



**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**

D.B. Civil Writ Petition No. 1587/2022

1. Union Of India, Through The General Manager (Personnel), North Western Railway, Headquarter's Office, Near Jawahar Circle, Jaipur (Rajasthan).
2. The Assistant Personnel Officer (Rectt.), North Western Railway, Durgapura, Jaipur.

----Petitioners

Versus

Harendra Gawaria S/o Shri Khinwa Ram, Aged About 31 Years,  
Resident Of Village Jasrana Tehsil Nawa, District Nagaur  
(Rajasthan)

----Respondent



For Petitioner(s) : Mr. P.C. Sharma, Adv., through VC  
For Respondent(s) : Mr. Devendra Sharma, Adv., for  
Mr. Balram Vashistha, Adv., through  
VC

**HON'BLE MR. JUSTICE PANKAJ BHANDARI  
HON'BLE MR. JUSTICE ANOOP KUMAR DHAND**

**Judgment**

**04/02/2022**

**Reportable:**

**(BY THE COURT:- PER HON'BLE JUSTICE ANOOP KUMAR  
DHAND)**

1. This writ petition has been filed by the petitioners under Article 226/227 of the Constitution of India, against the order dated 12.10.2021 passed by the Central Administrative Tribunal, Jaipur Bench, Jaipur (for short 'The Tribunal'), in the original application No.291/683/2013 whereby the original application filed by the respondent was allowed and the petitioner No.1-Union of India has been directed to give appointment to the respondent on the post of Group-D with all consequential benefits and the said



exercise was to be carried out within three months from the date of receipt of a certified copy thereof.

2. Skeleton facts of the case are that the North Western Railway Recruitment Cell issued an advertisement No.02/2010 on 16.12.2010 by which the applications for recruitment on several posts of Group 'D' i.e. Track Man, Traffic Khallasi, Helper, Cleaner, Cook etc. were invited, in pursuance of the said advertisement, the respondent submitted an application under the category of Other Backward Class (OBC). After participation in the process for selection, he qualified in the written examination and appeared in physical eligibility test. Thereafter, he was called for the medical test, in which, he was qualified. Finally, respondent was found fit but, subsequently his candidature was rejected vide order dated 29.07.2013 issued by the Department of North Western Railway for the reason that the Postal Order submitted by him was not within limitation.

3. The respondent feeling aggrieved by the order of rejection of his candidature, submitted the Original Application before the Tribunal pleading therein that the Postal Order submitted by him was well within the parameters and the amount of said Postal Order was received by the Railway Department and the same was also credited in its account but inadvertently, in the application form, the wrong year of Postal Order was mentioned. The respondent pleaded in the Original Application that he personally approached the Office of Railways and requested that the amount of Postal Order was proper but by inadvertent mistake, the date of Postal Order was mentioned as incorrect, which he prayed to be corrected. The respondent further pleaded that the amount of Postal Order was received by the Railway Authorities and after



that he was allowed to participate in the process of recruitment and ultimately he was declared qualified but his candidature has been wrongly rejected only on a hyper-technical ground.

4. The petitioner No.1 i.e. Union of India opposed the averments made in the Original Application filed by the respondent by pleading therein that as per condition No.8.11 of the Advertisement, the respondent was ineligible to get appointment and his candidature was rightly rejected by the authorities.

5. After hearing both the sides, the learned Tribunal while allowing the Original Application filed by the respondent, directed the petitioners-Department to give appointment to him on the post of Group-D with all consequential benefits.

6. Aggrieved by the impugned order dated 10.12.2021 passed by the Tribunal, the petitioner has preferred present petition.

7. Counsel appearing for the petitioners has argued that the respondent is not entitled to get appointment in view of the provisions contained in Para No.8.11 of the Advertisement dated 16.12.2010. The respondent has mentioned the details of the Postal Order issued on 20.01.2010 in his application form and as per Sub-para (XV) of Para 8.11 of the Advertisement, the application form of the respondent was liable to be rejected on the ground of furnishing incorrect information by him. Counsel argued that in para No.7.4 of the Advertisement, it is clearly mentioned that the Postal Order/Bank Drafts/Pay Order for payment of requisite fee issued prior to the date of advertisement or beyond the validity of six months, will not be accepted. Thus, in view of the conditions mentioned in Para Nos.7.4 and 8.11 of the Advertisement, the candidature of the respondent was rightly



rejected and the Tribunal has committed an error in allowing the Original Application filed by the respondent.

In support of his contentions, counsel for the petitioners has placed reliance upon the judgments delivered by the Hon'ble Apex Court in the cases of "Union of India & anr. Vs. Sarwan Ram & anr." decided on 08.10.2014 in Special Leave to Appeal No.706/2014 and in the case of "Bedanga Talukdar Vs. Saifudaullah Khan & Ors." in Civil Appeal Nos.8343-8344 of 2011 decided 28.09.2011.

8. Per contra, the counsel appearing for the respondent opposed the submission advanced by the counsel appearing for the petitioners and submitted that the date of advertisement was 16.12.2010 and the respondent submitted a Postal Order No.87F 980777/78 issued on 20.01.2011, which was enclosed with the application but by mistake through an oversight inadvertently, he could not mention in the application form the date of Postal Order as 10.01.2011. Counsel submitted that the amount of Postal Order was accepted by the petitioner-Department and the same was credited in its account and after accepting the same, the respondent was allowed to participate in the selection process. Thereafter, he was qualified in the written test, physical efficiency test and the medical test. Lastly, counsel argued that the mistake committed by the respondent has not caused any prejudice to any third party. Thus, the Tribunal has not committed any illegality in allowing the application filed by the respondent.

9. Heard counsel for the parties and perused the documents available on record.

10. The question which needs to be considered in this petition is whether the candidature of the respondent can be rejected by the





Department of Railways on the ground of human error/bona fide mistake only because the date of the Postal Order was wrongly mentioned by him in the application despite the fact that Postal Order was issued within the period of limitation. But by a human error, the respondent mentioned the wrong date of the postal order as 10.01.2010 instead of correct date i.e. 10.01.2011?

11. After going through the factual material of the case, it is found from the record that in pursuance of the advertisement dated 16.12.2010 issued by the petitioner-Department, the respondent submitted the application form along with the requisite Postal Order and other relevant documents. Thereafter, he participated in the entire selection process and cleared the written test, physical efficiency test and medical test and finally he was found fit but his candidature was rejected by the Department vide order dated 29.07.2013 mainly for the reason that the postal order submitted by him was not within limitation. The Postal Order submitted by the respondent was of proper amount bearing No.87F 980777/78 and it is not the case of petitioner-Department that the respondent has not enclosed with the application form, the postal order or the amount of postal order was inadequate but the only objection raised by petitioner-Department that the date mentioned in the application form regarding postal order was 10.01.2010. In fact the date of postal order was 10.01.2011. It is not disputed by the counsel for the petitioner-Department that the amount of Postal Order was credited in the account of the Railway Department. The only objection raised by the petitioner-Department is that the date of Postal Order as mentioned in the application was beyond the validity of six months.



12. "To err is human, to forgive is divine", the mistake can be of two kinds. First kind of mistake would not be where no body is affected by a mistake and the second mistake where a third party is affected by a mistake. The difference in two mistakes would be that whereas the rectification of the first mistake would cause no prejudice, rectification of the second would cause a prejudice.

13. This analogy has been taken for consideration by the Co-ordinate Bench of this Court while deciding D.B. Civil Special Appeal (Writ) No.1700/2017 on 01.11.2017 in the case of "Kavita Chaudhary Vs. Registrar (Examination), in which this Court has held that the human error can be rectified provided, no third parties' right is affected. It has also been held that a bona fide mistake which does not affect a third party right, should be allowed to be cured if the rectification of the said mistake would cause no prejudice to anyone. In the said judgment, this Court has placed reliance on the judgment "State of Rajasthan Vs. Datar Singh, in D.B.S.A.W. No.875/2012 decided on 11.10.2017.

14. This is not a case where fraud has been committed by the respondent. But the error/mistake was there on the part of the respondent in mentioning the incorrect date of the Postal Order in the application. Once the application was accepted by the petitioner-Department after getting the requisite fee amount of Postal Order, which was credited in its account and subsequently the respondent was allowed to participate in the recruitment process, the petitioner-Department cannot be permitted to reject the candidature of the respondent merely on hyper-technical ground. It is expected from the welfare state to act fairly. But in this case, the action of the petitioner-Department was totally unfair in rejecting the candidature of the respondent only on the



ground that he mentioned the incorrect date of the postal order as 10.01.2010 in place of 10.01.2011. When once the requisite amount of fee was credited in the account of the petitioner-Department and after that the respondent was allowed to participate in the entire recruitment process, then the petitioner-Department is stucked to change its stand.

15. It is the settled position of law that whenever there is a conflict between the substantial justice and hyper-technicality then the substantial justice should be preferred to avoid the defeat for the ends of justice. If the hypertechnical stand of the petitioner is allowed to stand as it is then it would amount to failure of justice.

The judgments cited by the counsel for the petitioners are not applicable to the facts of the present case.

16. Looking to the facts and circumstances of the case as also the fact that the only mistake committed by the respondent in his application form was that he, by mistake, mentioned the date of Postal order as 10.01.2010 instead of 10.01.2011. This Court finds that after accepting the application from of the respondent, the amount of Postal Order enclosed with the application form was accepted by the petitioner-Department which was got credited by the petitioner-Department. And on the basis thereof, respondent was allowed to participate in the entire recruitment process, it is not a case where the petitioner is either claiming any change of category or seeking any benefit of reservation to defeat the right of any person.

17. After hearing counsel for both the parties and looking to the material available on record, this Court is of the considered opinion that the contentions put forth by the counsel for the petitioners do not carry any merit. The Court is unable to accept



the case of the petitioners. The order passed by the Tribunal does not require any disturbance in the hands of this Court. Thus, the order dated 12.10.2021 passed by the Central Administrative Tribunal, Jaipur Bench, Jaipur in OA No. 291/683/2013 is confirmed.

18. The petitioner-Department is directed to give appointment to the respondent on the post of Group-D with all consequential benefits, if he is otherwise found suitable for the said post, except monetary benefits. The said exercise shall be carried out by the petitioner within a period of three months from the date of receipt of a certified copy of this order.

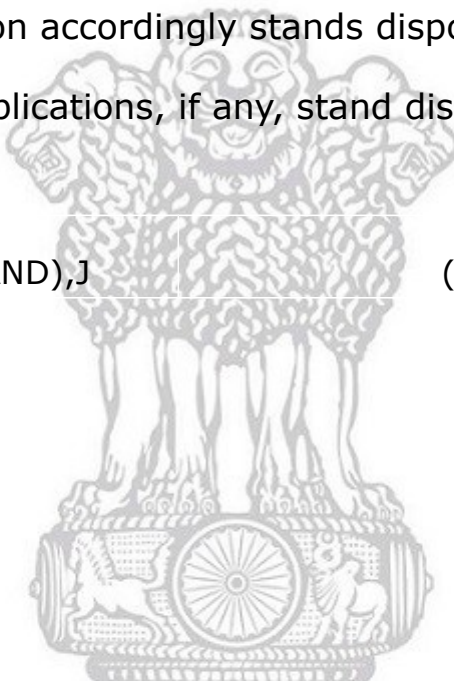
19. The writ petition accordingly stands disposed of.

20. All pending applications, if any, stand disposed of.

(ANOOP KUMAR DHAND),J

(PANKAJ BHANDARI),J

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