

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 20 DAY OF 11 2009)

Hon'ble Mr. A.K. Gaur, Member (J)
Hon'ble Mr. D.C. Lakha Member (A)

Original Application No. 1657 of 2004
(U/S 19, Administrative Tribunal Act, 1985)

Bal Krishna Son of Sri Sheo Prasad, Presently posted Ex Now TXR/MGS, Eastern Railway Mughal Sarai.

..... *Applicant*

Versus

1. Union of India through the Secretary Ministry of Railway, New Delhi.
2. The Railway Board, Rail Bhawan, New Delhi, through its Chairman.
3. The General Manager, Eastern Central Railway, Hazipur.
4. The Chief Personnel Officer, Eastern Railway, Hazipur.
5. The Senior Divisional Personnel Officer, Eastern Railway, Mughal Sarai.
6. The Divisional Railway Manager, Eastern Central Railway, Mughal Sarai.

..... *Respondents*

Present for Applicant : Shri Jamwant Maurya

Present for Respondents : Shri Anil Kumar

ORDER

(Delivered by Hon'ble Mr. A.K. Gaur, J.M.)

This is third round of litigation between the parties. To bring out the point in dispute, the little detailed facts is required to be mentioned. Respondents invited applications to fill up 40% promotional quota to the post of Train Examiner in the grade of Rs.1400-2300/- As the applicant was

also eligible, he along with others appeared in the test held on 11.05.1996. The applicant appeared in viva-voce test held on 19.08.1996 and 26.08.1996 along with other candidates. The final panel was notified on 27.08.1996. In the final panel name of the applicant was placed at serial no.14. The applicant was required to go under training of six weeks, and thereafter to resume duties on the post. The applicant was surprised to receive the information dated 24.10.1996 that the panel dated 27.08.1996 has been cancelled by the respondents on the grounds of some procedural defects. The applicant preferred representation to the Competent Authority against the cancellation of the panel but no heed was paid to the representation of the applicant by the respondents and a fresh selection was notified vide letter dated 25.10.1996 fixing 05.11.1996 for the date of written examination.

2. Feeling aggrieved the applicant along with one Bishwanath Baur and several other persons filed O.A. No.1149 of 1996, and the Tribunal granted interim order staying the holding of fresh selection. By means of the judgment and order dated 16.09.1997, the said O.A. was decided by making following observations:-

"19. In the present case, we have recorded our findings earlier above that considering the facts and circumstances of the case there was no justification to cancel the entire panel. The panel could have been amended by deleting the names of those in respect of the candidates the committee had noticed the irregularities and we have also discussed earlier. We are in respectful agreement with that what is held in the judgment of Kanhaiya Lal.

20. In view of what has been deliberated above the application is allowed and the impugned order dated 15.10.1996 is quashed. Orders dated 22.10.1996 and 25.10.1996 are also quashed. This will however not preclude the respondents from suitably amending the panel with a view to

delete the names of the applicants in respect of whom irregularities have been found. No order as to costs. Stay order dated 1.11.1996 is vacated."

3. After considering the direction contained in Tribunal's order, the respondents have issued fresh panel dated 13.02.1998. In this panel the name of the applicant does not find place. Aggrieved by the said action of the respondent, applicant filed O.A. No.462 of 1998 on the ground that the principle of natural justice has not been observed by the respondents and none of the applicants were given any show cause notice. It is also pleaded that on what grounds the name of the applicants have not been included in the subsequent list, is not disclosed by the respondents. In the earlier O.A. No. 1149 of 1996 the Tribunal had not observed anything against the applicant. While deciding the O.A. No.462 of 1998, it was observed by the Tribunal that if after the Tribunal's order in O.A. No.1149 of 1996, if any adverse material was found against the applicant, it was necessary to issue a show cause notice and to provide an opportunity of being heard. In absence of the same, the name of the applicant could not have been deleted from the panel. In view of the said observations, O.A. is allowed. The Tribunal in operative portion of the judgment in paragraph no.7 of O.A. No.462 of 1998 issued following directions:-

"7. In view of the above discussions, the O.A. is allowed. The respondents are directed to issue show cause notice in case any material adverse to the applicant for non-inclusion in the panel is available and after considering applicants reply, pass an appropriate orders. In case no adverse material is available against the applicants, the respondents shall include their names in the final panel dated 13.2.1998 at appropriate place in order of merit. In case the merit gets disturb, the respondents shall give opportunity to the affected persons and after following due procedure, the name of two applicants

shall be included in the final panel. They shall be given appointment with all consequential benefits admissible under the rules. Costs easy."

4. In the counter reply filed by the respondents, it is alleged that as the aforesaid panel was cancelled by the DRM, the matter was referred to Head Quarter and after approval of CPO vide letter dated 13.02.1998, the list of 11 successful candidates was published. In the case of the applicant the Tribunal had inadvertently indicated wrong serial numbers and as such the Railway Administration again moved before the Tribunal vide O.A. No.1449 of 1998 for necessary correction and corrected list was received on 29.10.1998 and after obtaining approval of the competent authority, the names of Sri Sheo Mangal (SC) and Sri Om Prakash Singh both fitters were included in the selection panel of TXR published vide letter dated 13.11.1998. The applicant and Sri Bishwa Nath Baur filed O.A. in the Tribunal registered as O.A. No.462 of 1998, which was decided by the Tribunal on 26.05.2004. The Tribunal clearly directed that the applicant's name was also in the final panel of TXR and accordingly, direction was given that it is for the respondents to show the reasons for non-inclusion of his name in the said panel and if any adverse material was found in O.A. No.1149 of 1996 against the applicant, it was necessary to issue a show cause notice and to provide an opportunity of hearing. O.A. was allowed on the ground that principle of natural justice was violated by the respondents.

5. In order to ensure the compliance of the direction of the Tribunal, the applicant was called by the respondents vide letter dated 03.07.2004 and

✓

was given opportunity of hearing by the then Sr. D.P.O. and also suitable reply was given by him by passing speaking order vide letter dated 08.07.2004. It was clearly brought to the notice of the Tribunal that as per joint enquiry report of J.A. Grade Officer irregularities have been found by the respondents to the extent that the applicant used un-stamped papers and using different ink in writing bearing code no.Z22. It is also submitted by the respondents that the applicant has already been promoted as TXR against 20% quota. The Competent Authority on the basis of joint enquiry report of JA grade committee has decided to delete the name of the applicant in respect of whom irregularities were detected. The Tribunal in its judgment passed in O.A. No.1149 of 1996 had given full powers to the respondents to implement the judgment by deleting the names of those candidates against whom irregularities were found. In O.A. No.1149 of 1996 there was no direction to issue any show cause notice to the applicant. According to the respondents, the O.A. is barred by Principle of Resjudicata and order 2 Rule2.

6. By filing Rejoinder Affidavit, applicant denying the averments contained in the Counter Affidavit and submitted that no such instruction was given about the non use of different ink in subjective examination, against the 40% quota. The applicant has been promoted against 20% quota as TXR, but has become junior to the others, who had appeared and placed in the panel under 40% quota. According to the applicant, the respondents

supplied un-stamped papers to the applicant and the same was used in continuation from the first answer-sheet to another copy.

7. We have heard Sri Jamwant Maurya, learned counsel for the applicant and Sri Anil Kumar, learned counsel for the respondents and perused the written arguments filed by the parties counsel.

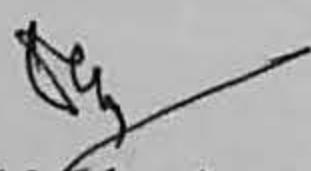
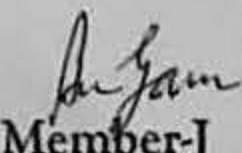
8. It is argued by the learned counsel for the applicant that there is no finding of the respondents that different handwritings are available on the answer sheet and enclosed un-stamped papers. The respondents have neither compared the signature of invigilator nor examined him during the course of enquiry. The order dated 08.07.2004 has been passed on the basis of surmises and conjecture and on the basis of earlier report.

9. Learned counsel for the respondents vehemently argued that in the joint inquiry report of three JA Grade Officers, clearly mentioned certain irregularities being committed by the applicant by using un-stamped papers and using different ink in the answer-sheet. Various paragraphs of the Counter Reply (Para-3A to Para-3L) have not evasively been denied by the applicant.

10. We have heard the rival contentions and also gone through the entire material on record as well, and found that the name of the applicant could not be included in the said panel due to reasons indicated above. The applicant was granted opportunity of personal hearing in pursuance of the order and direction of the Tribunal, and after considering the case of the

applicant speaking and reasoned order has been passed by the Competent Authority. A perusal of the speaking order passed by the Competent Authority clearly indicates that joint enquiry was conducted, and answer sheets were re-checked by the committee and it was found that applicant's (Code Z-22) had attached un-stamped papers with answer-sheets and also used different ink in writing which is an irregular practice. The competent authority after giving full and final consideration of the case of the applicant decided to delete his name on account of the aforesaid irregularities. We have noticed that in pursuance of the order and direction of the Tribunal in O.A. No.1149 of 1996, the respondents were duly authorized to delete the name of those candidates against whom irregularities were found. Moreover, no such direction was given by the Tribunal to issue show cause notice to the applicant. Even giving of show cause at such a belated stage would have been an empty formality. The respondents have acted in accordance with the direction of the Tribunal.

11. Having heard parties counsel at considerable length, we are fully convinced that proper and adequate opportunity has been granted to the applicant, we find no merit in the present case and is accordingly, dismissed with no order as to costs.


Member-A
Member-J

//Sushil//