

ORDER DATED: 20/04/2009.

C O R A M:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)
A N D

THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

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Applicant was a candidate pursuant to the notification for recruitment to Gr.D posts in the Railways. He appeared at the written test held on 2.11.2003. His contention is that although he was selected in the written test and stood 2nd he was not called for verification of documents whereas non-residents of Orissa were called for verification of documents which is contrary to the advertisement. Being aggrieved by such action he has filed this OA seeking direction to the Respondents to issue appointment order in favour of applicant for the post of Gangman.

2. By filing counter it has been stated by the Respondents that the entire selection was conducted in terms of the Rules/instructions of the Railways. As the applicant did not qualify in the written test he was not called for verification of documents. The candidates who came out successful in the written test were called for verification of documents according to their merit position in the list published by the respondents. As non-calling of the applicant cannot be faulted with, they have prayed for dismissal of this OA. No rejoinder has been filed by the Applicant rebutting the stand of the Respondents taken in the counter.

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3. Heard Learned Counsel for both sides and perused the materials placed on record.

4. From the pleadings made in this OA it is evident that virtually the applicant challenges the entire process of selection calling upon the candidates residing outside the territorial jurisdiction of the recruitment unit. But this assertion of the Applicant is of no consequence because the applicant had appeared at the test and failed, he has not made any such prayer for quashing of the entire selection making all of the selected candidates as party and that allowing candidate residing outside the territorial jurisdiction of the recruitment unit of the Railway has already been considered in OA No.639/04 & OA Nos.658-851/2004 and in order dated 31.5.2007, it has been held as under:

"11. Having given our thoughts to the rival submissions of the parties, we may observe that neither of the parties was able to produce the Rules governing the recruitment to the posts in question. Therefore, we are to take a decision on the basis of the factual matrix and law suiting the issues in hand. In this connection we may record that Public employment opportunity is a national wealth in which all citizens are equally entitled to share and that no class of people can monopolise public employment in the name of 'territorial jurisdiction' or other grounds. The right to equal opportunity to public employment may not be treated as a new form of entitlement limited to a particular area under the specific provisions made in the Rules. As per the mandate available under Article 16 of the Constitution of India every citizen irrespective of the place of birth has a right to be considered for the post in question. Article 16 of the Constitution of India deals "**EQUALITY OF OPPORTUNITY IN MATTERS OF PUBLIC EMPLOYMENT**". The relevant provisions outlined therein are as under:-

"(1) There shall be equality of opportunity of all citizens in matters relating to employment or appointment to any office under the State.

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(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State".

Article 14 enshrines the Fundamental right of equality before the law or the equal protection of the laws within the territory of India. It is available to all, irrespective of whether the person claiming it is a citizen or not. Article 15 prohibits discrimination on some special grounds – religion, race, caste, sex, place of birth or any of them. It is available to citizens only, but is not related to any employment or office under the State. Article 16, Clause (1) guarantees equality of opportunity for all citizens in matters relating to employment of appointment of any office under the State and Clause (2) prohibits discrimination on certain grounds in respect of any such employment or appointment. It would thus clear that Article 14 guarantees the general right of equality; Articles 15 and 16 are instances of the same right in the favour of citizens in some special circumstances. Article 15 is more general than Article 16, the latter being confined to matter relating to employment or appointment to any office under the State. Equality postulates identity of the class and once that is absent discrimination cannot arise. Merely because fortuitous circumstances arising out of some peculiar developments or situations create advantages or disadvantages for one group or the other, there cannot be a case of discrimination. If one class has not been singled out for special treatment, the mere circumstances of advantages accruing to one or the other cannot result in a breach of Article 14 of the Constitution.

12. Law is also well settled that wider the zone of consideration better is the chance of getting candidates, which would serve the interest of nation ultimately. Therefore, we find no wrong in the decision of the authorities in expanding the zone of consideration to get better hands.

13. As regards the plea of the Applicants that there was no *viva voce*, it is observed that the object of any process of selection for entry into a public service is to secure the best and the most suitable person for the job, avoiding patronage and favoritism. Selection based on merit, tested impartially and objectively, is the essential foundation of any useful and efficient public service. So open competitive examination has come to be accepted almost universally as the gateway to public service (Ref: **Lila Dhar v. State of Rajasthan**, AIR 1981 SCC (L&S) 588=AIR 1981 SC 1777). Competitive examinations are

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required to be conducted by the authorities to get the best brain. Public interest requires no compromise on quality. The Courts/Tribunal should not ordinarily interfere in the selection process, unless there is serious procedural irregularities or *mala fide*. If the selection committee thinks it best to rely solely on the physical and written tests and dispenses with the *viva voce* test, it is not for this Tribunal to sit in the judgment of it unless *mala fide* is proved. We do not find any such infirmity in the process adopted by the Respondents. There are rulings of the Courts that the choice of selection is, therefore, not open to judicial review once a candidate is found to be qualified and eligible for appointment (Ref: **R.K.Jain v. Union of India**, AIR 1993 SC 1769). It is also settled principles that in the absence of statutory rules, the authorities are competent to evolve their own procedure for the purpose of evaluation of merit (Ref: **Secretary (Health) Department of Health, v. Anita Puri**, 1996 SCC (L&S) 1491). Also settled principle of law is that Court cannot encroach upon the powers of the selection committee by substituting its own views and opinion in the absence of oblique motive attributed to the selection Board (Ref: **S.L.Vohra (Ar Vice Marshal) (Retd.) v. Union of India**, JT (1993) 3 SC 359).

14. Thus the Advertisement under Annexure-A/1 was de horse the Constitutional provisions. By issuance of Annexure-A/2, the vice in Annexure-A/1 was removed and, therefore issuance of Annexure-A/2 cannot be said to be bad in any manner.

15. Besides the above, another important feature of the matter is that conditions made in the first advertisement dated 05.11.1998 (Annexure-1) were modified on 26.11.1978 (sic) (Annexure-2), pursuant to which the Applicants appeared in the physical test as also written examination, without any protest. Having appeared in the tests and having failed to qualify in the open competitive examination, they have travelled to this Tribunal in the present O.A by raising grievances that the procedure was improper. In the case of **Om Prakash Shukla vs. Akhilesh Kumar Shukla**, AIR 1986 SC 1043, the Hon'ble Supreme Court has held as under : "Moreover, this is a case where the petitioner in the writ petition should not have been granted any relief. He had appeared for the examination without protest. He filed the petition only after he had perhaps realized that he would not succeed I the examination. The High Court itself has observed that the setting aside of the results of examinations held in the other districts would cause hardship to the candidates who had appeared there. The same yardstick should have been applied to the candidates in the District of Kanpur also. They were not responsible for the conduct of the examination".

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16. Thus, the Applicant, by their conduct, having accepted the position are estopped to challenge the recruitment process.

17. Apart from this, under the Administrative Tribunals Act, 1985, before one could approach the Tribunal, he/she has to exhaust the alternative remedy. No material has been placed to show that the Applicants have ever approached the departmental authorities ventilating their grievances and/or their representations made in that behalf have been lying indisposed. Thus, these cases virtually are not maintainable on that count.

18. Further we notice that the issue of expansion of zone of consideration earlier received judicial scrutiny of this Tribunal in OA No. 78 of 2006 (Ajay Kumar Barik v. Union of India and others) and this Tribunal in its order dated 27-02-2006 held that there was no wrong in changing the policy of recruitment to the posts in question and we find no logic to differ from the view already taken earlier by this Tribunal.

19. In the result, we find no merit in these OAs which stand dismissed by leaving the parties to bear their own costs."

5. In this case, no material has been produced by the applicant to establish that although he stood 2nd in the written test he was not called for verification of documents or any other person who secured less mark in the written test than him has been called for verification of document and appointment was given. No material other than the materials produced and considered by this Tribunal in the earlier OA has been cited by the Applicant so as to enable us to take any other view than the view already taken and quoted above.

6. In view of the above, we find no merit in this OA. Hence, this OA stands dismissed. No costs.

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(JUSTICE K.THANKAPPAN)
MEMBER (JUDICIAL)

C.R. MOHAPATRA
(C.R. MOHAPATRA)
MEMBER (ADMN.)