

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD**

ORIGINAL APPLICATION NO.1160 OF 2002

ALLAHABAD THIS THE 4/6/07 DAY OF MARCH, 2007

HON'BLE MR. P.K. CHATTERJI, MEMBER-A
HON'BLE MR. S.K. DHAL, MEMBER-J

Kaushal Kishore Verma, Aged about 60 years, S/o late R.P. Verma, R/o 217-A New Model Railway Colony, Izzat Nagar, Bareilly.

.....Applicant

(By Advocate Sri T.S. Pandey)

V E R S U S

1. Union of India through General Manager, N.E.R., Gorakhpur.
2. Chief Medical Director, N.E.R., Gorakhpur.
3. Chief Personnel Officer, N.E.R., Gorakhpur.

.....Respondents

(By Advocate: Sri Anil Kumar)

O R D E R

BY S.K. DHAL, MEMBER-J

The applicant has challenged the order dated 29.7.2002 under which the selection of Lab Assistant Gr.I, on promotion, in the pay scale of Rs. 6500-10500/- has been cancelled without assigning any reason.

2. The brief facts giving rise to this application are that a notification was issued on ½.2.2002 for holding selection for the post of Lab Asstt. Gr.I. The date of written test was fixed to 22.2.2001 and for absentees candidates on 28.6.2001. By then

the applicant was working as Lab Asstt. Gr.II. He alongwith one Kamleshwar Prasad and Sri S.P. Gupta appeared in the written test held on 22.2.2001. As the result was not declared and there was undue delay, the applicant submitted a representation to the respondent no.3 for early declaration of the result, but no action was taken till 15.5.2002. Subsequently, the result was declared on 16.5.2002 in which the applicant, Sri Kamleshwar Prasad and Satya Prakash were declared to be successful in the written examination. Thereafter the applicant, Kamleshwar Prasad and Satya Prakash had appeared in viva voce test held on 6.6.2002. The same was again conducted on 28.6.2002 for absentee candidates. The result of the Viva voce was not declared by the respondent no.3 in spite of two representations submitted by the applicant (Annexure 5 & 6). When the matter stood thus, on 29.7.2002 the entire selection process was cancelled by the respondent no.3. According to the applicant, he had a right to have been promoted to the post of Lab Asstt. Gr.I if the result could have been declared earlier i.e. before his date of superannuation. It is alleged that the respondent no.3 caused delay in declaring the result and subsequently cancelled the same with a motive to give promotion to Sri Kamleshwar Prasad and Satya Prakash. The grievance of the applicant is that if the result could have been declared earlier i.e. before his date of retirement, he could have got promotion to the post of Lab. Asstt. Gr.I and thereby he could have been benefited financially towards his pension. According to him, the cancellation of the selection is malafide, arbitrary and it cannot be sustainable in the eyes of law when no reasons have been assigned for cancellation of the entire



selection process. He has, therefore, prayed that considering his grievances, proforma promotion can be given to him to get the pensionary benefits.

3. The respondents in their written CA have taken a stand that there was no deliberate intention to cause delay in holding both written and viva voce test. The circumstance under which the delay was caused was beyond their control. One J.P. Singh made a representation regarding his seniority. So there was delay in holding the written test for absentee candidates which was held on 7.11.2001 and 5.2.2002. thereafter, the entire selection proceedings was placed before the competent authority for his approval. It was found that the selection was not in conformity with the Rules and Railway Board's Circulars. More-over, some complaints were received making allegations regarding selection process. So, the authority being satisfied cancelled the entire selection process. Further, stand of the respondents is that even if the name of the applicant was found in the selection list after written test the list was not published after the viva voce test was over. According to the respondents, even in worst case if the name of the applicant found in the selection list, he cannot claim for the post as a matter of right.

4. On the above pleadings of the parties, the following points arise for consideration.

- (i) Whether the order of cancellation of the selection process is not sustainable in the eyes of law when no reasons have been assigned which is mandatory.
- (ii) Whether the delay was caused for holding written and viva voce tests with malafide intention to favour the other two candidates.

5. No-doubt, the applicant had qualified in the written test with other two candidates and faced viva voce test, but the result was not published. The list of successful candidates was placed before the competent authority for its approval. So in that case, it cannot be said that the applicant was selected because the list was not published after obtaining the approval of the authority. Admittedly, the impugned order does not reveal the reasons for which the selection process was cancelled. But, subsequently the respondents have placed material before this Tribunal to convince that there was no deliberate or ulterior motive to suppress the reasons for cancellation of the selection process. It is admitted by the respondents that directions was given by this Tribunal while disposing the O.A. no. 359 of 2002 that the reasons should be assigned when the selection process is cancelled. But, the circular of the Board in this regard could not reach before the competent authority when the selection process was cancelled by him in this case.

6. The applicant has taken the plea that due to malafide intention and to favour two other candidates the selection process was cancelled. It is now well settled that onus lies on the party who makes allegations of malafide or bias to prove strictly by placing positive and convincing material in support of his allegations. But, in this case we are of the view that the applicant has failed to place any material before us to accept his contention. So, we are not inclined to accept the submission made on behalf of the applicant that the selection process was cancelled to show undue to other candidates.

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7. The ratio of the case of **Union of India Vs. K.V. Vieesh reported in 1996 (2) ESC 106 (SC)** has been pressed into service on behalf of the respondents in support of their stand that a candidate whose name finds place in the selection list, has got no right to claim for a post even if there is vacancy or future vacancy. In this case, the selection list was approved, but appointment order could not be issued as there was no vacancy. So the Hon'ble Supreme Court were pleased to hold that even if the name of a candidate appears in the selection list he does not acquire any legal right of promotion even in existing or future vacancy. In the case before the apex Court the ground was even stronger as the name of the applicant was ^{as very} declared in the select list. In the case, in hand, the result of selection was not published. So the applicant cannot claim to be promoted because his name was found in the selection list after written test. The same view also has been taken in the case of **Abdul Haqim P. Vs. U.O.I. & Others reported in 2006 (1) ATJ 7** wherein the CAT, Ernakulam Bench has held that a person whose name is said to find place in the selection panel has no vested right to get appointed to the post in spite of vacancy existing.

8. No other points have been urged before us.

9. So, in view of the above findings, we are of the considered view that there is no merit in the O.A., hence it is dismissed on contest. No costs.


MEMBER-J
GIRISH/-


MEMBER-A