

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.421/2012

Jodhpur this the 26th day of July, 2013

CORAM

Hon'ble Mr. Justice Kailash Chandra Joshi, Member (J),

Hon'ble Ms. Meenakshi Hooja, Member (A)

1. Kuldeep Kumar Dogra S/o Shri R.S. Dogra, aged about 44 years, R/o Qtr No.4011, Railway Colony, Bhagat Ki Kothi, Jodhpur, at present employed on the post of Sr. Section Engineer (Diesel/Mech), Loco Shed, Bhagat Ki kothi, Jodhpur NWR.
2. Surendra Singh Solanki S/o Shri Jai Singh, aged about 39 years, R/o L-99-B, Near Railway Colony, Behind Railway Hospital, Lalgarh, Bikaner, at present employed on the post of Sr. Section Engineer (Mech), Workshop, Bikaner, NWR.
3. Praveen Kumar Vashistha S/o Shri Mahesh Chandra Vashistha, aged 42 years, R/o 226-A, New Railway Colony, in front of Power House, Lalgarh, Bikaner, at present employed on the post of Sr. Section Engineer (Mech), Workshop, Bikaner, NWR.

.....Applicants

(Through Advocate Mr. J.K. Mishra)

Versus

1. Union of India through General Manager, North-Western Railway, Hqrs. Jaipur Zone, Chainpura, Jagatpura, Jaipur, Rajasthan.

.....Respondent

(Through Advocate Mr. Kamal Dave)

ORDER (Oral)

Per Justice K.C. Joshi, Member (J)

By way of this application, the three applicants namely Kuldeep Kumar Dogra, Surendra Singh Solanki and Praveen Kumar Vashistha, have challenged the legality of the order dated 27.09.2012 (Annexure-A/1) passed by the General Manager, North Western Railway, by which the selection for promotion to the Group 'B' post of Assistant Mechanical Engineer (LDCE-30%)

Scale of Rs.9300-34800 (PB-2) Grade Pay of Rs.4800 was cancelled. This written test was held on 28.01.2012.

2. The applicants have prayed to pursue this OA jointly and the same is allowed.
3. The necessary facts to decide this application are that the applicants enjoyed their last promotion to the post of SSE (Diesel/Mechanic), SSE (Mech) and SSE (Mech) in the years 2009, 2006 and 2009 respectively. The respondent, General Manager, North Western Railway, Jaipur, issued a notification dated 14.09.2011 for filling up the 12 posts of Assistant Mechanical Engineer Group B, under regular 70% quota and five posts under LDCE 30% quota. The notification further contains the other terms and eligibility conditions. All the applicants fulfilled the eligibility conditions for selection against LDCE 30% quota vacancies for the post of Group B i.e. Assistant Mechanical Engineer, and therefore applied for the same. The list of eligible candidates was published on dated 26.12.2011. The Limited Department Competitive Examination (LDCE) for Assistant Mechanical Engineer was held on 28.01.2012. All the applicants qualified the written examination and their names find place at Sl. No.2, 6 and 4 respectively. The applicants were directed to appear before the Medical examination they were also directed to submit the requisite records to the Dy. CPO Hqrs. for further action. On 15.03.2012, all the applicants were medically examined and declared fit for promotion to Class-II

as per para 530-A of Indian Railway Establishment Manual Vol.-I 2000 Edition. While the applicants have been waiting anxiously for undertaking the viva voce test and finalization of the selection thereof, the General Manager, North Western Railway, Jaipur issued a letter dated 27.09.2012 by which the result of the written examination has been cancelled and the written examination has been directed to be held again. Therefore, the applicants, by way of this application, have sought the following relief(s):-

- “(i) That the applicants may be permitted to pursue this joint application on behalf of three applicants under rule 4 (5) of CAT Procedure Rule, 1987.*
- (ii) That impugned order dated 27.09.2012, (Annexure-A/1) passed by 1st respondent and may be declared illegal and the same may be quashed and the respondents may be directed to finalise the selection for the post of AME Group B post on the basis result of written test dated 13.03.2012 (Annexure-A/5) and applicants allowed with all consequential benefits including consideration of promotion in question as per their merit position in final select list.*
- (iii) The respondents may be directed to produce the relevant file containing noting thereof where the decision has been taken to cancel the written test and the result thereon and to issue the impugned order.*
- (iv) That any other direction, or orders may be passed in favour of the applicants, which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.*
- (v) That the costs of this application may be awarded.”*

4. It has been averred in the application that it is a settled principal of law as held by the Hon'ble Supreme Court in the case of **Union of India & others v. Rajesh P.U. Puthuvalnikathu & Anr.**, reported in AIR 2003 SC 4222 that in the absence of any specific or categorical finding supported by any concrete and relevant material that widespread infirmities of all pervasive nature, such examination cannot be cancelled.

5. The respondent by way of reply denied any right of the applicants for appointment to the post of Assistant Medical

Engineer. It has been averred that a complaint mainly indicated deviation from the prescribed allocation of question papers and marks with option to answer the question to the candidates, and on such complaint, a clarification was sought from the Railway Board having the statutory body to issue circulars as regard the conduct of the selection culminating into direction that in four sections representing various streams of Mechanical Branch i.e. (i) Division and Operations Management, (ii) Diesel and Locomotive, (iii) Carriage and Wagon and (iv) Workshops must have 100 marks professional portion in Part B of the Paper-II with a liberty to the candidates to attempt question either from his own stream/discipline or from any other which may be more than one discipline with a condition that total marks of the attempted part shall be hundred. These directions have not been followed while conducting the written examination affecting all the candidates. In the written examination held on 28.01.2012 in Part-B of Paper-II containing professional portion totalling to hundred marks, the paper was set incorporating 6 questions each of 20 marks with a choice to attempt any 5 questions. As per the requirement question paper in Part-B of II has to necessarily incorporate four parts of hundred marks each for every section representing various streams of the mechanical branch. In the above independent divisions, the marks were provided and fixed to extend equal opportunity for every stream of mechanical department as avenue of promotion is common for all the stream. The paper set resulted in lack of equal opportunities

causing discrimination hence it became imperative to cancel the examination in order to restore the equal opportunity to every candidate. It has been further averred that the order dated 27.09.2012 (Annexure-A/1) was correctly issued as the paper itself was not set as per the requirement of the syllabus necessarily affecting all the candidate and the possibility of weeding out the beneficiaries of irregularities were not available. In reply, it has been further averred that the scheme of the examination envisages the idea of disbursement of promotional avenues by providing equal opportunity to the staff posted and working under different streams of Mechanical Department having different nature of work but having the common avenue of promotion for Group 'B' post of Assistant Mechanical Engineer. Since the Paper-II did not conform to this policy ^{and} caused injustice to several candidates who did not find 100% questions from their respective streams. This irregularity vitiated the selection procedure, therefore the result of the written examination was cancelled, and a fresh examination was ordered to be conducted. The eligibility and zone of consideration remained uncharged for the scheduled fresh written examination not contravening any of the legal rights of the applicants. It has been further averred that illegality cannot be allowed to be perpetuated and in the present case when a grave irregularity/illegality in setting of the question paper is admittedly contrary to the syllabus, the administration has every right and duty

to rectify the error at any stage when it comes to its notice, and thus the foundation for cancellation of examination was correct.

6. By way of rejoinder, the applicants while reiterating the same facts as averred in the OA contended that even in the years 2005 and 2010 similar papers were set up and on the basis of same pattern, the result was declared and the candidates were selected on the post of Assistant Mechanical Engineer.

7. The respondent –department filed an additional affidavit and averred that the examination were cancelled to safeguard the legitimacy of the written examination and also annexed some documents in support of its averments.

8. Heard both the parties. Counsel for the applicant contended that when the paper was set for all the candidates and sufficient questions were given and out of 10 questions 5 questions were required to be answered by each candidate, although the multiple questions were not given but the question paper as set by the Railways cannot be said to be illegal or irregular because equal opportunities were provided to each candidate. It has been further contended by the counsel for the applicant that examination were held on 28.01.2012 and complaint was filed on 02.03.2012, and after declaration of result the cancellation of the examination adversely affects the rights of the applicants, and in such matter judicial review is permissible. It has been further contended by the counsel for the applicants that there is no finding of widespread

infirmities of all pervasive nature undermining the selection process, therefore in the absence of such finding, the order issued by the competent authority misdirected itself in taking such an extreme and unreasonable decision. Counsel for the applicant in support of his arguments relied upon the judgment of the Hon'ble Apex Court passed in **Union of India & Others v. Rajesh P.U. Puthuvalnikathu And Anr.**, reported in (2003) 7 SCC 285.

9. Per contra, counsel for the respondent contended that when the paper was not set as per the norms and syllabus fixed by the Railway Board and once it came to the knowledge of the competent authority that the paper was not framed, accordingly, the respondent-department have every right to cancel the examination and he further contended that mere passing of the written examination does not create any right in favour of the applicants because even inclusion of the name of such applicants in the selection list does not create of any right of appointment. In support of his arguments, the learned counsel for the respondent relied upon the judgment of Hon'ble Apex Court passed in **Secretary, Board of Basic Education, Uttar Pradesh v. Rajendra Singh & Ors**, reported in (2009) 17 SCC 452 and the judgment passed in the case of **Divisional Forest Officer and Others v. M. Ramalinga Reddy**, reported in (2007) 9 SCC 286.

10. Counsel for the respondent further contended that once it was found that the paper was not framed as per the syllabus and no malafide has been attributed, the action of the respondent cannot be

said to be unjustified or unreasonable. He further contended that the judgment of the Hon'ble Supreme Court passed in the case of **Union of India & ors. vs. Rajesh P.U., Puthuvalnikathu & Anr.** (Supra) is not applicable in present case because the examinations have not been cancelled on the basis of infirmity or irregularity committed during the examination but simply on the technical ground of non framing of question paper as per the guidelines of the Railway Board, which provide for opportunities for each branch. Counsel for the respondent strongly relied upon the averments made in the reply that to allow the recruitment process will be against the scheme envisaged by the Railway Board according to which the disbursement of promotion avenues must be equally available to the staff posted and working in different department and having different nature of work but having the common avenues of promotion for Group 'B' post of Assistant Mechanical Engineer.

11. Counsel for the applicants during the course of arguments also contended that he had applied/prayed for summoning of record of the Railway Board so as to confirm that what was the ground for cancellation of examination, and the counsel for the respondent during the process has submitted the note sheet of the competent authority and in this note sheet it has been ordered that both papers I and II did not confirm to laid down instructions as explained in the note and accordingly examination has been cancelled.

12. We have considered the rival contentions of both the parties and also perused the relevant record. So far as the judgment relied upon by the counsel for the applicant is concerned, it is not the case of the respondent department that they have cancelled the examination due to the infirmities or irregularities during the process of the examination but the cause for cancellation of the examination was non setting of the question paper as per the norms laid down by the Railway Board. Therefore, the judgment relied upon by the counsel for the applicants bear different facts to the facts of the present case.

13. It is a settled position of law that mere inclusion of names in the select list does not create any right in favour of the applicants, and otherwise also, when the examination has been cancelled on the ground that the papers were not in conformity with the guidelines laid down by the Railway Board, therefore in our considered view the Order at Annexure-A/1, cancelling the examination passed by the competent authority, cannot be said to be illegal or unjust.

14. Accordingly, in our view the OA lacks merits, and therefore, the same is dismissed with no order as to costs.


(Meenakshi Hooja)
Administrative Member


(Justice K.C. Joshi)
Judicial Member