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Reserved

Central Administrative Tribunal, Allahabad.

Registration T.A.No.328 of 1987(W.P.No.3957 of 1979)

Gopal Narain Kapoor
and two others ... Petitioners.

Vs.

Union of India and
4 others ... Respondents.

Hon.D.S.Misra, AM
Hon.G.S.Sharma, JM

(By Hon'ble G.S.Sharma, JM)

This writ petition under Article 226 of the Constitution of India has been received from the High Court of Judicature at Allahabad u/s.29 of the Administrative Tribunals Act XIII of 1985.

2. The petitioners had joined the N.E.Railway as Inspector of Works, Asstt. Inspector of Works and Asstt. Bridge Inspector respectively and the next post to which the petitioners were entitled to promotion according to the rules of their service is the post of Asstt. Engineer. The allegation of the petitioners is that the petitioners were due for promotion as Asstt. Engineers. The post of Asstt. Engineer is a selection post and the selection for this post is held in accordance with rules 132 and 133 of the Railway Establishment Code Vol.I. The petitioner nos. 1 and 2 claim themselves senior to the respondent nos.4 and 5 and the petitioner no.3 claims himself senior to the respondent no.5. The selection process was started for filling up two posts of Asstt. Engineer and the General Manager vide his letter dated 4.6.1979 addressed to the Dy.

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Chief Engineer, Diesel Locomotive Works Varanasi asked him to advise the respondent nos. 4 and 5 to keep themselves ready for appearing in the viva-voce test on the intimation of date, time and place in due course. As the petitioners were not called for interview/viva-voce test, they felt aggrieved and filed the present writ petition in June 1979 for issuing a writ of certiorari calling for the record¹ of the case and quashing the order dated 4.6.1979 and for a mandamus to direct the respondents not to proceed with the holding of the interviews of respondent nos.4 and 5 as provided in the letter dated 4.6.1979 and not to empanel them on the basis of the test held on 11.1.1979 and 27.4.1979 and for a further direction to the respondents to proceed in accordance with law for the empanelment of two candidates and not to empanel the respondent nos. 4 and 5.

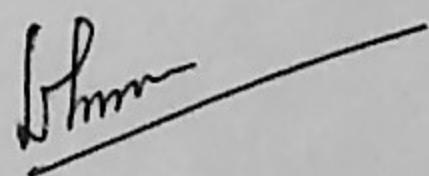
3. The writ petition was contested on behalf of the respondents on various grounds raised in the counter affidavit. At the time of the hearing of this petition before us today, Sri Lalji Sinha appeared on behalf of the respondents and pointed out to us that in the meantime the petitioner no.1 has retired and the respondent nos. 4 and 5 have already been selected and appointed as Asstt. Engineers and the writ petition has become infructuous. Sri B.P.Srivastava, Advocate who appeared on behalf of the petitioners before us, however, disputed this contention of the respondents and contended that despite the selection and appointment of the respondent nos. 4 and 5 as Asstt. Engineers, the relief regarding the issue of writ of certiorari still subsists and the writ be heard and decided on

merits.

4. We have carefully considered the contentions raised before us on the maintainability of this writ petition. It was not disputed that the respondent nos. 4 and 5 for whom the letter dated 4.6.1979 was issued by the General Manager for keeping themselves in readiness have already been selected and appointed as Asstt. Engineers. The petitioners did not choose to get the writ petition amended to seek ^{the} cancellation of the selection and appointment of respondent nos. 4 and 5. The relief for issuing the writ of certiorari is a discretionary relief and in view of the fact that the petition has become infructuous for the main reliefs claimed by the petitioners and they are not interested in getting the selection of respondent nos. 4 and 5 quashed, we will not like to call for the record of the selection merely to cancel the letter dated 4.6.79 as on its cancellation the subsequent proceedings will not automatically stand cancelled.

5. We accordingly dismiss this writ petition as having become infructuous without any orders as to costs.


MEMBER (J)


MEMBER(A)

Dated: Feb 9, 1989
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