

RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated: THIS THE 13th DAY OF Sept. 2006.

Original Application NO.41 of 2006

HON'BLE MR. A. K. BHATNAGAR, Member (J)
HON'BLE MR. P.K.CHATTERJI, Member (A)

1. Vijai Shanker, Son of Shri Ram Lakhan Ram, Aged About 49 years, Staff No.04099, Posted as Section Engineer in Mill Wright Trade, Diesel Locomotive Works, Varanasi.
2. Lalta Prasad, Son of Late Pancham, Aged About 52 Years, Staff No.04300, Posted as Section Engineer in Mechanical Department, Diesel Locomotive Works, Varanasi.
3. B.P. Singh, Son of Shri Ram Bahel Singh, Staff No.11595, Posted as Section Engineer in Mechanical Department, Diesel Locomotive Works, Varanasi.
4. A.S. Vatsa, Son of Shri Rajendra Kumar Singh, Staff No.11605, Posted as Section Engineer in Mechanical Department, Diesel Locomotive Works, Varanasi.
5. Umesh Chandra Asthana, S/o K.R. Asthana, Staff No.11747, Posted as Section Engineer in Toolmaker Trade, Diesel Locomotive Works, Varanasi.
6. Rakesh Kumar Singh, S/O Late B.N.Singh, Staff No.11618, Posted as Section Engineer in Mechanical Department, Diesel Locomotive Works, Varanasi.
7. P.K. Gupta, Son of Shri Shiv Govind Gupta, Staff No.11612, Posted as Section Engineer in Mechanical Department, Diesel Locomotive Works, Varanasi.

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8. Vinod Rathore, Son of Shri Shyam Lal Rathore, Staff No.12209, Posted as Section Engineer in Mechanical Department, Diesel Locomotive Works, Varanasi.

(Applicants No. 6,7 and 8 are posted as Section Engineer in Mechanical Deptt, DLW, Varanasi.)

. Applicants

(By Advocate : Sri V. Budhwar & Sri S.K. Mishra)

Versus

1. Union of India through the Secretary Ministry of Railways, New Delhi.
2. General Manager (Personnel), Diesel Locomotive Works, Varanasi.
3. Chief Personnel Officer, (Headquarters) Diesel Locomotive Works, Varanasi.

..... Respondents.

(By Advocate : Sri A. K. Pandey)

ORDER

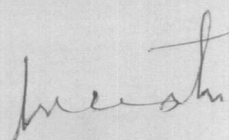
In this case the applicants are 08 in number.s They have all been working as Section Engineer in the North Eastern Railways at Varanasi since various dated in the year 2004. In this order they have challenged notification No. 28/8/75-E/Selection- SE/ Ya. Bha /VII dated 29.12.2005 issued by the respondent No. 3 whereby selection/recruitment on the post of Section Engineer in the pay scale of Rs. 6500-10500 is being sought.

2. The facts of the case briefly are as follows:

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In the year 2002 the Railway issued an order of restructuring of Group 'C' and 'D' posts. The restructuring was allowed vide circular dated 09.10.2003. The applicants were all working as Junior Engineers at that time. The restructuring yielded some additional posts in the higher grade of Section Engineer's, whereupon the Competent Authority, vide letter dated 19.11.2003, directed that the restructuring would be given effect and suitable action should be taken for up gradation of eligible officials to the post of Section Engineer. The letter dated 06.01.2004 contained detailed instructions regarding implementation of the orders of the restructuring. It was stated interalia in the circular that for purpose of up gradation against the selection quota the usual procedure of scrutiny of service records and CRs besides holding written test and viva-voce would be modified and the need for written test and viva-voce was dispensed with. It was directed that the decision was being taken after consultation with the staff side as one time exception. It would be relevant to extract here the relevant portion of the circular as under:

"The existing classification of the posts covered by these orders as 'selection', as the case may be, remains unchanged. However, for the purpose of implementation of these orders,



if an individual Railway servant becomes due for promotion to a post classified as a 'selection' post the existing selection procedure will stand modified in such a case to the extent that the selection will be based only on scrutiny of service records, and confidential reports without holding any written and/ or viva-voce test. Naturally under this procedure the categorization as 'Outstanding' will not figure in the panels. This modified selection procedure has been decided upon by the Ministry of Railways as a one time exception by special dispensation, in view of the numbers involved, with the objective expediting the implementation of these orders. Similarly for posts classified as 'non-selection' at the time of this restructuring the promotion will be based only on scrutiny of service records and confidential reports. In the case of Artisan staff, the benefit of restructuring under these orders will be extended, on passing the requisite Trade Test. However, in case of placement of Supervisors (erstwhile Mistries) to grade Rs. 5000-8000 the instructions contained in para 13.2 should be followed."

3. Acting upon the instructions, competent authority went through the process of selection as per the directions and the panel of Section Engineers thus selected were declared vide memo dated 24.02.2004, 25.02.2004 and 27.02.2004. After this certain officials claiming to be senior to the applicants in the gradation list of Junior Engineers, who were not given promotion as Section Engineer, were aggrieved by the process of selection and filed two OAs No. 596 of 2004 and OAs 597 of 2004, in which the applicants of this OA were also impleaded as respondents. The contentions of the applicants in those two OAs were that they were not considered for promotion only because of the reason that they had average grading in their CRs.

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4. On 06.04.2004 the Railway Board issued another circular purportedly for clarifying some points regarding the process of selection. It was stated that the normal process of assessment of CRs would be modified for the purpose of giving effect to the restructuring. The circular also drew attention to the letter dated 08.10.1993 issued by the Railway Board stipulating that for the purpose of giving effect to restructuring (not the restructuring of 2003 but previous restructuring which took place in 1993) the officials having average grading should not be ignored in the process of selection and they should not be considered unfit only for the reason of having average grading in their CRs. The relevant portion of the order dated 06.04.2004 is as follows:

"2. ICF have raised doubts regarding the modified selection procedure as detailed in para 4 of Board's letter dated 06.01.2004 and have sought further elaboration of this aspect. The issue has been examined and it is clarified that the existing selection procedure should be modified to the extent that the selection will be based only on scrutiny of service records and confidential report without holding any written and/or viva-voce tests. In this procedure, the Selection Board is supposed to consider the claims of the eligible staff one by one in order of their seniority. It will scrutinize the service records and confidential reports of staff beyond the number equal to the number of posts calculated in terms of para 4.1 of Board's restructuring order dated 06.01.2004 only to the extent the number of staff is found unsuitable for promotion. Further, while implementing the restructuring on the basis of the above procedure, instructions contained in Board's letter No. E (NG)I-92/CR/3 dated 08.10.93 should be kept in view."

5. After this the entire process of selection to the post of Section Engineers thus made was reviewed by the competent authority. Thereafter, the panels of Section Engineers dated 24.05.2005, 25.05.2004 and 27.02.2004 were cancelled. After cancellation of the panel the respondents made fresh notification dated 16.02.2005 for fresh selection to the post of Section Engineers. Aggrieved by this sudden developments the applicants of the present OA filed OA Nos 169/05, 181/05 and 185/05. This Tribunal after considering the OAs, issued order dated 29.07.2005 directing the respondents to cancel the notification dated 15.02.2005 and to follow due process of law which was not followed by the respondents. As per principle of natural justice a show cause notice was to be issued to the applicants before terminating their services, decision should have been taken only after considering the representation against the show cause notice which was not done in this case.

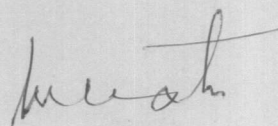
6. Thereafter, the respondents in compliance with the direction of the Tribunal issued a show cause notice on 09.08.2005 to the applicants calling upon them to show cause as to why the selection would not be terminated. The applicants made their respective representations and after considering the representations, the respondents terminated their selections vide order dated 19.08.2005. The

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applicant, thereafter, filed OA No. 1039 of 2005 challenging the termination of their selection as Section Engineer, which was under consideration by this Tribunal. When the respondents issued a fresh notification dated 29.12.2005, they were further aggrieved. ^{The are} Apprehending that the respondents were going to fill up the posts of Section Engineer in such a way that their continuation as Section Engineer, to which they were promoted would be jeopardized even if they get a favorable decision in OA 1039/05. The applicants are of the view that as their promotions to Section Engineer were done with the due process of law and is legally valid, the respondents are not correct in their action in trying to recruit Section Engineers afresh without waiting for the outcome of the other OAs No. 1039 of 2005. This OA, therefore, hinges upon the decision in the other OA No. 1039 of 2005.

7. The respondents strongly supported their action in terminating the allegation of the applicants to the post of Section Engineer saying that it was done erroneously and, therefore, the executive has full authority to correct the mistake. They have justified their action in notifying for fresh selection as follows:

- i. The impugned order (vide Annexure No. A-1 of Original Application pages 31, 32 and 33, dated 29.12.2005 is a notification issued by Respondents Diesel Locomotive Works Varanasi



for selection of candidates to be promoted to the post of Section Engineer. Three posts in all were advertised and all of these three posts were reserved for Scheduled Tribe candidates. The post is Section Engineer. Since none of the Applicants belongs to Scheduled Tribe category there was no question of calling them for selection. As such the selection in question cannot be challenged by any of the applicants for the three posts which are reserved for Scheduled Tribe candidates and the Applicants have no locus standi to challenge the impugned order dated 29.12.2005.

- ii. For the remaining six posts which were advertised belong to the machinist group. Out of these six posts 2 posts are reserved for Scheduled Tribe and 4 for general candidates.
- iii. Applicants No. 1 to 5 belong to Mill Wright Tool Maker Trade. Applicants No. 2, 3 and 4 belong to fitter trade. Applicants No. 6, 7 and 8 belong to machinist trade have been called for selection (vide page 33 of Original Application). Their names appear at serial Nos. 1, 2 and 5. As such, Applicants 6, 7 and 8 since having been called for the selection have no locus standi to file and maintain the Original Application (also vide para 6.29 to 6.31 of the Counter Affidavit).
- iv. As such, it is clear that all the Applicants have no locus standi to file and maintain the Original Application because Applicants Nos. 2, 3 and 4 who belong to fitter trade

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and not to machinist are of general community. They are not eligible to appear in the selection test for which all the three posts are reserved for Scheduled Tribe. Similarly Applicants Nos. 1 and 5 also belong to mill wright and tool maker trade and not the machinist trade were not eligible and hence not entitled to file the Original Application. Applicants No. 6, 7 and 8 too did not have any locus standi to file and maintain the Original Application just because they were called for the selection (Vide page 33 of Original Application) where their names appear at serial Nos. 1,2 and 5.

a. As such, it is crystal clear that none of the applicants had a locus standi to file and maintain the Original Application. This fact has been admitted in para 5 of the Rejoinder Affidavit.

Malicious Motive - Applicants not approached the Court with clean hands.

b. It is, as such, apparent on the face of record on perusal of para 4.1 of the Original Application that all the applicants have posted themselves as belonging to the machinist trade, which is absolutely false and frivolous on their part. When counter was filed the facts became clear and the malicious approach of the Applicants was revealed. For this act of the Applicants they are liable to be prosecuted under the relevant criminal law. Moreover, this ground itself is sufficient for this

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Tribunal for dismissing the Original Application even without looking into merit of the case.

c. It is further submitted that the applicants have misrepresented this Tribunal and have tried to cause miscarriage of justice. The applicants obtained the interim order merely on misrepresentation and suppression of material facts as well as by playing fraud before this Hon'ble Tribunal by posing themselves as belonging to machinist trade, which is absolutely false. For this misconduct all the applicants deserve severe punishment of special cost by this Tribunal.

d. The Hon'ble Supreme Court in a catena of judgments has categorically settled the analogy on this point that the Petitioner not coming to the court with clean hands is liable to be penalized and prosecuted by the court.

- (1) In *S.P. Chengalvaraya Naidu Versus Jagannath* reported in AIR 1994 SC 853, the Apex Court held that concealment of material facts is a fraud played on the court. So the wrongdoer is liable to be prosecuted. In such circumstances, an exemplary cost should be imposed.
- (2) In *Savran Singh Versus Union of India and others* reported in AIR 1995 SC 1729, the Constitution Bench of five judges of the Apex Court imposed cost of Rs. 15,000/- each on three Police inspectors who mischievously filed a Public Interest Litigation for their own vested interests with an idea and intention to paralyse the working of Tribunal and benefit from the delay at the cost of other litigants.

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8. We are of the view that the decision in this OA has direct bearing on the decision in OA No. 1039 of 2005. The applicants' contention is that the respondents' move to make fresh selection by this notification implies that the respondent have taken it for granted that they were fully justified in terminating the selection of the applicants as Section Engineers. The applicants on other hand apprehend that if in this way the posts of Section Engineers are filled up that will preempt their chance of continuing as Section Engineer even in the event of their getting a favorable decision in OA No. 1039 of 2005. Moreover, the very fact that three of the applicants of this OA have been called for the selection for the post of Section Engineers vide the impugned notification vindicate the contention of the applicants that the respondents were firm and uncompromising on their stand that the termination of the selection of the applicants as Section Engineers was legally valid and just.

9. We are of the view that the contention of the applicants is reasonable. It would be worthwhile to reproduce the decision of this Tribunal in OA 1039 of 2005 which is as follows:

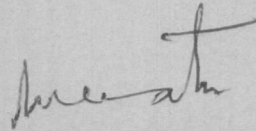
"We have examined the letter dated 19.08.2005 to see whether there are infirmities in it. As matter of fact the issues disclosed in the above paragraphs were substantive and relevant issues as far as the present OA goes. Therefore, against the representations of the applicants it was

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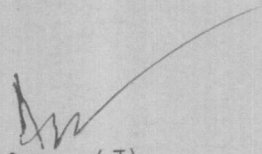
expected that these issue should be discussed and appropriately answered. However, it is seen that the letter dated 19.08.2004 does not satisfactorily answered these issues and, therefore, it is not adequate.

With these observations we are of the view that the OA succeeds. The impugned order dated 19.08.2005 is set aside. The applicants may be restored to their post of Section Engineers from the date they were originally promoted with all consequential benefits. No costs."

10. For these reasons this OA is allowed. The impugned order dated 29.12.2005 is quashed. The respondents have to calculate afresh the vacancies in the grade of Section Engineer in their unit after confirming the selections of these eight applicants in the post and, thereafter, only take further action for selection. No cost.



Member (A)



Member (J)

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