

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No. 496/2016

Dated this Monday the 18th day of November, 2019

CORAM: R. VIJAYKUMAR, MEMBER (A)
RAVINDER KAUR, MEMBER (J)

(By Advocate Shri Vicky Nagrani)

Versus

1. Union of India,
Through the General Manager,
Central Railway,
CSTM, Mumbai - 400 001.
2. The Railway Recruitment Cell,
Through Chairman, Central Railway,
Headquarters Office,
Personal Branch, CST
Mumbai - 400 010.
3. Senior Personal Officer (RT)
Railway Recruitment Cell,
Central Railway,
Chief Project Manager (Conv) Office
Building, WadiBunder,
P.D. Mello Road,
Mumbai - 400 010. Respondents.

(By Advocate Shri R.R. Shetty)

ORDER

Per: Ravinder Kaur, MEMBER (J)

This application has been filed by
the applicant under Section 19 of the

Administrative Tribunals Act, 1985 seeking the following reliefs:-

"8(a) This Hon'ble Tribunal may graciously be pleased to call for the records of the case from the respondents and after examining hold and declare that the applicant had fulfilled all the conditions as per the notification No.01/2007 and has qualified his candidature under General category.

(b) This Hon'ble Tribunal may further be pleased to direct the respondent No.2 to appoint on group D post under General category since he has qualified the same by securing 102.67 marks with all consequential benefits.

(c) Costs of the application be provided for.

(d) Any other and further order as this Hon'ble Tribunal deems fit in the nature and circumstances of the case be passed."

2. The respondents had issued Advertisement of Employment Notice No.RRC/CR/01/2007 for filing 6413 posts in Group 'D' having pay band of Rs.5200-20200 with Grade Pay of Rs.1800/- . The qualification required for the said post was 8th standard pass. The copy of the Notification annexed to the OA is Annexure A-2. The applicant applied in pursuance to the said Notification and alongwith the application form, he attached all the necessary documents including marksheets of 10th class as well as the passing

certificate. After scrutiny, the application was accepted and he was called for written examination on 16.10.2011 for which Admit card (Annexure A-3) was also issued. The applicant appeared for the examination and qualified the same vide result (Annexure A-4) published on the website, wherein the date of birth of the applicant also finds mention. Thereafter the applicant was called for Physical Efficiency Test on 19.04.2011 for which separate Admit card was issued. The applicant qualified this test also. Thereafter he was called for medical examination and documents verification on 18.01.2012, for which again separate Admit card (Annexure A-6) was issued. On medical examination he was declared fit in A-II and below category vide Medical certificate (Annexure A-7). The documents verification was also carried out. However for a considerable period of time, the applicant did not receive the offer of appointment. On inquiry from the office, he was informed that the process of issuance of offer of appointment was going on and he will be

informed accordingly. However, he did not receive any reply from the respondents. Thereafter, he sought information under RTI Act whereby he received reply dated 24.08.2015 (Annexure A-8) whereby he was informed that cut-off marks for General category is 100.33 whereas the applicant had secured 102.67 marks. He was further informed that he was ineligible for appointment since he had not submitted the birth certificate alongwith the application. The applicant filed appeal against the aforesaid reply whereby again he was provided the same information as in the reply. Consequently, he made complaint against the respondents to the Chief Vigilance Commission for cancelling his candidature on the false ground of not attaching the birth certificate when the respondents themselves have mentioned his date of birth in the result Annexure A-4 published by them. The applicant received reply dated 27.01.2016 (Annexure A-11) whereby he was informed that the application had been forwarded to Advisor (Vigilance),

Railway Board New Delhi for necessary action. Since the applicant did not receive any reply on his said complaint, he filed the present OA on the ground that the impugned action of the respondents is illegal, arbitrary and void ab-initio and that he has been denied appointment by the respondents without assigning any justifiable reason. Further, that as per clause 8.10(iv) of the Notification, he was only required to furnish attested copy of one educational qualification certificate containing proof of age and no objection from the employer, if already employed. It is stated that as per the said clause, it was not necessary to submit the birth certificate. He was required to submit the educational qualification certificate containing proof of age and to that effect he had submitted the passing certificate which contains his date of birth and SSC result alongwith the application form. On these grounds, he had sought direction to respondent No.4 to appoint him on Group 'D' post under General category since he had

secured 102.67 marks and had fulfilled all the conditions as per Notification No.01/2007.

3. The respondents have filed detailed affidavit in reply. They have contested this OA on the grounds that as per Employment Notice No.01/2007, para 8.10 (iv) the applicant was required to annex proof of age but since he failed to annex the same, his candidature was rejected in consonance with the law laid down by the Hon'ble Supreme Court on the issue. It is submitted that non-following of the instructions in the Employment Notice would lead to invalidation of the application and this is what was precisely done in the case of the applicant. That since the applicant had not enclosed the proof to establish his birth, his candidature was rejected. The respondents have placed on record the entire set of documents as Annexure R-1 which the applicant had submitted alongwith the application form. It is submitted that the candidates were advised to read the Employment Notification carefully before

filling the application form. However, it is mandatory to follow the instructions mentioned in the Employment Notice No.01/2007. The applicant had not enclosed the proof of age to establish his date of birth. He had enclosed his intermediate pass certificate dated 10.11.2004, Indian Postal Order and one photograph only. It is stated that the claim of the applicant that he had enclosed the 10th pass certificate is false. The respondents had rightly rejected the candidature of the applicant and it does not warrant any interference by this Tribunal.

3.1 The respondents have also raised the objection that the OA is barred by limitation as the eligible candidates were informed about selection on 24.02.2011 whereas the present OA has been filed on 20.06.2016 and there is delay of more than 4 years.

3.2 It is also contended by the respondents that in response to the Notification No.01/2007, 462361 number of candidates appeared for Physical Efficiency Test, out of which 31396 candidates were

found eligible for written test and the applicant ought to have been declared ineligible but was called inadvertently for the recruitment process as to scrutinize the large volume of applications the chance of error is inevitable.

3.3 The respondents have relied upon the judgment of Hon'ble Apex Court in the case of Union of India & Anr. Vs. Sarwan Ram & Anr., Civil Appeal No.9388/2014 decided on 08.10.2014 whereby it is held that the instructions issued vide Employment Notice are mandatory to be followed by the candidates or it will be treated as invalid application. Regarding the applicant being called for physical efficiency test, written test and further recruitment process, it is submitted that this was done inadvertently on the part of the respondents.

3.4 The respondents have further relied upon clause 9.5 and 10.6 of the Notification Notice to the effect that the selection of candidates by Railway Recruitment Cell/Central Railway does not confer any right to the candidate for appointment and

that before applying to the post the candidate should ensure that he/she fulfills the eligibility criteria. It is stated that the Recruitment Cell/Central Railway shall reject application for not fulfilling the requisite criteria at any stage of recruitment and if any candidate is erroneously appointed he shall be liable to be summarily removed from service.

4. No rejoinder has been filed by the applicant to the reply filed by the respondents.

5. We have heard Shri Vicky Nagrani, learned counsel for the applicant and Shri R.R. Shetty, learned counsel for the respondents. We have also carefully considered the facts and circumstances, law points and rival contentions in the case

6. Learned counsel for the applicant has submitted that the applicant had annexed alongwith the application form the certificate of qualifying the Matric examination and marksheets of inter which is mentioned in column 5 of his application form. It is submitted that it is on the

basis of Matric certificate which finds mention his date of birth, the applicant was called for Physical Efficiency Test, Written Examination and thereafter Medical Examination. Further, there is every possibility that thereafter before the arrival the stage of scrutiny of these documents the certificate of Matric was misplaced by the respondents. However, for this reason the applicant cannot be deprived of his right of appointment to the post of Group 'D'. He has laid more stress on the fact that in the result of the written test published on the website his date of birth is clearly mentioned as 19.01.1982 and this itself leads to the inference that the certificate of Matric was annexed by the applicant alongwith the application form.

7. Learned counsel for the applicant has further argued that the judgment relied upon by the respondents in the case of Sarwan Ram (*supra*) is not applicable to the facts and circumstances of the present case as the applicant had performed his obligation but due to some reason thereafter the documents

were lost from the custody of the respondents for which he cannot be allowed to suffer. He has relied on the following judgments:-

- (1) *R. Vidhya Vs. The Secretary, Tamilnadu Public Service Commission Commercial Tax Annexed Building, No.1 Greams Road, Chennai, reported in 2014 SCC OnLine Mad 6120.*
- (2) *Dolly Chhanda Vs. Chairman, Jee and Others, reported in 2005 (9) SCC 779.*

8. On the other hand, learned counsel for the respondents has submitted that all the directions contained in the Advertisement/Notification are to be followed scrupulously and in case any candidate does not follow the same, his candidature is required to be rejected. It is submitted that the applicant in the present case has not produced proof of age as required in terms of the Notification. The certificate of Matric as mentioned in the list of enclosure on the application form was not found annexed and that even the other document i.e. marksheets was also not found annexed. Therefore the candidature of the applicant was rejected. Learned counsel

for the respondents has produced the original record of the case consisting of the application form filled in by the applicant and the documents annexed in the application form. It is further argued that the form of the applicant should have been rejected at the initial stage itself, however due to large number of candidates appearing for Physical Efficiency Test and thereafter for written examination, it went unnoticed that the applicant had not complied with the directions as contained in the Notification. It is further submitted that at the stage of verification of the documents, it was detected that the applicant had not filed the proof of educational qualification containing proof of his age.

9. Learned counsel for the respondents relies upon the judgment of Hon'ble Apex Court in the case of Sarwan Ram (supra) in support of his contention. He has also relied upon clause 8.11 of the Notification which deals with the invalid application. Learned counsel for the respondents has

prayed that the OA is liable to be dismissed.

10. After hearing the submissions of both the parties, we have carefully gone through the pleadings and original record available on record.

11. Clause 8.10 sub clause iv reads as under:-

“(iv) Attested copy of only one educational qualification certificate containing proof of age. No Objection Certificate from the employer, if already employed.”

As per clause 8(iv) of the Notification, the applicant was required to furnish one educational qualification certificate containing proof of age whereas as per clause 8 sub clause (vii), the candidate was required to furnish only attested copies of educational certificate, proof of age and caste certificate etc which should be attested by Gazetted officer. If we read both clause 8(iv) and 8(vii) jointly, the purpose of the Notification was to furnish the educational qualification certificate containing proof of age or educational qualification certificate and proof of age separately. However, the applicant did not

comply with either of the directions contained in clause 8(iv) or clause 8(vii). As per the application form filled in by the applicant, he had annexed alongwith his application AHE certificate of Matric and marksheets of inter. However during scrutiny it was found that the certificate of Matric was not enclosed alongwith the application form and only intermediate pass certificate No.0536007 was found annexed beside IPO of Rs.40 and one Photograph. The contention of the applicant that the certificate of Matric which he had annexed alongwith the application form must have been misplaced by the respondents could be appreciated if the applicant had furnished the said certificate for the perusal of this Tribunal. To the contrary, he has placed on record the marksheets of secondary school examination 1999 and the certificate of passing the annual secondary examination 1999. This certificate of passing the secondary examination was admittedly not annexed with the application form. Only document found annexed alongwith the application form is

intermediate pass certificate referred above which does not find mention his Date of Birth. As such, the requirement of Clause 8.10 (iv) & (vii) has not been fulfilled. The contention of learned counsel for the applicant is that in the result published on the website his date of birth is mentioned therefore, it stands proved that he had annexed the matric pass certificate alongwith the application form. However, in our opinion, it does not give rise to any such presumption as the applicant himself had mentioned his Date of Birth on the application form which must have been noticed by the respondents and consequently it was mentioned in the result.

12. Clause 8.11 deals with "*INVALID APPLICATIONS*". The applications having any of the deficiencies and discrepancies or irregularities mentioned therein are liable to be summarily rejected. As per clause 8.11 (ix) application without proper certificates is liable to be rejected summarily.

13. Clause 10.6 of the Notification reads as under:-

"10.6 Before applying to the post, the candidate should ensure that he/she fulfills the eligibility criteria. The RRC/CR shall reject applications not fulfilling the requisite criteria, at any stage of recruitment and if erroneously appointed, such candidates shall be liable to be summarily removed from service."

As per this clause, it is bounden duty of the candidate to ensure that he fulfills the eligibility criteria. It also empowers the RRC/CR to reject the application which do not fulfill the requisite criteria, at any stage of recruitment. In case any candidate has been erroneously appointed, he shall be summarily removed from service. The Hon'ble Apex Court in the case of Sarwan Ram (supra) held that in case of non-compliance of the conditions mentioned in the Employment Notice, it is always open to the Competent Authority to reject such application being incomplete.

14. Learned counsel for the applicant has also cited the *R. Vidhya Vs. The Secretary, Tamilnadu Public Service Commission Commercial Tax Annexed Building, No.1 Grems Road, Chennai (supra)* and *Dolly Chhanda Vs. Chairman, Jee and Others (supra)* judgments in support

of his contentions. However, though we fully agree with these judgments, they do not apply to the facts and circumstances of the present case.

15. In view of the above facts and circumstances, it is observed that it was mandatory for the applicant to enclose the educational qualification certificate containing proof of age along with the application form. The application form though finds mention that he had annexed the certificate of Matric and marksheets of inter. However, when we perused the record produced by the respondents, both these documents were not found to be enclosed alongwith the application form, instead only certificate 'Bihar Intermediate Shiksha Parishad, Patna' was found annexed which is not even mentioned in para 5 of the application form. This certificate does not find mention the Date of Birth of applicant. Since the applicant has not complied with the conditions mentioned in the Employment Notice vide clause 8(iv) and 8(vii), we do not find any fault with the rejection of his

candidature by the respondents.

16. The Original Application being devoid of merits is hereby dismissed. No order as to costs.

(Ravinder Kaur)
Member (J)

,R. Vijaykumar)
Member (A)

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