

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH**

Original Application No. 671 of 2003

Monday, this the 11th day of May, 2009

Hon'ble Mr. Justice A.K. Yog, Member (J)
Hon'ble Mrs. Manjulika Gautam, Member (A)

1. Nand Lal Prasad Gond S/o Asarfi Gond Posted Mate at Anugrah Narain Road.
2. Rajendra Prasad Yadav S/o Late Chalittar posted at Ismilepur.
3. Munni Gahlot S/o Late Jageshwar posted as Kaymanat Rafi Ganj.
All are working in East Central Railway of Mughal Sarai Division under Senior Divisional Engineer (Co-ord) East Central Railway Mughal Sarai.

Applicants

By Advocate: Sri Sajnu Ram

Vs.

1. Union of India through General Manager, East Central Railway, Hajipur, Bihar.
2. Divisional Railway Manager, East Central Railway, Mughal Sarai.
3. Senior Divisional Engineer (Coord) East Central Railway, Mughal Sarai.

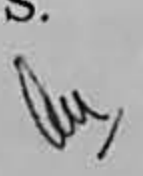
Respondents

By Advocate: Sri K.P. Singh

ORDER

Delivered by Justice A.K. Yog, Member-Judicial

The applicants, happened to be employed and working as 'Mate' in the Respondent Railways; they appeared in prescribed examination,; also medically examined and selected but appointment letter not issued and denied 'appointment' as P.W.S. Applicants contend that it is now obligatory upon the respondents to appoint them as P.W.S.



2. We may refer to the relief sought in this O.A.: -

"(i) to direct the respondents to promote and post the applicants as P.W.S. in scale Rs.4500-7000 with all consequential benefits, salary and seniority etc. from the date of 18.12.2002 when they were declared fit medically for the aforesaid posting after due selection.

(ii) to direct the respondents to produce the records of the case before this Hon'ble Court."

3. On the other hand, Sri K.P. Singh, Advocate/Counsel for the respondents refers to para-8 of the Counter Reply, which reads: -

"8. That the contents of paragraph 4.3 of Original Application are not correct hence denied. In reply, it is submitted that a date of Viva Voce test was fixed on 05.12.2002 for the post of PWS in the pay scale of Rs.4500-7000/- (RPS). But the result of viva-voce test was not published due to procedural irregularities was detected in process of examination. The Competent Authority ADRM, who is Chairman of Selection Board, decided to cancel the examination and ordered that fresh written examination be held.

It is further submitted that all candidates who attended for viva-voce test, were directed for medical examination on 17.12.2002 to judge in fitness for the said medical category. Medical Examination conducted to judge the Medical Fitness of the candidates for prescribed category, is in no way guarantee that the candidates have successfully qualified the examination."

In reply to the above quoted para-8 of Counter Affidavit, the applicants vide para-8 of Rejoinder stated: -

"8. That the contents of para 8 of C.A. are wrong, misconceived and denied contents of para-4.3 of O.A. are reasserted. It is pointed out that medical test is being conducted after the process of selection is completed. There is no provision to hold the medical test before completing the selection. No one cancelled examination of selection. Applicants are legally entitled to be posted as P.W.S. after having been qualified and medically declared for the promotion post of P.W.S."

4. From the above, it is clear that respondents' authority found irregularities committed in the process of selection and decided to cancel the examination in question. The submission of learned counsel for the applicants cannot be appreciated being without substance. Selection on the basis of irregular and vitiated process gives no statutorily enforceable right.

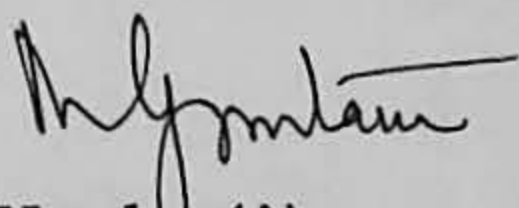
5. From perusal of the relief claimed in the O.A. it is clear that the applicants are asking for mandamus. Learned counsel for the

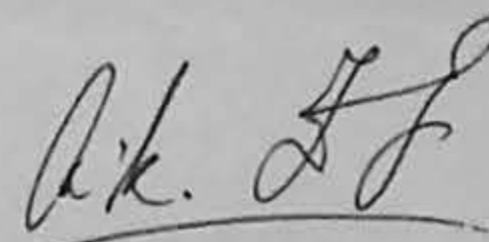
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applicants insisted to submit that the applicants were not required to approach 'departmental authorities' and the only remedy is to approach Tribunal/Court.

6. It is well settled that before an aggrieved person is approaching for seeking mandamus, he must be required to first approach the departmental authority, and still fails then alone one may approach Tribunal/Court.

7. O.A. has no merit, hence dismissed. No order as to costs.


Member (A)


Member (J)

/M.M/