

(Reserved on 15.05.2012)

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD**

ALLAHABAD this the 1<sup>st</sup> day of June, 2012

Present:

**HON'BLE MR. SANJEEV KAUSHIK, MEMBER- J  
HON'BLE MR. SHASHI PRAKASH, MEMBER-A**

**ORIGINAL APPLICATION NO. 1487 of 2006**

Kaushal Kishore, S/o Nanhoo Mal, R/o Durga Mandir Wari,  
Morris Road, Aligarh.

.....Applicant.

**V E R S U S**

1. Union of India through the General Manager, North Central Railway, Allahabad.
2. Shri Sudhir Kumar Tyagi, Senior Divisional Electric Engineer, North Central Railway, Tundla, Aligarh.
3. Shri A.A. Azad, Senior Loco Engineer, North Central Railway, Tundla, Aligarh.
4. Shri A.K. Upadhyay, Senior Controller, North Central Railway, Tundla, Aligarh.

..... Respondents

Present for the Applicant: Sri Pankaj Srivastava

Present for the Respondents: Sri Avnish Tripathi

**ORDER**

**By Hon'ble Mr. Sanjeev Kaushik, JM**

By way of the instant original application filed under section 19 of Administrative Tribunals Act 1985, the applicant seeks for quashing the panel of examination conducted by the respondents pursuant to the advertisement dated 09.03.2006.

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Prayer has also been made for a direction to the respondents to promote the applicant on the post of Electric Loco Pilot (Goods) .

2. The facts of the case, in brief, are that the applicant was appointed as Assistant Electric Driver in the year 1992 and is working as Senior Electric Assistant Driver. The next promotional post is Electric Loco Pilot (Goods). The respondents advertised the vacancies for the post of Electric Loco Pilot (Goods) on 09.03.2006 (Annexure A-1). 438 candidates were called to appear in the written examination. The result of the written examination was declared on 11.09.2006 in which 149 candidates were declared successful (Annexure A-3).

3. Learned counsel for the applicant submitted that since the applicant being Additional Secretary of the Union raised the matter of employees before respondents, therefore, respondent were always annoyed with him. Since the whole examination was conducted under the supervision of respondent Nos. 2 to 4 they declared the applicant fail. He further submitted that so many juniors to the applicant have been declared successful and are going to be promoted as Electric Loco Pilot (Goods), hence the O.A.

4. Pursuant to the notice the respondents resisted the claim of the applicant by filing detailed Counter Affidavit wherein they have supported the action of the respondents.

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5. We have heard Shri Pankaj Srivastava, learned counsel for the applicant and Shri Avnish Tripathi for the respondents and have gone through the pleadings on record.

6. Undisputedly the applicant appeared in the written examination held pursuant to the notification dated 09.03.2006 for the post of Electric Loco Pilot (Goods), the result of which was declared on 11.09.2006. The applicant was declared fail and out of 438 candidates only 149 candidates were declared successful. The sole controversy involved in the instant O.A is that the action of the respondents is totally malafide as the respondent Nos. 2 to 4 <sup>here</sup> always biased <sup>against</sup> with the applicant, who is union leader and the ~~whole~~ examination was conducted by them. Though the applicant has alleged malafide against respondent Nos. 2 to 4 but merely alleging malafide without proving the same cannot be looked into. The allegation of malafide has been alleged in para 4.8, 4.11, 4.14 and 4.15 but the applicant has failed to prove the same. Mere alleging that the whole examination was conducted by the respondent Nos. 2 to 4, who are biased <sup>against</sup> with the applicant, does not prove the allegation of malafide. Moreover, it is no where pleaded in the O.A that the same respondents have evaluated the answer sheets. Therefore, unless the allegation of malafie <sup>d</sup> is proved the argument of the counsel for applicant that respondent Nos. 2 to 4 deliberately failed the applicant, is not sustainable.

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7. Further from perusal of para 4.11 of O.A it appears that the applicant participated in the written examination for the post of Electric Loco Pilot (Goods), but was declared unsuccessful. Admittedly the present O.A has been filed by a candidate, who appeared pursuant<sup>e</sup> to the Notification dated 09.03.2006 and remain unsuccessful. When a candidate appeared<sup>s</sup> in the examination without protest and subsequently ~~it was~~ <sup>he is</sup> found to be not successful in the examination <sup>(pur</sup> pursuant <sup>to</sup> to which he appeared in the examination) <sup>he</sup> merely because the result of the examination is not palatable to him, cannot turn around on the ground of malafide and subsequently challenge the notification. The law on the subject has been crystallized by the Apex Court in <sup>a</sup>plethora of judgments starting from **Dr. G. Sarna Vs. Vice Chancellor - AIR 1976 SC 2428**, which was subsequently followed in the case of **Munindra Kumar Vs. Rajeev Govil- 1991 SCC (L&S) 1052**. The view taken in the above case later on was followed in the case of **Madan Lal Vs. J & K - 1995 (3) SCC-486** and subsequently in the case of **Dhananjay Malik and others Vs. State of Uttaranchal and others - 2008 (4) SCC-171**. The Apex Court judgment in the case of **Sadananda Holo & Ors. Vs. Momtaz Ali Sheikh & Ors. - 2008 (4) SCC page 619 is also relevant** para 59 of which reads as under: -

"59. It is also a settled position that unsuccessful candidates cannot turn back and assail the

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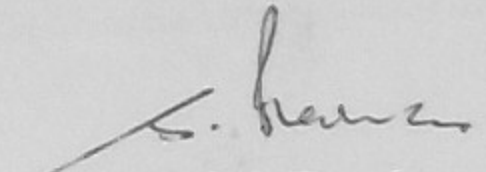
selection process. There are of course, the exceptions carved out by this Court to this general rule. This position was reiterated by this Court in its latest judgment in Union of India Vs. S. Vinodh Kumar where one of us (Sinha,J) was a party. This was a case where different cut-off marks were fixed for the unreserved candidates and the Scheduled Caste and Scheduled Tribe candidates. This court in para 10 of its judgment endorsed the action and recorded a finding that there was a power in the employer to fix the cut off marks which power was neither denied nor disputed and further that the cut-off marks were fixed on a rational basis and, therefore, no exception could be taken. The court also referred to the judgment in Om Prakash Shukla Vs. Akhilesh Kumar Shukla where it has been held specifically that when a candidate appears in the examination without protest and subsequently is found to be not successful in the examination, the question of entertaining the petition challenging such examination would not arise. The Court further made observations in para 34 of the judgment to the effect : (S. Vinodh Kumar case, SCC 107, para 9).

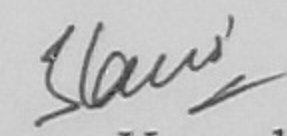
“19. .... ‘ 34. There is thus no doubt that while question of any estoppel by conduct would not arise in the contextual facts but the law seems to be well settled that in the event a candidate appears at the interview and participates therein, only because the result of the interview is not “palatable” to him, he cannot turn round and subsequently contended that the process of interview was unfair or there was some lacuna in the process.”

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8. By applying the above ratio to the facts of the present case, which leaves no doubt that a candidate who has taken a chance later on cannot turn around and challenge the validity of advertisement or subsequent proceedings being malafide or otherwise, therefore, the O.A deserves to be dismissed.

9. In view of the observations made above, the O.A is dismissed. No costs.

  
(Shashi Prakash)  
**Member-A**

  
(Sanjeev Kaushik)  
**Member-J**

/Anand/