

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA 523/2011
With
MA 317/2013, MA 210/2013 & MA 211/2013**

Reserved on : 04.12.2019
Pronounced on: 09.12.2019



C O R A M

**HON'BLE MR. JAYESH V. BHAIKAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER**

1. Shyam Narayan Yadav, S/o- Late Rameshwar Yadav, Resident of Village- Sautadih, Post Office- Santadih, P.S.- Belhar, District- Banka. At present posted as J.E. (Works) EC Railway, Dhanbad under E.C Railway Zone, Hajipur, Division Dhanbad, District- Dhanbad.
2. Ratan Shankar, S/o- Ramdhan Prasad Sah, Resident of Village- Mirjapur, Post Office- Mirjapur, P.S.- Shambhu Ganj, District- Banka. At present posted as J.E. (Works), EC Railway, Gomoh, Division- Dhanbad, District- Dhanbad under EC Railway Zone- Hajipur.
3. Faiyaz Alam, S/o Sarfuddin, Resident of Village- Kathari, P.S.- Sathi, District- West Champaran at Bettiah. At present posted as J.E. (P.Way), EC Railway, Barauni, District- Begusarai, Division- EC Railway, Sonpur, District- Sonpur.

.... Applicants.

By Advocate: - Mr. Praveen Kumar with Ms. Madhuri Kumari

-Versus-

1. The Union of India, through the General Manager, EC Railway, Hajipur, District – Vaishali at Hajipur.
2. The General Manager (Personnel), East Central Railway, Hajipur.
3. The General Manager (Vigilance), East Central Railway, Hajipur, District- Vaishali at Hajipur.
4. The Principal Chief Engineer, East Central Railway, Hajipur, District- Vaishali at Hajipur.
5. Shambhu Kumar, Son of Sri K.N. Prasad, at present working as AEN/TMC at Dhanbad, EC Railway.
6. Sanjay Kumar, S/o- not known to the applicant at present working as AEN/CON Officer, Rest House near Railway Station, PO- Morwa, District- Singrauli, Pin- 486889 (M.P.).
7. Samar Kant Pathak, S/o – not known, at present posted as AEN/Con Dy. CE Rajgir, EC Railway, At+ PO – Rajgir, Distt.- Nalanda, Pin- 803116.
8. Manoj Kumar, S/o not known, at present posted as AEN/Saharsa, PO+ District- Saharsa.



9. Navin Kumar Singh, S/o not known, at present posted as AEN/West Barauni, District- Begusarai, EC Railway, Pin- 851112.
10. Narendra Kumar Singh, S/o not known, at present posted as AEN/Under Dy. CE (CON), Barkakana, E.C. Railway, P.O.- Barkakana, District- Ramgarh, Pin- 829102.
11. Vijay Kumar Singh, S/o not known, at present posted as AEN/Works/EC Railway, Hajipur, Pin- 844101.
12. Milind Kr. Shukla, S/o not known at present working as AEN/Town Engineer, DRM Officer, EC Railway, Samastipur, Pin- 848101.
13. Manohar Lal, S/o not known, at present working as AEN under Dy. CE, Dhanbad, Pin- 826001.
14. Shailendra Kumar, S/o not known, at present working as AEN/CON/Raxaul, C/o Dy. CE Narkatiyaganj, District- West Champaran- 845455.
15. Krishna Nandan Prasad, S/o not known, at present working as Work Shop Project, WP Engineering Chamber Bhawan, JC Road, Patna- 800001.
16. Vijay Shankar Singh, S/o not known, at present working as AEN/Officer of Dy. CE (CON), Samastipur, Pin- 848101.

....

Respondents.

By Advocate(s):- Mr. Bindhyachal Rai for UOI
Mr. S.N. Madhuvan for Respondent No. 6.

ORDER

Per Dinesh Sharma, A.M:- In the instant OA, the applicants have prayed for the following reliefs: -

“(i) That your Lordships may graciously be pleased to quash the final result dated 19.05.2011 contained in Annexure-A/13 and consequential order dated 24.05.2011 contained in Annexure-A/14 with a direction to publish fresh result in accordance with the clearance report of CVC/Board received by the office of the respondents.

(ii) That the respondent be further directed to sort out the name of the candidates who have been said to have illegally included in the result dated 07.08.2009 as per the vigilance report vide No. ECR/VIG/SS/08-09/669 and prepare a fresh list and publish the fresh result thereafter.

(iii) That the respondents be further directed to produce before this Hon'ble Tribunal all the answer sheets of the successful candidates as per result dated 7.8.2009 and the answer book of Shambhu Kumar (Respondent No. 5) as well as the report of board/CVC and the original Vigilance report vide no. ECR/VIG/SS/08-09 as well as the list prepared after interview and sent for approval and the list prepared before publication of final result dated 19.05.2011 introducing the name of respondent no. 5.

(iv) That the respondent be further directed to include the names of the applicants in the final result dated 19.05.2011, after excluding the name of candidates wrongly included in the result dated 7.8.2009 and 19.05.2011 with all consequential benefits.

(v) Any other relief or reliefs including cost of the proceeding may be allowed in favour of the applicants."

2. The main ground for seeking these reliefs is that the respondent no. 5 who was not originally found successful in the result published on 07.08.2009 has been later included on the basis of false representations and litigations resorted to by the respondent no. 5. They have also alleged that the final result was not published since the three members who prepared it included the then Principal Chief Engineer who himself had a case pending against him because of which the vigilance clearance of Principal Chief Engineer took nearly one and half years and in the meantime everything was manipulated and changed at the instance of respondent no. 5. Since the name of the respondent no. 5 has been wrongly included and since a large scale of bungling was committed by the respondents making interpolation in the answer books



of the candidates only to introduce the name of Shri Shambhu Kumar, respondent no. 5. The applicants have prayed for quashing the final result and for declaring to exclude the name of the candidate who has been illegally included.

3. The respondents have filed their written statement and denied the claim of the applicants. While not denying the facts in general which are matter of record, they have denied that any pressure was created on the administration by Shri Shambhu Kumar (and Shri Sanjay Kumar). They have accepted that there was delay in publication of result due to investigation in the matter but have denied any charges of manipulation etc. The corrective action has been taken by the respondents after irregularities were found during vigilance investigation relating to evaluation of answer sheets. On the basis of such investigation initiation of minor penalty proceedings was advised against the evaluators of the written examination. However, following the judgment of the Hon'ble Supreme Court circulated vide Railway Board vide letter No. E(GP) 2004/2/72 dated 08.09.2005 wherein it has been observed that selection should not be cancelled unless there is large scale infirmities and correction should be done from the stage the irregularities occurred, corrective action was taken by the administrator and question no. 2 of paper-1 of candidate of copy code- 451 (of Shri Shamabhu Kumar) was re-evaluated. In substance, the written statement has argued that the re-evaluation in case of Shambhu Kumar and his



consequent inclusion should not be a cause for cancelling the whole result sheet and therefore the OA should be rejected.

4. MA 317/2013 has been filed during the pendency of the OA again suggesting foul play in the process of selection and requesting the Tribunal for calling the entire records of the aforesaid examination. He has also filed MA 211/2013 for accepting deemed service to respondents no. 5 to 16 and MA 210/2013 for extending the life of the panel which is under challenge in the OA. The respondents have replied to the MA stating that all relevant documents have been supplied to the Tribunal.



5. This case was earlier decided by this Tribunal along with OA 522/2011 by its order dated 04.08.2015 and RA filed against that decision was disallowed by this Tribunal's order dated 06.11.2015. However, the applicants approached the Hon'ble High Court in CWJC 20007 of 2016 wherein the Hon'ble High Court vide order dated 01.02.2018 have directed this Tribunal to hear the OA again by giving an opportunity to the parties and pass a fresh order with regard to their status and claim. The relevant portion of the order of Hon'ble High Court dated 01.02.2018 is reproduced below: -

“ With due respect to the Tribunal, there was an obligation to at least deal with the facts and issue raised even by these petitioners, which, according to them, has not been taken note of at all while dealing with two OAs. The thrust of adjudication is basically on the issue raised in OA 523/2011.

It will be in the interest of things, that OA 523/2011 is heard by giving an opportunity to the parties and a fresh order with regard to the status and claim is passed.

It is also further clarified that since the status of respondent no. 5 to the present writ application, namely, Shambhu Kumar has already been adjudicated by the Division Bench and upheld by the Hon'ble Supreme Court, therefore, any decision, which will be rendered by the Tribunal, will not cause any reflection on the position in which the private respondent no. 5, Shambhu Kumar is as of now.



For the reasons indicated above, as a consequence thereof, the order passed in review, which is RA 38/2015 dated 06.11.2015 is also quashed and set aside. The matter is remitted back to the Tribunal in terms of the direction as above.

Writ applications are disposed off. ”

6. Following the direction of Hon'ble High Court, an MA 282/2018 has been filed by the applicant in which they have reiterated the facts mentioned in the original OA. The respondents have filed reply to this MA where they have stated that the MA is contrary to the records of the case. The results have been declared on the basis of the written examination (held on 06.06.2009 and 07.06.2009) and subsequent viva-voce test held on 11.03.2010 and 18.05.2011. The applicant in this MA did not secure aggregate 60% overall marks and was therefore not empanelled for the post of PEN/Gr. B (30%). They have also reiterated (what was earlier mentioned in the written statement) that proper

procedure has been followed in the re-evaluation and the charges of manipulation are baseless.

7. Following the direction by the Hon'ble High Court, the matter was re-heard. During the course of the arguments, a specific query was put to the learned counsel for the applicant about the specific aspect in which the prayer sought in this OA was materially different from the reliefs sought in OA 522/2011. The learned counsel fairly submitted that though the examination process to which this and the other OA related and the reliefs sought were materially no different, the grounds for seeking such relief were different. It was also brought to the notice that the earlier decision of this Tribunal in this matter was challenged by Shri Shambhu Kumar in the Hon'ble High Court of Patna in CWJC No. 13423 of 2015 and the Hon'ble High Court in their order dated 08.10.2015 set aside the order of the Tribunal on merit and restored the position as in the final results and final select list. The Hon'ble High Court while passing the order remitting the matter back to this Tribunal was aware of this decision and had therefore specifically clarified that any decision by this Tribunal in this OA will not cause any reflection on the position of private respondent no. 5 Shambhu Kumar.

8. We have gone through the pleadings again and we find that though there are other issues raised for cancellation of the selection process seeking our intervention in checking the records of the whole evaluation, the main ground for questioning the selection was the



alleged illegal inclusion of Shri Shambhu Kumar. We are now barred from looking into that matter since it has been decided by the Hon'ble Division Bench of Patna High Court and that decision has been reported to be upheld by the Hon'ble Supreme Court. The applicants have not produced any material to substantiate their other charges about mistakes in evaluation and this Tribunal cannot substitute its judgment, for the judgment of qualified examiners/evaluators, in the absence of any proof of alleged malafides. The pendency of a vigilance case against one of the persons who conducted the enquiry, following allegations of irregularity in the examination process, cannot, by itself be a reason for suspecting the findings of the inquiry process. It was also brought to our notice, by the learned counsel for the respondents during hearing, that following the examination in the year 2010 there have been further such examinations for promotion in the subsequent years and the applicants who failed in that examination had ample opportunity to appear in the subsequent examinations and get promotion. In the aforesaid circumstances, we find that the reliefs sought by the applicants, on the grounds mentioned in their OA, cannot be granted now when the main ground for seeking this relief has failed and no sufficient evidence has been produced to support any of the other grounds. The OA and MAs are, therefore, dismissed. No order as to costs.

[Dinesh Sharma]
Administrative Member
Srk.

[Jayesh V. Bhairavia]
Judicial Member

