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**Central Administrative Tribunal
Jodhpur Bench.**

Date of Decision: 09.11.2003.

CORAM

**Hon'ble Mr. J.K. Kaushik, Judicial Member.
Hon'ble Mr. M.K. Misra, Adm. Member.**

1. O.A No. 267/2003

Mangi Lal son of Shri Moti Lal, aged 48 years, Kaga Road, Jodhpur. Mistry in Shop No. 14, North Western Railway Workshop, Jodhpur.

.....Applicant.

(Mr. Vijay Mehta, Counsel for the applicant.)



V E R S U S

1. Union of India, through the General Manager, North Western Railway, Jaipur.
2. Deputy Chief Mechanical Engineer, North Western Railway Workshop, Jodhpur.
3. Shri N. Philiphs, JE II, Shop No. 8, North Western Railway Workshops, Jodhpur.
4. Shri Devendra Kumar, JE II, P C O, North Western Railway Workshop, Jodhpur.

...Respondents

(Mr. Manoj Bhandari, Counsel for the respondents.)

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2. O.A. No. 282/2003

Ratan Lal S/o Shri Mohan Lal Ji, aged about 55 years, resident of "Kanoziya Bhawan", House No. 51, Sardarpura, E-11 Ropad, Jodhpur.

Post:- The applicant is presently holding the Post of Mistry in Shop No. 12, North Western Railway, Workshop, Jodhpur.

....Applicant.

(Mr. Kuldeep Mathur, Counsel for the applicant.)

V E R S U S

1. The Union of India, through the General Manager, North Western Railways, Jaipur.
2. The Deputy Chief Mechanical (Personnel) North Western Railway workshop, Jodhpur.
3. Shri N. Philiphs, JE-II, Shop No. 8, North Western Railway Workshop, Jodhpur.

Respondents.

(Mr. Manoj Bhandari, Counsel for the respondents.)

O R D E R
(By Mr. J. K. Kaushik, Judicial Member)

In both these cases, a common question of law and fact is involved hence both the OA's are being decided through a common order.

2. We have heard the learned counsel for the parties and have anxiously considered the records as well as pleadings of these cases.
3. The factual matrix of the case is at a very narrow compass. Both the applicants in these OAs were in the Feeder cadre for promotion to the post of Junior Engineer II. The post of Junior Engineer II is a selection post and is to be filled in on



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the basis of positive act of selection consisting of written test and viva voce test as per Para 219 (g) of the Indian Railway Establishment Manual Vol. No. 1, 1989. Both the applicants were within the consideration zone and they were allowed to undertake the selection. They appeared in the written test but could not qualify for being called for the viva voce test. The selection came to be finalised vide order dt. 31.10.03 Annex. A/1 wherein the private respondent in both the cases have been selected and placed on the panel. The common ground of the parties has been that a special favour has been extended to the private respondent inasmuch as the special supplementary examination was conducted only in respect of the private respondents in which he has been declared as successful. It has also been submitted that the medical authorities seems to have not made annotation on the certificate issued by him that the applicant was not in a position to undertake the tests and his treatment was necessary as per the rules in force. Therefore, the Annex. A/1 has been questioned.



4. On the other hand, the respondents have opposed the case of the applicants and have submitted that the applicants have no locus standi to challenge the selection in which they have appeared without any objection and failed. A failed candidate does not have any right to challenge the selection in which he has appeared without any objection. The learned counsel for the respondents has been more than fair and shown us the requisite certificate having required annotation on the medical certificate and the respondents in conducting the selection have committed no irregularity. He has further submitted that the respondents have been so much fair that even there has been 100% restructuring of the cadre subsequently and both the applicants in respect of OA No. 267 and 282 of 2003 have been granted the benefits of upgradation w.e.f. 01.11.03.

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5. The learned counsel in case of Shri. Mangi Lal was probably not aware of the latest development in the case. However, as far as factual aspect of the matter is concerned regarding failing of the applicants in written test and also the the certificate containing the requisite details issued by the medical authorities are not in dispute. In this view of the matter, it has been submitted by the learned counsel for the respondents that applicants have no case at all for interference.

6. It is fairly settled by catena of judgements of Apex court that a failed candidate cannot challenge the selection in which he has appeared without any objection and the learned counsel for the applicants have not been able to point out any irregularity alleged to have been taken place in conducting of the selection in question, so as to warrant its nullification. We subscribe to the submissions of the learned counsel for the respondents that no *prima facie* is made out for our indulgence.

7. In the premises, the Original Application Nos. 267/03 and 282/03 are devoid of any merit and substance and the same stand dismissed. However, the parties are directed to bear their own costs.

(M.K. MISRA)
Member(A)

J.K. KAUSHIK
(J.K. KAUSHIK)
Member(J)

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Part II and III destroyed
in my presence on 31/10/2013
under the supervision of
Section Officer () as per
order dated 18/10/2013

S.K. Gaur
Section Officer (Record) 31.10.2013

~~W.M. Gaur~~
~~W.M. Gaur~~

P. Gaur
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