

LIBRARY

LIBRARY

**CENTRAL ADMINISTRATIVE TRIBUNAL, CALCUTTA BENCH
KOLKATA**

Original Application No. 350/00667/2015

Present : Hon'ble Mr Justice Vishnu Chandra Gupta, Judicial Member
Hon'ble Mr P. K. Basu, Administrative Member

Shri Alla Venkata Laxmi Suryanarayana Murthy

.....Applicant

-Vs-

Union of India & ors. RRC (E. Railway)

.....Respondents

For the petitioner : Mr J. R. Das, Counsel

For the respondents : Mr S. Banerjee, Counsel

Date of Hearing : 03.03.2016.

Date of Order : 31-03-2016.

ORDER

JUSTICE V. C. GUPTA, JM:

This application has been filed under Section 19 of the Administrative Tribunals Act 1985

claiming the following reliefs :

- i) An order quashing and/or setting aside the purported explanation dated 01.08.2014 and 14.08.2014 issued by Sr. Personnel Officer Rectt. for Chairman/RRC E.Railway of the applicant's candidature for the post of Group D.
- ii) An order directing the respondents to quash/set aside and/or cancel the purported letter dated 15.09.2014 seeking cancellation of the candidature of the applicant against EN No. 0106 being arbitrary and malafide.
- iii) An order directing the respondents to consider the case of the applicant on merit to effect the appointment to the applicant already ordered since has came out successful all throughout.
- iv) To pass an appropriate order directing the respondents not to make the applicant suffer since already waited for nearly 9 years and be duly considered for said Gr. D posts following direction of Hon'ble Tribunal.
- v) An order directing the respondents to give consequential benefits including full salary and all other service benefits to the applicant as per with his batchmate on immediate basis with interest as per rules.



vi) To pass an appropriate order directing the respondents to submit all relevant records of the case before the Hon'ble Tribunal for conscionable justice with copies to the Ld. Advocate of the applicant for reference thereto."

2. The brief facts of the case are that the applicant in pursuance of advertisement No.01/06 issued by the Eastern Railway for Group D post applied and he was declared successful and the provisional appointment was issued in favour of the applicant on 16.10.2012. While issuing provisional appointment letter he was required to appear within 30 days in connection with completion of pre-recruitment formalities and also for verification of testimonials and to appear in the medical fitness test. After completion of formalities the applicant was not permitted to join. He made representation to the authorities concerned on 14.08.2013. In pursuance thereof Divisional Railway Manager by letter dated 4.10.2013 informed the applicant that his case has been referred to Chairman, Railway Recruitment Cell and direction are awaited. He made another representation on 17.10.2013 alleging therein that except applicant all other batch mate in the panel of successful candidates have already joined. Thereafter, Senior Personnel Officer, Recruitment by letter dated 18.11.2013 requiring the presence of the applicant before Railway Recruitment Cell on 29.11.2013 to short out some anomalies. He appeared in pursuance thereof and completed the formalities during the course of the day. But in spite of that no joining instruction was received. He made another representation on 02.07.2014. Thereafter a letter dated 01.08.2014 was received by the applicant showing cause as to why his appointment may not be cancelled for the reasons that he was under age when he took admission for 1st Degree Course in Andhra University and he has not completed age of 21 years at the time of admission to the first degree course under formal/distance education. Unless he is successfully completed 12 years schooling through an examination conducted by the Board/University and in case there is no previous academic record., he/she is eligible for admission, if he/she has passed an entrance examination conducted by the University that he/she is not below the age of 21 years at the time of admission. This information was based on Railway Board's letter No.E(NG)-II/2013/RR-1/8 dated 30.10.2013, which is re-produced below :

"Sub: Clarification regarding acceptance of educational qualification obtained through distance education mode from Open University without



undergoing formal education for the purpose of employment on the railways – reg.

The issue whether qualification of PG Degree without prosecuting 10+2+3 or 11+1+3 and Under Graduate Degree without prosecuting 10+2 or 11+1 stream of studies obtained by candidates/serving employees for employment/promotion through Open Universities (non formal/distance education) can be accepted for otherwise has been under consideration of this Ministry.

The same has been examined in consultation with Distance Education Bureau, University Grants Commission and it is directed that while scrutinising certificates of qualification submitted by the candidates obtained through Open and Distance Learning centres for the purpose of employment/promotion, following guidelines may be kept in view:-

- i) No student is eligible for admission to the 1st Degree Course through non formal/distance education unless he has successfully completed 12 years schooling through an examination conducted by a Board/University. In case there is no previous academic record, he/she is eligible for admission if he/she has passed an entrance test conducted by the University provided that he/she is not below the age of 21 years of admission.
- ii) No student is eligible for the award of the first degree unless he/she has successfully completed three year course, this degree may be called the B.A/B.Sc/B.Com(General/Honours/Special) degree as the case may be; and
- iii) No student is admitted in a Master's Degree course unless he/she has successfully completed Bachelor's Degree of minimum three year duration. In other work PG degree obtained without a Bachelor Degree cannot be treated as valid."

2. In reply to show cause the applicant submitted that in Andhra University the minimum age was 18 years for taking admission in first degree course and he also filed the certificate to this effect as Annexure A-11. On 14.08.2014 the Railway Recruitment Cell asked the applicant to furnish actual age of passing the entrance test in support of his claim. The reply was submitted on 20.08.2014. Dissatisfied with the reply and in view of the aforesaid Board's letter dated 30.11.2013 the candidature of the applicant was cancelled. Aggrieved by the aforesaid cancellation the present O.A has been filed.

3. During the course of hearing, the learned counsel for the applicant Mr J.R.Das, brought on record the informations received through Right to Information Act by Andhra University and the letter of Director of Andhra University School of Distance Education dated 05.11.2015 addressed to Director-Estt (N)-11, Railway Board, New Delhi, Chief Personnel Officer, Eastern



Railway, Kolkata and Chairman, RRC, Eastern Railway, Kolkata along with the amendment made relaxing the age limit for taking admission in first degree course. This amendment of relaxation of age dated 4.11.1995 was attached. On perusal of it reveals that above mentioned regulation of 1985 has been amended and the age required for first degree course was reduced from 21 to 18 years. The aforesaid amendment came into force with immediate effect. The relevant portion of letter and amendment of UGC is re-produced herein below :

"Subject: Amendment to the UGC (the minimum standards of Instructions for the grant of first degree through non-formal/distance education in the faculties of Arts, Humanities, Fine Arts, Music, Social Arts, Commerce and Sciences) Regulations, 1985.

Sir

In continuation of this letter No.F.1-117-83(CP) dated 2nd January, 1986 and in partial modification of the UGC (minimum standards of instructions for grant of first degree through non-formal/distance education in the faculties of Arts, Humanities, Fine Arts, Music, Social Sciences, Commerce and Sciences) Regulations, 1985; please find enclosed a copy of the notification No.F.1-117/83(CPP-II) dated 18.10.95 which amends the earlier UGC notification No.F.1-117/83 (CP) dated 25th November, 1985.

In this connection, I am to inform you that sub-clause (1) of clause (2) of the above mentioned Regulations of 1985 have been amended as under :

Existing clauses 2. Admission/Student	Amended clauses 2. Admission/Student
1 No Student shall be eligible for admission to the 1 st degree course through non-formal/distance education unless he has successfully completed 12 years schooling through an examination conducted by a Board/University. In case there is no previous academic record, he shall be eligible for admission if he has passed an entrance test conducted by the University, provided that he is not below the age of 21 years on July 1 of the year of admission	(1) No student shall be eligible for admission to the 1 st degree course through non-formal/distance education unless he has successfully completed 12 years schooling through an examination conducted by a Board/University. In case there is no previous academic record, he shall be eligible for admission if he has passed an entrance test conducted by the University, provided that he is not below the age of 18 years on July 1 of the year of admission

The above amendments have come into force with immediate effect."

The regulation of 1985 of UGC is also extracted below :

"8.3 UGC Regulations, 1985 regarding the Minimum Standards of Instructions for the Grant of the First Degree through Non-formal/Distance Education



University Grants Commission New Delhi-110 002 25th November, 1985

No.F1117/83(CP) In exercise of the powers conferred by Clause (f) of subsection (1) of Section 26 of the University Grants Commission Act, 1956 (No. 3 of 1956), the University Grants Commission makes the following regulations, namely:

1. Short title, application and commencement :-

(1) These regulations may be called the University Grants Commission (the minimum standards of instructions for the grant of the first degree through non formal/distance education in the faculties of Arts, Arts, Humanities, Fine Arts, Music, Social Sciences, Commerce and Sciences) Regulations, 1985. (2) They shall apply to every university established or incorporated by or under a Central Act, Provincial Act or of a Section 2 of the University Grants Commission Act 1956 and every institution deemed to be University under Section 3 of the said Act. (3) They shall come into force on June 1, 1986.

2. Admission/Students:

(1) No student shall be eligible for admission to the 1st Degree Course through non-formal/distance education unless he has successfully completed 12 years schooling through an examination conducted by a Board/University. In case there is no previous academic record, he shall be eligible for admission if he has passed an entrance test conducted by the University provided that he is not below the age of 21 years on July 1 of the year of admission. (2) No student shall be eligible for the award of the first degree unless he has successfully completed a three year course; this degree may be called the B.A/B.Sc/B.Com. (General Honours/Special) degree as the case may be. Provided that no student shall be eligible to seek admission to the Master's Course in these faculties, who has not successfully pursued the first Degree course of three years duration. Provided further that, as a transitory measure where the universities are unable to change over to a three year degree course, they may award a B.A.

S.K.Khanna
Secretary
UGC"

4. The Andhra University in its Senate meeting held on 30.03.1990 resolved that age limit to take admission in the first degree course was reduced from 21 to 20 years from 1st July onwards and it was at the Senate meeting resolved that relaxation of age limit would be of one year i.e. 21 to 20 years and the decision in the Senate was taken with the concurrence of the UGC. The Senate's decision of 30.03.1990 is re-produced herein below :

"ANDHRA UNIVERSITY
Minutes of the
Annual Meeting of the Academic Senate
(1989-90)

The Annual meeting of the Academic Senate was held at 10-00 a.m. on Friday the 30th March 1990 in T.L.N. Sabha Hall University Campus, Waltair.



6-F. 15 The Executive Council placed before the Academic Senate for consideration the question of reduction of age limit from 21 year to 20 years in respect of candidates appearing for the B.A./B.Com. Entrance Examination of School of Correspondence Courses for the purpose of admission into 1 year B.A./B.Com. Degree courses of study with effect from the Entrance Examinations to be held in June/July 1990, i.e. for the 1 year B.A./B.Com. admissions during the academic year 1990-91 and thereafter in pursuance of the change of regulations by the U.G.C. and also to maintain the uniformity with A.P. Open University."

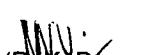
Though these documents were not form part of the record but those documents based on notification which can be taken into consideration after taking judicial notice in terms of Section 81 of Indian Evidence Act.

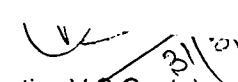
5. The UGC has taken a decision to reduce the age by making necessary amendment in its own regulation which came into existence from 04.11.1995. The decision of Senate of Andhra University reproduced herein above makes it clear that the age of admission was reduced for the first degree course from 21 to 20 years on 1st July 1990. The applicant completed the first degree course on 01.08.1998. His date of birth on the basis of document placed on record is 16.06.1974. It shows that he was 20 years plus when he took admission in the first degree course on 25.10.1994. If Senate decision of the Andhra University is taken into consideration which shows that the same has been carried out after concurrence of the UGC, then it makes a difference in the whole scenario and in such situation the first degree course completed by him cannot be said to be against the UGC regulation or norms. It is also pertinent to mention here that the Board's letter dated 30.10.2013 is not the decision of the Board itself but it was taken with the consent of UGC. The Senate decision of the Andhra University which has also been taken with concurrence of UGC cannot be ignored and hence we are of the view that Board's circular dated 30.10.2013 is not in consonance with the decision taken by the UGC by amending the regulation and reducing the age from 21 to 18 years with effect from 1995 and as such the Board's letter cannot be acted upon as it is contrary to the decision of the UGC. The Senate's decision has not been taken into consideration by the Railway Board though it was said to be in consonance with the UGC.

A handwritten signature consisting of a stylized 'S' or 'R' followed by a small 'i' and a flourish.

6. In view of the above we are of the view that Railway Board's letter dated 30.11.2013 cannot be allowed to operate in field in view of the amendment in regulation with effect from 04.11.1995 and consequently the impugned order dated 15.09.2014 is set aside. The Railway Recruitment Cell is directed to consider the case of the applicant in the light of the decision taken by the Senate of Andhra University mentioned hereinabove and in terms of the amendment in the regulation made by the UGC and pass a reasoned and speaking order within a period of 3 months from the date of receipt of a copy of this order and communicate the same to the applicant. It is made clear that the Railway Board need advise in the matter from UGC there shall be no bar for the same but the time limit should be adhered to.

With the above order O.A succeeds. There will be no order as to costs.


(P.K. Basu)
Administrative Member


(Justice V.C. Gupta)
Judicial Member

Pg