

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 8th day of Dec. 2006

Original Application No. 181 of 2006

Hon'ble Mr. Justice Khem Karan, Vice Chairman
Hon'ble Mr. P.K. Chatterji, Member (A)

1. R.K. Agnihotri, S/o Sri Sriram Agnihotri, Presently posted as J.E. I (Works) Line Jhansi Division, Jhansi.
2. A.K. Gupta, S/o Sri S.P. Gupta, J.E. I presently posted as J.E.-I (Works) Juhi Kanpur.

... Applicants

By Adv: Sri S. Narain & Sri D. Vaish

V E R S U S

1. Union of India, through General Manager, North Central Railway, Allahabad.
2. Divisional Regional Manager, North Central Railway, Jhansi Division, Jhansi.
3. Divisional Railway Manager (Personnel)/ Senior D.P.O., Jhansi Division, North Central Railway, Jhansi.
4. Additional Divisional Railway Manager, North Central Railway, Jhansi Division, Jhansi.

... Respondents

By Adv: Sri Ravi Ranjan

ORDER

By Hon'ble Mr. P.K. Chatterji, Member (A)

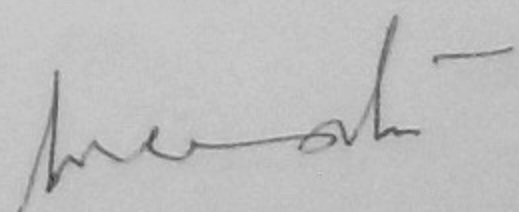
The question asked by the two applicants in this OA is whether the an employer has unfettered right to cancel one examination after holding it and also after the declaring the result regardless of the nature and seriousness of representation against it. Applicant No. 1 was as JE (Works-I) at line Jhansi Divsiison and applicant No. 2 was posted as JE -I (Works) at Juhi Kanpur after their initial appointment and

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subsequent promotion. The respondents issued a notification on 20.09.2005 for holding an examination for selection to the posts of Section Engineer (Works). The examination was held on two dates i.e. 12.11.2005 and 19.11.2005. Both the applicants sat for the examination and were declared successful, the result of which was declared on 13.01.2006. Till the declaration of the result there was no objection or murmur of protest from any quarters including the applicants, 36 in number. But after the results were published some of the unsuccessful candidates made a representation to the respondents on 18.01.2006 alleging that there was discrepancy in setting the question papers and some of the questions were out of syllabus.

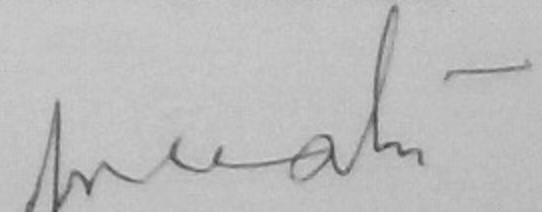
2. On 03.02.2006 the respondents cancelled the examination. Both the applicants made a representations before respondent No. 3 against cancellation of the examination in which they were declared successful. But inspite of their representation a fresh notification for holding the examination was issued on 14.02.2006 fixing the date of the examination on 08.03.2006 and 13.03.2006. As to the reasons for cancellation of the first examination the respondents stated that it was due to certain discrepancies being found in the question papers.

3. The applicants have approached the Tribunal with the request to issue direction to cancel the notification for second examination and to cause them to be appointed as Section



Engineers (Works) on the basis of the result of the first examination. The grounds on which they have set up their relief are as follows:

- a. The cancellation of the examination was not justified by reasons. It was whimsical and on flimsy ground. Even up to the date of declaration of the result there was no whisper of protest from any corner and, therefore, according to learned counsel for the applicant the whole thing was shrouded in mystery and secrecy. It was done at the behest of the unsuccessful candidates and the respondents did not act in a transferable manner.
- b. The cancellation is also in violation of the provision of Section 219 (1) of the IREM, which puts restriction on cancellation of examination was held.
- c. The impugned order of cancellation was done without following procedure, and in this respect the learned counsel for the applicants has brought to our notice this Tribunal's order in OA 359/01 in support of his arguments.
- d. The learned counsel for the applicant has cited the decision of the Hon'ble Supreme Court in the case 2003 SCC (L&S) 1048 in which the Apex Court has decided that the authorities would not be justified in canceling selection once made for any reason particularly when such cancellation would go against candidates who was untainted regarding irregularity in holding such selection. The learned counsel while arguing in this context said that such cancellation would be justified only in cases of extreme irregularity in which it would not possible for the authority to distinguish between those who benefited from the irregularity and those who were innocent. In this case



also it would be unreasonable and utterly unjust to deprive the applicants of their right for no fault of theirs and on grounds which are extremely flimsy.

- e. The learned counsel for the applicant has also drawn our attention to the two sets of question papers of the examination held before and after to show that there was not much material different and the whole matter was done at the behest of the unsuccessful candidates to favour them.

4. The respondents in their submissions in the Counter Affidavit denied the allegations and stated that the examination was cancelled as the paper was not as per norms of the Board's letter No. E(NG)1-2004/PM-1/25 dated 21.09.2004. The question No. 6 of the exam on 12.11.2006 and No. 7 of 19.11.2006 did not come within the purview of the norms of Rajbhasha Policy. The learned counsel for the respondents also pointed out that provision 219 (1) of IREM was also not relevant to the present matter because it related to cancellation of the panel form on the basis of an examination. In this case no panel was formed and, therefore, it would not be relevant to the present matter.

5. In support of their arguments the respondents also cited from two judgments of the Apex Court, 2006 SCC (L&S) 565 and decision on 2006 SCC (L&S) 235. In both these case the Apex Court has decided that selectees to a particular appointment on the basis of examination/selection cannot claim appointment as a matter of right. Appointment will be decided on the basis of vacancies and other factors that may

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come between the process of selection and appointment. Citing these judgments the learned counsel for the respondents emphatically stated that the applicants were not justified in making their claim.

6. We have gone through the pleadings and heard the arguments of both the counsel. Before we proceed further it would be pertinent to mention here that the Tribunal in an earlier interim order passed on this OA had directed that the respondents could go ahead with the examination as per the second notification, but two vacancies would be reserved for the applicants to accommodate them in case the final outcome of this OA went in their favour. The applicants were also exempted from sitting for the second examination without any prejudice to their rights to their claim of having been selected already.

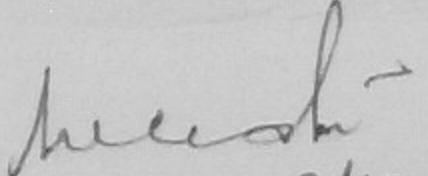
7. The learned counsel for the applicant strongly pleaded that on the ground given the respondents they were not justified in canceling the examination in enblock^{and it}. It was extremely unjust to the two applicants who were successful. In dealing with the matter at length he has tried to bring out that the discrepancies alleged was blown out of proportion and it was a subterfuge to conceal the intent behind the cancellation which was to favour the unsuccessful candidates. Notwithstanding the force in his arguments we are of the view that this is a matter within purview of the administration and, therefore, for

M. S. Maheshwari

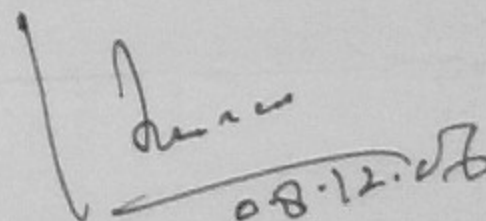
this very reason we are not inclined to quash the notification for cancellation of the first examination.

8. We have to take a pragmatic view in the interest of the applicants as well as of the administration so as to leave no one disgruntled. We have taken note of the fact that in the first examination only two candidates qualified. The vacancies were much larger in number and for that reason it was required for the respondents to fill up the vacancies. Moreover, on the basis of the second examination the results were declared and the successful candidates have been placed against their respective posts. Therefore, we are of the view that canceling the second examination alongwith the notification will unsettle this position and will also leave the qualified candidates aggrieved. At the same time on the basis of the arguments put forth by respective counsel we cannot hold that two applicants have no right to be selected as Section Engineers for which they had to sit through an examination in which they were declared successful.

9. We, therefore, direct that the two applicants should be declared as selected as Section Engineer (Works) on the basis of the first examination and be placed against the two vacancies which have been reserved for them. Their seniority should also be fixed prior to the selectees in the subsequent examination.
No cost.


Member (A) 8/12/16

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08.12.16
Vice-Chairman