

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 19093 of 2014 (O&M)

Date of decision : 26.08.2015

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Puneet Kumar Pareek

.....Petitioner

vs.

The Central Administrative Tribunal, Chandigarh Bench,
Chandigarh and others

.....Respondents

**Coram: Hon'ble Mr. Justice Surya Kant
Hon'ble Mr. Justice P.B. Bajanthri**

Present: Sh. J.S. Dahiya, Advocate for the petitioner.

Sh. Puneet Jindal, Senior Advocate with
Ms. Sakshi, Advocate for respondents No. 2 and 3.

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1. *Whether Reporters of local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

P.B. Bajanthri, J.

The petitioner is one of the candidate for the recruitment to the post of Staff Nurse in the Railways. On 30.4.2013 his candidature was rejected and he was debarred for a period of two years from 13.4.2010 to 12.4.2012. Aggrieved by aforesaid, he preferred Original Application before the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for short 'the Tribunal'). On 7.3.2014, the Tribunal upheld the order rejecting his candidature to the post of Staff Nurse and debarring him for two years and dismissed

OA No. 781-CH of 2013. Thus, the petitioner has presented this petition.

(2) On 13.3.2010, the respondents-Railway Recruitment Board (for short 'RRB'), advertised for the Staff Nurse posts. In pursuance of the said advertisement, petitioner applied for the post and he is one of the candidate.

(3) In the month of February 2012, date of examination was fixed for which the petitioner travelled from Hanumangarh, Rajasthan to Chandigarh. However, due to administrative reasons the written examination was cancelled. Thereafter, date of written examination was re-notified, for which he had appeared and passed in the written examination. It was noticed that call letter for written examination consists of two parts, one portion relates to date, time and name of the examination centre and the other portion relates to free travel authority. On the latter portion it is clearly indicated that "NOT APPLICABLE" to the petitioner. In pursuance of the selection, RRB issued letter to the petitioner asking him to appear for document verification on 22.8.2012. He travelled from Hanumangarh, Rajasthan to Chandigarh on 20.8.2012 with reference to the free travel authority issued to him by the Assistant Secretary of RRB alongwith intimation to appear for document verification.

(4) The petitioner came to know that a large number of candidates' names have been considered for the purpose of selection, even though their applications for the post of Staff Nurse was defective like without obtaining no objection certificate from their

employer. Thus invalid candidature were entertained. In this regard he had cited 4-5 names of the candidates in a representation to RRB. Since no action was taken, the petitioner sought information under the RTI about the selection and waiting list. However, RRB refused to furnish the information sought by the petitioner. Consequently, he was compelled to prefer an appeal before the competent authority. When things stood thus, on 18.2.2013 the petitioner was called to appear before RRB on 8.3.2013 at 10.00 A.M. When he appeared on 8.3.2013, the petitioner was asked many questions. In the said process, RRB officials have admitted that due to clerical mistake 'free travel authority' was issued in the name of the petitioner for which a separate action would be taken against the concerned clerk.

(5) On 10.4.2013, RRB issued show cause to the petitioner in which the petitioner was informed that he has misused the 'Free Railway Pass' and he had admitted the said fact on 8.3.2013 as he belong to un-reserved community and is not entitled to free Railway Pass which is meant for SC/ST candidates. Thus, show cause notice was issued to explain as to why the petitioner's candidature should not be rejected and debar him for two years for misusing the Free Travel Authority. The petitioner submitted his reply on 25.4.2013 explaining that the verification letter consists of two parts, one is for time and date for verification of documents and the other portion is relating to 'free travel authority'(pass). In both the portions, name of the petitioner, roll number and community was indicated and both the portions were attested by the Assistant Secretary, RRB. Ignoring the

mistake/error committed by the RRB officials, the petitioner was penalised by rejecting his candidature, as well as debarring him for a period of two years on 30.4.2013. The period of debar is from 13.4.2010 to 12.4.2012.

(6) Feeling aggrieved by the order of rejection of his candidature for the recruitment to the post of Staff Nurse and debarring him from taking of the examination for a period of two years that the petitioner unsuccessfully approached the Tribunal.

(7) Learned counsel for the petitioner vehemently contended that there is no lapse or fault on the part of the petitioner in using the free travel authority (pass) by rail for the purpose of document verification in pursuance of the communication dated 28.7.2012. The said communication consists of two parts, first part is relating to date and which are the documents to be submitted for the purpose of verification, the second part is relating to Free Travel Authority for appearing in document verification on 22.8.2012 for the post of Staff Nurse, CAT No. 01 of CEN-06/2010. The said portion consists of name of the candidate i.e. petitioner, his roll number, community, date of travel – return and outward. Both parts were signed by the Assistant Secretary, RRB. If the railway travel concession is earmarked for SC/ST candidates only, then the second portion/part should not have been filled up, like name of the candidate, his roll number, community and so also signature of the Assistant Secretary, RRB, in case it was not meant for the unreserved candidates. Due to the aforesaid mistake committed by the officials of RRB, the

petitioner got ticket in the counter. Even in the counter, concerned staff did not object and issued ticket. Therefore, the petitioner availing free travel authority for the purpose of documents verification at Chandigarh from Hanumangarh, Rajasthan, is not at the fault. In fact the petitioner borrowed the demand draft relating to the tariff for travelling from Hanumangarh, Rajasthan to Chandigarh and submitted to the RRB. At the time of issuance of call letter for examination, it was clearly mentioned that petitioner is not entitled to free travel authority by specifying "NOT APPLICABLE". Thus the petitioner had not misused free travel authority. Having regard to these factual aspects, the petitioner's candidature should not have been cancelled and so also debarring him for two years for the period from 13.4.2010 to 12.4.2012.

(8) It was further submitted that petitioner travelled on 20.8.2012 and the document verification was done on 22.8.2012, the respondents did not take any action even though they were aware of the fact that the petitioner has used the free travel authority for appearing in document verification. For the first time, petitioner was called to appear before RRB on 8.3.2013 vide communication dated 18.2.2013. When he appeared on 8.3.2013, certain questions were posed and the same were taken on record. On the same day, officials of RRB have admitted that it was clerical mistake committed by the staff in filling up the second portion of the communication dated 28.7.2012, in other words, permitting for free travel to appear for document verification. The reasons for calling petitioner and taking

certain information is due to petitioner's request for production of certain information relating to selected candidates. In fact he had sought for information under RTI and the same was not furnished. Therefore, the RRB officials had a grouse against the petitioner in questioning certain action in the process of recruitment. Further on 10.4.2013, a show cause notice was issued to the petitioner seeking his explanation for availing free travel authority, which was earmarked for SC/ST candidates and not to the petitioner who is unreserved candidate. Further, sought explanation of the petitioner as to why his candidature should not be rejected and why he should not be debarred for 2 years for misusing the free travel authority. In this regard, the petitioner had submitted factual aspect that there is no error on his part, on the contrary for the mistake committed by the RRB officials, he should not be penalised. The Tribunal did not appreciate the contentions of the petitioner. On the other hand, Tribunal considered only the error committed by the petitioner that even though he is not entitled to free travel authority for document verification, he had mis-utilized the same, therefore, action of the RRB was not interfered.

(9) The petitioner's counsel reiterated the contentions raised before the Tribunal citing that for no fault he has been punished, like cancelling his candidature and debarring him for a period of 2 years. Therefore, the decision of the Tribunal is not fair.

(10) Per contra, learned counsel for the respondents submitted that the impugned action is in accordance with law, so also the

decision of the Tribunal. Firstly, the petitioner should not have availed the free travel authority when it was meant for SC/ST candidates only. Secondly, the petitioner cannot blame the RRB officials with reference to the contents of the free travel authority form which indicates that it is earmarked for SC/ST candidates. Thirdly, the candidates have been instructed that their candidature would be cancelled and also debarred from all examinations conducted by all RRBs all over the country for a period of two years and legal action can be initiated, if warranted. When these specific instructions were issued, the petitioner's conduct is sufficient to cancel his candidature, as well as, debarring him for a period of two years.

(11) On the directions of this Court, Deputy Secretary, Railway Recruitment Board, Chandigarh has filed an affidavit on 28.5.2015, in which it was admitted that an error of omission has also been committed by the concerned official of Railway Reservation office as well. The extract of the affidavit is reproduced hereunder:-

“In the instant case, the said candidate had malafidely used free travel authority which was meant only for SC/ST candidates. This is explicitly mentioned on the call letter issued to the candidate for appearing in Document Verification stage. In this process, an error of omission has also been committed by the concerned official at railway reservation office as well. As confirmed by North

Western Railway, a departmental action has been taken against the erring staff whereby a penalty of stoppage of increments for two years has been imposed. The action of debarring of a candidate is also associated with rejection of the candidature for the particular recruitment for which he has applied. This is as per provisions of clause 14.02 of CEN-06/2010.

This would also be appropriate to mention that action of debarring against four other candidates namely, S/Sh. Prem Shankar Malav, Ram Niwas, Sushil Kumar, Narender Kumar had been taken as per the provision of clause 14.02 of CEN-06/2010. All these four candidates were also respondents in OA No. 781/CH/2013 filed by Sh. Puneet Kumar Pareek before Hon'ble CAT, Chandigarh.

On the directions dated 21.05.2015 by Hon'ble High Court, the matter for reconsideration of the petitioner's case and withdrawal of the impugned order has been considered. After due consideration by competent authority, the matter for reconsideration of petitioner's case needs to be referred to Ministry of Railways/Railway Board as such a decision shall have wide ramifications being a issue pertaining to policy matter. The

administrative process shall take time for decision on such a crucial and important matter. As regards prospective appointment, the said Sh. Puneet Kumar Pareek had appeared for recent round of selection for the post of Staff Nurse for which written exam was held on 8.2.2015. His candidature shall be considered on merit as well as terms and conditions published in reference to such a selection. The Hon'ble Court may therefore, grant further time for reconsideration of the matter being related to policy issue.” (emphasis applied)

(12) Further this Court directed to file affidavit regarding reconsideration of the petitioner's case. The authorities have reconsidered and rejected on 7.7.2015. A copy of the communication has been made available by way of filing affidavit by the Deputy Secretary, Railway Recruitment Board, Chandigarh. The reasons for rejection of the petitioner's claim is that if a candidate who is yet to join government service uses manipulation and misuse of authority to travel to bona fide candidates of weaker section, he can play havoc, if he joins the government. Further contended that 'corruption', whether small or big is after all corruption and such candidates should not be allowed to join government service.

(13) We have heard counsel for the parties and gone through the record.

(14) The petitioner has been denied for selection to the post of

Staff Nurse on the ground that 'free travel authority' was mis-utilized by him on 20.8.2012 for production of documents and verification. As already it was noticed that the said communication dated 28.7.2012 consists of two parts, one is relating to production and verification of documents and the second part is relating to availing free travel authority. By oversight, the officials of RRB might have filled up the second part which was earmarked for SC/ST candidates. The said issue was undisputed and it was admitted by the RRB officials in the affidavit. Therefore, the petitioner should not be blamed when there is a patent mistake committed by the recruiting authority. The aforesaid patent mistake is further evident from the fact that the petitioner was called for written examination. The said communication also consists of two parts, one part relates to date, time and venue of examination and second part relates to free travel authority. However, on the 2nd part it was clearly mentioned that "NOT APPLICABLE" for the reason that petitioner was non-SC/ST candidate. Moreover the impugned action by the RRB should have been taken in the month of August 2012 i.e. after availing the travel authority on 20.8.2012. Till 10.4.2013, no action was taken.

(15) There is every possibility and strong reasons to believe that the proposal to cancel the candidature of the petitioner and debarring him, is due to the fact that he was pursuing the grievance like seeking certain information of the selected candidates even though they were not eligible on various grounds. In fact, the petitioner sought information under RTI, which was denied by the

RRB. In this backdrop the RRB issued a show cause notice seeking the explanation of the petitioner why his candidature be not cancelled and debar him for a period of two years. Thereafter, ignoring the reply of the petitioner, his candidature was cancelled and he had been debarred for two years. The dates and events indicates that there is a mala fide action on the part of the RRB. It is evident from highly execrated language like 'corruption' used in the latest communication dated 7.7.2015, which has been referred to in detail. The decision of the RRB is that misuse of free travel authority by the petitioner amounts to corruption, which shows that somehow the petitioner's non-selection is to be defended.

(15) Having regard to the fact that RRB officials have misled the petitioner while filling up the second portion of the communication dated 28.7.2012, for production of documents and verification and further an error had also been committed by the concerned official at railway reservation office that the petitioner travelled from Hanumangarh, Rajasthan to Chandigarh vide free travel authority, therefore, we are of the view that due to the mistake committed by the RRB officials at two stages in respect of free travel authority, the petitioner cannot be blamed, when he had pointed out defective applications were entertained by the RRB. Therefore, the RRB must have acted validly for a discernible reason and not whimsically for any ulterior purpose. Viewed thus, and considered in the background of the factual details and materials on record, there is an absolutely need for this Court to interfere with the impugned

orders, we are inclined to set aside the order of the Tribunal dated 7.3.2014 passed in OA No. 781/CH/13 (Annexure P-1) and the order No. RRB/CDG/Debar/2012/Staff Nurse/CAT.01 dated 30.4.2013 issued by the RRB, Chandigarh, (Annexure A-22). The respondents are directed to reconsider name of the petitioner for appointment to the post of Staff Nurse within two months and to extend all service benefits except backwages and strictly as per his merit.

(16) Accordingly, the writ petition is allowed.

(17) No order as to costs.

(**Surya Kant**)
Judge

(**P.B. Bajanthri**)
Judge

August 26th, 2015.
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