. The petitioner was admitted to Final Law before declaration of the result of Pre-Law and Inter-Law examinations. At that point of time it was informed that since the applicant secured less marks, he is not admissible in law course. The applicant represented that he has secured more than 40% marks in the examination and therefore he is admissible for law course. Thereafter, the Board of Studies had recommended the case, but the University did not declare the result. The appeal filed by the petitioner was allowed by the Hon'ble Apex Court. This case related to admission and is factually distinguishable from the case in hand.

20. Learned counsel for the respondents Mr.M.B.K.Rao in OA No. 645/2016 filed a copy of the order of this Tribunal dated 13.10.2017 passed in OA 14/2014 (Narendra Gopichand Desharbharater -vs- UOI represented through General Manager, East Coast Railway and Others. In this case the issue was that the applicant had given short signature. In this case it was held by this Tribunal as under :

"5.Ld. counsel for the applicant has placed reliance on a decision of this Triubnal in OA No. 526/2013 (Surendra Kumar Laxman Ghusakar -vs- UOI) wherein the Tribunal observed that not giving full signature was not so serious to debar a candidate from the appointment as the defect was detected at a later stage and directed for issue of offer of appointment. No doubt the said order of this Tribunal was upheld by the Hon'ble High court in WP(C) No. 6268 of 2017 vide order dated 1.5.2017 and there was no difficulty in issuing a similar instruction by this Bench but Mr.M.B.K.Rao, Id. Counsel for the official respondents, has drawn attention of the Bench to the judgment of the Hon'ble Apex Court in the Special Leave to Appeal (C) No(s).706/2014 in the case of Union of India & Anr. -vs- Sarwan Ram & Anr. Wherein Their Lordships analyzing the responsibility of the candidate for filling up of application form as per employment Notice has been pleased to observe as follows :

'Condition No.8.7(i) is one of the conditions mandate mentioned in the employment notice. We are of the view that in non-compliance of such condition, it was always open to the competent authority to reject such application being incomplete. Respondent No.1 having failed to do so, the

competent authority has rightly rejected the application. IN such circumstances, it was not open to the High Court to direct the authorities to consider the case of respondent No.1 for appointment sitting in appeal over the scrutiny of application by refereeing to certain certificate of length of service. High Court under Article 226 of the Constitution of India is not competent to scrutinize the applications filed for appointment and cannot substitute its own opinion based on some evidence to come to a conclusion whether the application from is defective.'

6. In view of the aforesaid authoritative pronouncement of the Hon'ble Supreme Court, once the form was not filed up properly or rather contrary to the specific direction issued in the advertisement, no right percolates to the applicant to claim overlooking of such deficiency merely because the applicant has cleared the other test. According to Their Lordships, what to speak of this Tribunal even the Hon'ble High Court is not competent to scrutinize such defective application filed for appointment and also cannot substitute its own opinion. Since there is nothing wrong in the order and approach of the competent authority in rejecting the candidature of the applicant for not filling up the form properly, no interference is called for. Hence ordered."

21. As submitted by the applicants' counsel, the order dated 13.10.2017 of the Tribunal in OA No. 14/2014 was set aside by Hon'ble High Court vide order dated 11.5.2018 passed in the case of Narendra Gopichand Desharbharater vs. UOI & others in W.P. (C) No. 25372/2017 and it was held as under:-

"7. The Tribunal considering the respective plea of the parties recorded a finding that once the form was filled up contrary to the specific direction issued in the advertisement, no right accrued to the applicant for appointment overlooking such deficiency merely because he has cleared the other test.

8. The Apex Court in the case of **Union of India and others Vs. Miss. Pritilata Nanda** reported in **2010 (II) OLR (SC) 636** held that once the candidature of the respondent was accepted by the concerned authorities at the threshold scrutiny and she was allowed to participate in the process of selection, it was not open to them to turn around and question her entitlement to be considered for appointment as per her placement in the merit list.

9. As discussed in the aforesaid paragraphs, it appears that the Tribunal has ignored the fact that the petitioner has written his full name in Column No.1, which was no doubt a big one and he has explained under what circumstances he has not put his full signature subsequently. The said defect is curable one. He has appeared in the written test as well as Physical Efficiency Test and selected on merit. The Apex Court in the case of *Miss. Pritilata Nanda (supra)* considered the same and settled the principle that once a candidate was allowed to participate in the written test and Physical Efficiency Test, his candidature should not have been rejected subsequently. The order passed by the Tribunal is an error apparent on the face of the record. In view of the aforesaid settled position of law enunciated by the Apex Court, this Court while setting aside the impugned order directs the opposite parties to take steps as per the ratio decided by the Apex Court in the case of *Miss. Pritilata Nanda (supra)* as expeditiously as possible, preferably within a period of six weeks from the date of production of certified copy of this order."

22. Learned counsel for the respondents in OA No. 645/2016, further submitted in his written notes that the recruitment process under the Employment Notice dated 28.10.2006 is complete, closed and left over

vacancies have been carried forward. Three employment notifications in the year 2010, 2012 and 2013 were issued carrying forward the left over vacancies of previous notifications. These facts have also been mentioned in para 8 of the counter. It is further submitted that the order dated 11.5.2018 rendered by Hon'ble High Court in WP(C) 25372/2017 in the case of Narendra Gopichand Desharbharater (supra) is distinguishable on the ground that the ratio of the decision rendered by the Apex Court in the case of Sarwan Ram (supra) vide judgment dated 8.10.2014 has not been taken into account. Writ Petition was allowed placing reliance on the case of Pritilata Nanda (supra). Learned counsel has enclosed copy of the order of Hon'ble High Court in the above case along with written notes.

23. It was also submitted by respondents' counsels that in a recent judgment dated 3.5.2019 by Hon'ble Apex Court in Civil Appeal No. 4597/2018, Maharashtra Public Service Commission, through its Secretary -vs- Sandeep Shriram Warade & Others, the Hon'ble Supreme Court has clearly laid down that

"In no case, can the Court, in the grab of judicial review, sit in the chair of the appointing authority to decide what is best for the employer and interpret the condition of the advertisement contrary to the plain language of the same."

It went on further to say,

"The fact that an expert committee may have been constituted and which examined the documents before calling the candidates for interview cannot operate as an estoppels against clear terms of the advertisement to render an ineligible candidate eligible for appointment."

24. In CA No. 4597/2018, the dispute was regarding eligibility of the candidates for the post of Assistant Commissioner (Drugs) and Drug Inspectors advertised by the Maharashtra Public Service Commission for which the experience in manufacturing and testing of the drug was essential qualifications. It was claimed by the candidate that the research experience in the synthesis and testing of drugs in a research laboratory shall also be a desirable qualification for the said advertisement. Maharashtra State Administrative Tribunal did not accept such contentions of the candidates, who challenged the decision of the Tribunal before the Hon'ble High Court. Hon'ble High Court while allowing the Writ Petition, held that the candidate having

research experience should be preferred. This was challenged in the CA No. 4597/2018 and it was held by the Hon'ble Apex Court that the essential qualification for appointment in the post was for the employers to decide. The desirable qualifications including any preference should be decided and granted by the employer and Court cannot lay down the conditions of eligibility. Accordingly the order of Hon'ble High Court was set aside. The facts of this judgment cited by the learned counsel for the respondents which pertains to the interpretation of qualification and experience are not similar to the present OA in which dispute related to the manner of putting the signature on the application form. Hence, in our opinion the cited judgment will not be helpful for the respondents in these OAs.

25. Learned counsel for the respondents in OA 843/2016 in his written note submitted that the conditions of the advertisement are very clear. Learned counsel has also cited the order of this Tribunal in OA 574/2012 (Kabiraj Swain -vs- UOI) which upheld the decision of the respondents. It was also argued that the decisions of Hon'ble High Court cited by the applicant are distinguishable and cannot be considered as binding precedent in the present case. It was also pointed out that the reason for rejection was uniformly followed by the respondents for all candidates. Learned counsel also enclosed the copy of the judgment of Hon'ble Apex Court in the case of UOI & Another – vs- Sarwan Ram in support of his arguments. In this case, the dispute was on account of photograph pasted by the applicant which was required to be in the military uniform as per the conditions of the advertisement, since the advertisement was for ex-servicemen quota. In this case the application of Mr.Sarwan Ram was rejected after he participated in the selection process when the defect was noticed. He approached the Jaipur Bench of this Tribunal, which dismissed the OA vide order dated 1.4.2011. This order was challenged before Hon'ble High Court in a writ petition which was allowed on the ground that the candidate had produced discharge certificate issued by the Army Authorities which proved that he had served in the Indian Army. The matter was considered by the Apex Court. Hon'ble Apex Court set aside the order of

Hon'ble High Court on the ground that for claiming benefits under the ex-servicemen quota, photograph in military uniform was required to be furnished.

26. In view of the discussions above, the main issue to be decided in these OAs is whether the judgments of Hon'ble High Court in the case of Narendra Gopichand Desharbharater (supra) in W.P. (C) 25372/2017 and in the case of Surendra Kumar Laxman Ghauskar (supra) in W.P. (C) 6268/2017, will be applicable to the present OAs. As discussed earlier, in both these cases, it was observed by Hon'ble High Court that the name of the applicant was long. In W.P. (C) 6268/2017, it was observed that there was no stipulation in the notification about the consequences if the letters in the box provided for the signature exceed the box provided in the application form. It was found by the Tribunal that the full signature cannot be accommodated in the small box provided in the application form. The applicants have cited these judgments claiming that their case to be similarly placed.

27. The respondents' counsels have argued that judgment in the W.P.(C) No. 25372/2017 is not applicable since Hon'ble High Court did not consider the judgment of Hon'ble Apex Court in the case of Sarwan Ram (supra) in the said order. We are unable to agree with such argument. In the case of Sarwan Ram, the deficiency was considered to be serious by Hon'ble Apex Court for which the decision to cancel his form was upheld. The recruitment in question was for ex-servicemen quota as the recruiting agency had taken a stand that as per the rules pertaining to ex-army personnel, they are required to be in military uniform. But the candidate in that case had affixed the photograph without military uniform. The deficiency was considered by Hon'ble Apex court to be serious. We are, therefore, of the view that the judgment in the case of Sarwan Ram (supra) will not be applicable to the present OAs, in which the defect in the application form of the applicants was not detected prior to calling them for the written test.

28. The respondents in the counter have mentioned huge number of candidates they had to handle in such examinations. We are also not able to

accept the argument. There was no justification to allow the candidates with defective application forms to participate in the examination. No satisfactory explanation has been furnished for not checking the details in respect of 15661 candidates who had qualified in the written test (as mentioned in the counter for OA No. 594/2016), before publishing the result of the written examination and calling them for participating in subsequent stages of the examination. The explanation that the defects can be detected at any stage and candidature can be cancelled even after the candidate has qualified in the test, cannot be accepted in view of the ratio of the judgments of Hon'ble High Court as discussed earlier.

29. In view of above, we are of the considered view that the judgments of Hon'ble High Court in the case of Narendra Gopichand Desharbharatar (supra) and Surendra Kumar Laxman Ghusakar (supra) are squarely applicable to the present OAs with similar facts and circumstances and the applicants in these OAs will also be entitled for a similar relief. The pleas of the respondents that the selection process is over and the vacancies were carried forward do not have any merit, since the applicant can be considered against any of the current or future vacancy, and they had qualified in the test as per the notification dated 28.10.2006 and the grounds for rejection of their candidature are not found to be sustainable. The impugned orders dated 24.7.2012 in OA No. 594/2016 and OA No. 645/2016 and order dated 18.10.2012 in OA No. 843/2016 are accordingly set aside and the respondents are directed to take action in respect of the applicants in these OAs in accordance with the judgment dated 11.5.2018 of Hon'ble High Court in the case of Narendra Gopichand Desharbhartar -vs- Union of India & Ors. in W.P.(C) 25372/2017.

30. All the three OAs are allowed as above. No costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

