

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 11th DAY OF March, 2011)

PRESENT:

HON'BLE MRS. MANJULIKA GAUTAM, MEMBER-A
HON'BLE MR. SANJEEV KAUSHIK, MEMBER - J

ORIGINAL APPLICATION NO. 533 OF 2006
(U/s, 19 Administrative Tribunal Act.1985)

1. Mahesh Prasad S/o Sri Gyasi Prasad, R/o 98, Railway Colony, Phabund, Auraiya.
 2. Harish Chandra S/o late Sri Ram Dayal, R/o 23-A/B, Loco Railway Colony, Kanpur.
 3. Bhoop Singh S/o Sri Channi Lal, R/o 975-A, Loco Railway Colony, Kanpur.
- All are working as Junior Engineer (Works) Grade-1 under the Assistant Divisional Engineer, Headquarters, North Central Railways, Kanpur.

.....Applicants

By Advocate: Shri S.K. Om.

VERSUS

1. Union of India through General Manager, North Central Railways, Allahabad.
2. Senior Divisional Personnel Officer, North Central Railways, Allahabad.
3. Member (Staff), Railway Board, New Delhi.
4. Divisional Personnel Officer, North Central Railway, Allahabad.
5. Additional Divisional Personnel Officer, North Central Railway, Allahabad.
6. Durga Prasad, S.E. Works under Section Engineer/Works, North Central Railway, Mirzapur.
7. Ashok Kumar Singh, Section Engineer Works Asstt. Divisional Engineer, Office, Near Civil Lines Side Railway Station, Allahabad.
8. Ali Iqbal Husain, Section Engineer Works, Section Engineer, Works Office, Near Track Depot Subedarganj, N.C. Railway, Allahabad.
9. Mohd. Wahid, Section Engineer Works, Rajapur, Section Engineer Works Office, Near Microwave Tower, Passiyana Colony, N.C. Railway, Allahabad
10. R.S. Dwivedi
11. Vinay Kumar Singh
12. Praveen Kumar Pandey
13. Ashok Kumar Shukla
14. Girish Tripathi
15. Anup Kumar Pandey
16. Manish Kumar Srivastava

Respondent Nos. 10 to 16 C/o Section Engineer Works under Dy. Chief Engineer Const. Chief Administration

Office N.C. Railway, Allahabad Near Balmiki Chauraha, Allahabad.

17. Ravi Prakash, Section Engineer Works, under Dy. Chief Engineer Const. Kanpur, Dy. Chief Engineer/Const. Office, N.C. Railway, Jhakarkati, Kanpur.
18. Ashish Khare, Section Engineer Works, C/o Section Engineer Works/Line Kanpur, N.C. Railway, Kanpur near TAT Mill Chauraha, Kanpur.
19. Lalji, Asstt. Manager Design/DFCCIL, 5th Floor Merto Railway Station Building Pragati Maidan, Near Delhi.
20. Ajay Kumar Jain, Section Engineer Works, Kanpur Central Railway Station, N.C. Railway, Kanpur.
21. Narandra Kumar Sharma, Section Engineer, Works.
22. Tribhuwan Narayan Singh, Section Engineer Works.
23. Annat Ram Kesharwani, Section Engineer Works.
Respondents No. 21 to 23 C/o Dy. Chief Engineer/Const. Lucknow, N.C. Railway, Charbagh, Lucknow.
24. Nandlal, Section Engineer Works, Section Engineer Works office, N.C. Railway, Naini/Chheonki, Naini, Allahabad.
25. M.S. Meena, Section Engineer Works, Section Engineer Works Office, N.C. Railway, Hathras, Mahamaya Nagar.
26. Jagdish Narayan, Section Engineer Works, Section Engineer Works Office, N.C. Railway, Fatehpur.
27. Dinesh Kumar Singh, Section Engineer Works/Line Office, N.C. Railway, Passiyana Colony, Allahabad.
28. Om Prakash Talreja, Section Engineer Works, Chief Vigilance Inspection Vigilance Branch, General Manager, N.C. Railway's Office, Subedarganj, Allahabad.
29. D.C. Champia, Asstt. Project Manager, DFCCIL Office, 117/455, Pandu Nagar, Behind J.K. Temple, Kanpur.

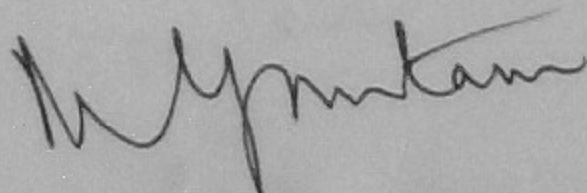
.....Respondents

By Advocates: Shri S. Narain,
Shri P. Mathur
Shri S. Dwivedi

ORDER

Delivered by MRS. MANJULIKA GAUTAM, MEMBER-A.

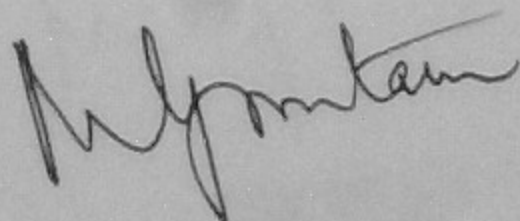
Three applicants have challenged the panel dated 16.2.2006 for the post of Section Engineer (Works) in the grade of Rs. 6500-10500. All the applicants are working as Junior Engineer (Works) Grade I in the scale of Rs. 5500-9000 and next promotion is the post of Section Engineer in the scale of Rs. 6500-10500, which is to be filled by way of selection under 70% quota. On 29.08.2005, notification was issued for the post of 25 Section Engineer (19 Gen. 3 S.C. and 3 S.T.= 25). Accordingly, written examination was scheduled for 11.09.200. The names of all the applicants figured in



the list of eligible candidates, which was attached to the notification. After written examination, the panel was declared on 16.2.2006 and the names of the applicants are not in the panel. Aggrieved, they have filed the present O.A seeking the following relief(s):-

- “(i) To issue a writ, order or direction in the nature of certiorari quashing the panel dated 16.2.2006 issued by respondent NO.2 (Annexure No.A-1 to Compilation I).
- (ii) to issue a writ, order or direction in the nature of mandamus commanding the respondents to cancel the written examination held on 11.09.2005 and 18.09.2005 respectively and conduct it afresh in impartial manner and strictly according to the Rules and guidelines provided by the Railway Board.
- (iii) to issue a writ, order or direction in the nature of mandamus commanding the respondents to reassess the vacancy by excluding the vacancies of Northern Railways and CETA.
- (iv) To grant all the consequential relief which the petitioners are entitled for.
- (v) to grant any other relief which this Hon'ble Court may deem fit and proper under the circumstances of the case.
- (vi) To award the cost”.

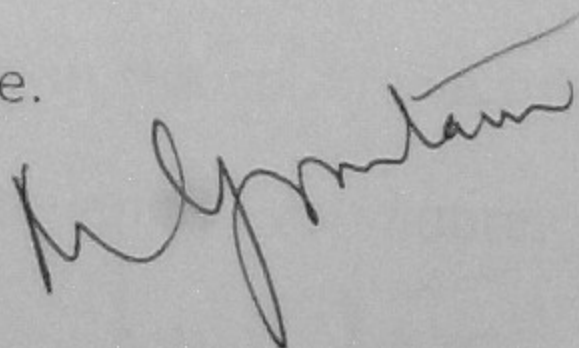
2. The applicants have pointed out three main infirmities in the procedure followed for making the panel. According to them, as per instruction of Railway Board, 50% of total marks were to be allotted to the objective type question. According to the applicants, in the written examination 50% of question were not objective type, therefore, the instruction of Railway Board were not adhered to. The applicants have also pointed out that though the instruction had clearly stated that there is to be no negative marking the principles of negative marking were applied in evaluating the answer. The third issue raised by the applicants is that the vacancies have not been correctly calculated and certain posts of Construction and Civil Engineering Department of Northern Railway which are outside the geographical jurisdiction of North Central Railway have been taken into account. Similarly ex-cadre vacancies of Central Electricity Training Academy (CETA) were also



considered while calculating the vacancies. The case of the applicants is that instruction of Railway Board were not adhered to as pointed out above and, therefore, the panel suffers from infirmity and is liable to be quashed.

3. In the Counter Affidavit filed by the respondents, all three points raised by the applicants have been replied to. According to the counter affidavit, written examination was conducted in a fair manner as per Rules. According to them, almost 40% questions were objective and, therefore, there was no illegality in the question paper. It is also stated by them that though the concept of negative marking had not been allowed by the Railway Board, in this examination, question No.1 was evaluated on the basis of negative marking. This was done uniformly for all the candidates, who appeared in the examination.

4. The case of the respondents is that candidates appeared in the written examination without any protest and it is only when they were not found successful that they made all these representations regarding type of question and negative marking. It is settled law that once a candidate appears in the written examination and fails to qualify it, he cannot question the legality or correctness of that examination. As far as question of calculation of vacancy is concerned, respondents have clarified that there were instructions from the Railway Board dated 8.10.2010 placed at Annexure RA-1. Vacancies were calculated in accordance with above instructions and approval of the Competent Authority was taken for the same.



5. In this connection, the following citations are to be seen: -

- (i) Dhananjay Malik v. State of Uttaranchal, (2008) 4 SCC 171
- (ii) Madan Lal v. State of J&K
- (iii) Om Prakash Shukla v. Akhilesh Kumar Shukla (1986) Supp SCC 285 K. Manjusree v. State of A.P., (2008) 3 SCC 512 K.H. Siraj v. High Court of Kerala, (2006) 6 SCC 395
- (iv) Om Prakash Shukla v. Akhilesh Kumar Shukla, 1986 Supp SCC 285
- (v) Sadananda Halo v. Momtaz Ali Sheikh, (2008) 4 SCC 619
- (vi) State of Orissa & Anr v. Rajkishore Nanda & Ors. Civil Appeal No. 2808 of 2008, decided on June 3, 2010
- (vii) Union of India v. N. Chandrasekharan, (1998) 3 SCC 694 Chandra Prakash Tiwari v. Shakuntala Shukla, (2002) 6 SCC 127
- (viii) 2008 (4) SCC-619 Sadananda Halo & Others Vs. Momtaz Ali Sheikh & Ors.

It is the settled legal proposition that no relief can be granted to the candidate if he approaches the Court after expiry of the Select List. If the selection process is over, select list has expired and appointments had been made, no relief can be granted by the Court at a belated stage.

(Deepa Keyes -Vs.- Kerala State Electricity Board & Anr., (2007) 6 SCC 194;

J. Ashok Kumar Vs. State of Andhra Pradesh & Ors., (1996) 3 SCC 225;

K. Thulaseedharan Vs. Kerala State Public Service Commission, Trivendrum & Ors., (2007) 6 SCC 190;

State of Bihar & Ors. Vs. Md. Kalimuddin & Ors., AIR 1996 SC 1145;

State of U.P. & Ors. Vs. Harish Chandra & Ors., AIR 1996 SC 2173;

State of U.P. & Ors. Vs. Ram Swarup Saroj, (2000) 3 SCC 699;

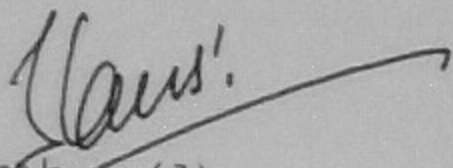
Sushma Suri Vs. Government of National Capital Territory of Delhi & Anr., (1999) 1 SCC 330;

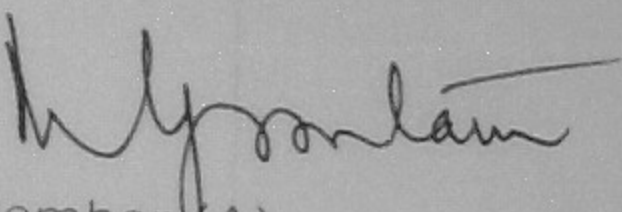
6. We have heard Shri S.K. Om, learned counsel for the applicants and Shri P. Mathur and Shri S. Narain, learned counsel for the respondents and perused the records on file. It is very apparent that all objections raised by the applicants regarding examination, formation of panel have been adequately answered by the respondents in the counter affidavits filed by them. It is also settled law that once candidates have appeared for an

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settled law that once candidates have appeared for an examination, they cannot question its correctness after they have been declared unsuccessful.

7. In view of the same, there is no merit in the O.A. and it is accordingly dismissed. No costs.


Member (J)


Member (A)

Manish/-