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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIFUR BENCH

JAIPUR

OA No.445/1993 and MA No. 203/1997

Date of order: 29-8-1994

1. Manohar Lal Arora, presently posted as H.S. Machineman-II, T.No. 18697/23, C&W Ajmer.
2. Raisuddin Siddiqui, presently posted as PMA-II T.No. 37230/28, C&W, Ajmer.
3. Lalit Kishore, presently posted as Smith/II, T.No. 22408/24, C&W, Ajmer.
4. Kulfat Singh, presently posted as H.S. PMA II, T.No. 37333/28, C&W, Ajmer.
5. Tej Singh, presently posted as H.S.Fitter Gr.I, T.No. 48434/30, C&W, Ajmer.
6. Dhruv Kumar Mishra, presently posted as H.S. PMA-II, T.No. 18600/23, C&W, Ajmer.
7. Bhanwar Singh, presently posted as H.S. Treamer Gr.I, T.No. 31902/26, Ajmer.
8. Tej Pal Singh, presently posted as Painter-III, T.No. 31288/26, C&W, Ajmer.
9. Ashok Kumar, presently posted as C.B.R.III, T.No. 35002/28, C&W, Ajmer.
10. Ramesh Chand, presently posted as H.S. B.Smith Gr.I, T.No. 48902/30, C&W, Ajmer.
11. Baldev Singh, presently posted as H.S.Fitter Gr.II, T.No. 14310/22, C&W, Ajmer.

.. Applicants

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Bombay.
2. Dy. Chief Mechanical Engineer (C&W), Western Railway, Ajmer.

.. Respondents

Mr. R.N.Mathur, counsel for the applicants

Mr. Manish Bhandari, counsel for the respondents

CORAM:

Hon'ble Mr. O.P.Sharma, Administrative Member

Hon'ble Mr. Ratan Prakash, Judicial Member

ORDER

Per Hon'ble Mr. O.P.Sharma, Administrative Member

In this application under Section 19 of the Administrative Tribunals Act, 1985 S/Shri Manohar Lal

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Arora, Raisuddin Siddiqui, Lalit Kishore, Kulfat Singh, Tej Singh, Dhruv Kumar, Bhanwar Singh, Tej Pal Singh, Ashok Kumar, Ramesh Chand Berwa and Baldev Singh have prayed that order Ann.A2 dated 23.6.1993 by which selection proceedings conducted in pursuance of the notification dated 12.11.1991 in which the applicants had appeared and were declared successful had been cancelled may be quashed. They have further prayed that the respondents may be directed to declare the result of the above selection proceedings which have been cancelled and in case the applicants are found successful, directions may be issued for their promotion/appointment on the post of Apprentice Mechanic scale Rs. 1400-2300 against the available vacancies of the years 1990, 1991, 1992 and 1993 or in case vacancies are available for the years 1987, 1988 and 1989, they may be appointed against such vacancies.

2. The factual position of the case, as explained by the applicants, is that the applicants in this OA had appeared in a selection test for the post of Apprentice Mechanic in the Carriage Workshop, Western Railway, Ajmer, conducted vide notification dated 12.11.1991 (Ann.A5), for filling up 8 vacancies. The candidates who qualified in the written examination (Ann.A1 dated 10.2.1993) were required to appear in the interview but before the interviews could be conducted certain persons filed an application before the Tribunal (No. 404/1991) against holding of the selection vide notification Ann.A5. The selection vide Ann.A5 had been held after cancelling an earlier selection held vide notification dated 23.8.90 (Ann.A6). This earlier selection vide notification dated 23.8.90 had been cancelled by the respondents on the ground that irregularities had been committed in that

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selection process. The persons who had filed OA No. 404/1991 before the Tribunal were aggrieved by cancellation of the entire selection process held vide notification dated 23.8.90. This OA was allowed by the Tribunal vide an order dated 18.5.1993 by which the selection process initiated vide notification dated 23.8.90 was revived. The Tribunal by its order dated 18.5.1993 also quashed the notification dated 12.11.1991 by which fresh selection process was initiated.

3. Further, according to the applicants, they had appeared in the subsequent selection process initiated vide notification dated 12.11.1991. The result of their written examination was declared vide Ann.A1 dated 10.2.1993 and it was cancelled vide Ann.A2 dated 23.6.93 on account of the order dated 18.5.1993 passed by the Tribunal in OA No. 404/1991 filed by some other persons. The grievance of the applicants is that they were not parties to OA No. 404/1991. The applicants had appeared in the selection proceedings (which were later cancelled under the Tribunal's order) without being aware that these proceedings were provisional in nature. Earlier, on 12.12.1991, the Tribunal had issued directions in OA No. 404/1991 on a Misc. Application filed by the applicants in that OA that selection proceedings may continue but the result thereof shall not be declared until the decision of the OA. However, still the result of the written test was declared during the pendency of the OA. The result of the selection proceedings in which the applicants had appeared could not have been cancelled without giving them an opportunity of being heard, particularly when they were not aware that these selection proceedings were subject to decision in any case pending before the Court. The respondents have also not conducted the selection for

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appointment/promotion on the post of Apprentice Mechanic for 3 years from 1991 to 1992 and, therefore, vacancies for these years have been lying unfilled. Since the applicants had appeared in the selection test and had qualified the written examination, instead of cancelling the entire selection process the respondents should have filled up the vacancies of the subsequent years which are lying vacant by appointing the applicants against those vacancies. The applicants have further stated that as per their information, certain vacancies of the earlier years have also not been filled up. There is no allegation that there was any irregularity with regard to the examination in which the applicants had appeared. On the other hand, allegations with regard to the earlier selection process which was revived, were more serious inasmuch as the question paper itself was not kept secret (Ann.A7) and it became known to certain candidates even before the examination. This fact, however, was not brought to the notice of the Tribunal by the respondents when the Tribunal passed the order dated 18.5.1993 cancelling the subsequent selection process in which the applicants had appeared and reviving the earlier selection process. They have, therefore, prayed that instead of cancelling the entire selection process in which they had appeared, this process should be finalised and the successful candidates should be appointed/promoted against vacancies of subsequent years.

4. The respondents in their reply have stated that the earlier selection process initiated vide notification dated 33.8.90 was initially cancelled by the respondents themselves because uniform standard of marking had not been maintained. A fresh notification was issued on 12.11.1991 for holding the selection. However, in view

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of the order dated 18.5.1993 passed by the Tribunal, the subsequent notification for holding the selection was cancelled and the earlier selection process was revived. Accordingly, the result of the earlier selection process, after complying with the directions of the Tribunal, was declared on 24.9.1993. Since the notification for holding the subsequent selection process in which the applicants had appeared had been quashed by the Tribunal, it had no relevance now. On account of the earlier selection process which had been revived, results of 11 candidates were declared. There were 11 vacancies as per the notification dated 23.8.90 by which the earlier selection process was initiated. However, ultimately only 8 vacancies were found to be available, as per the position given in the chart Ann.R3. Accordingly, in the subsequent selection process in which the applicants had appeared only 8 vacancies were notified. If the applicants had any grievance against the order dated 18.5.1993 passed by the Tribunal in OA No. 404/1991, they should have approach the Hon'ble Supreme Court. Since the respondents have declared the result of the earlier selection as per the directions of the Tribunal, this cannot now be questioned. According to the respondents, no posts of Apprentice Mechanic are at present lying vacant. (This observation is as on 21.2.1995, the date on which reply was filed by the respondents).

5. Subsequent to the filing of the present OA, the applicants filed a Misc. Application, No. 203/1997 with which they annexed a communication dated 23.6.1997 whereby fresh selection for the post in question was proposed to be held. The applicants have stated in this MA that since they had earlier qualified in the written test held in pursuance of an earlier notification and had also

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appeared in the interview for the post of Apprentice Mechanic, though the selection was cancelled, the respondents should be restrained from conducting any selection in pursuance of the notification dated 23.6.1997 in view of the fact that the applicants' OA questioning the cancellation of the selection process in which they had appeared is pending. The Tribunal vide order dated 1.8.1997 had directed that the selection process initiated by the aforesaid notification can go on but final appointments shall not be made till the next date. The respondents were to file reply to the MA but on the date of hearing the learned counsel for the respondents stated that the respondents did not consider it necessary to file any reply to the MA.

6. During the oral arguments, the learned counsel for the applicants stated that the respondents have never declared the correct position of the vacancies in the posts of Apprentice Mechanic available with them and they have been changing the figure from time to time without justifying such change. There must be vacancies available subsequent to declaration of the result of the selection process which stood revived by the order of the Tribunal passed on 18.5.1993 in OA No. 404/91. The applicants had appeared in the selection test - both in the written examination and the interview - but their results had not been declared. They cannot be compelled now to appear in the fresh selection proceedings when they had already appeared therein earlier in pursuance of an earlier notification of which result had not been declared. Therefore, the result of the earlier selection process should be declared and those of the applicants who qualify therein should be appointed/promoted against vacancies arising subsequent to those which were to be filled up by

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the candidates qualifying the earlier selection process which stood revived by the order of the Tribunal.

7. The learned counsel for the respondents argued that the selection process in which the applicants had appeared had not been completed and it had been cancelled as a result of the order of the Tribunal. As long as the order of the Tribunal stood, the action of the respondents in cancelling the selection process in which the applicants had appeared could not be faulted. The applicants should have sought a review of the order of the Tribunal. The learned counsel for the respondents also questioned the right of the applicants to place on record the notification dated 23.6.1997 initiating fresh selection process on the ground that this was a subsequent event which had no relation, whatsoever, with the earlier selection process. There was too much of a time lag, according to him, between the earlier selection process and the one proposed to be initiated by order dated 23.6.1997 and the vacancies proposed to be filled up by this notification cannot be filled up as a result of the selection process which already stood cancelled.

8. The learned counsel for the applicant stated by way of rejoinder that the applicants could not have filed a Review Application because they were not aware of the order passed by the Tribunal on 18.5.1993 to which, in any case, they were not parties. It was the duty of the administration to file a review application. The applicants are not at fault, in any way, because it was not because of any wrong done by them that the selection process in which they had appeared had been cancelled. Therefore, they cannot be asked to appear in the selection process again for the same post. The learned counsel for the applicants also produced before us a copy

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of the order dated 28.6.1995 passed by this Bench of the Tribunal in OA No. 591/93 whereby the Tribunal had directed that in the circumstances of the case, the applicant should not be subjected to a fresh selection test when he had earlier cleared the selection test and there was no misrepresentation by the applicant in that case. He added that ratio of this judgment should be applied to the present case also.

9. We have heard the learned counsel for the parties and have perused the material on record.

10. The factual position that has emerged in this case is that vide notification dated 23.8.1990 (Ann.A6) selection process for filling up 11 vacancies of Apprentice Mechanic scale Rs. 1400-2300 was initiated. This selection process was cancelled by the respondents themselves on account of certain irregularities in the examination. The candidates who had appeared in the selection process filed an OA, No. 404/1991, before the Tribunal challenging the cancellation of the selection process. Meanwhile after cancelling the selection process, the respondents issued a fresh notification on 12.11.1991 (Ann.A5) proposing to hold a fresh selection for filling up 8 vacancies in the said post. Written examination was also held in pursuance of the notification Ann.A5 in which the applicants in the present OA appeared. It is not quite clear whether they had also appeared in the interview, before the Tribunal passed the order dated 18.5.1993 in OA No. 404/1991 filed by persons who had appeared in the earlier selection vide notification Ann-A6. Anyhow, the Tribunal passed the following order on 18.5.1993 in OA No. 404/1991:

" The grievance of the applicants is that a written selection was held for the post

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of Apprentice Mechanic. However, the test itself was cancelled and the results were not declared. Annexure-F5 contains reasons for cancellation of the test. It has been stated therein that the officer concerned, on receipt of certain complaints, himself examined a few answer books of successful as well as unsuccessful candidates securing more than 50 marks, and found that a uniform standard of marking had not been maintained, while evaluating the answer books, thereby creating anomalies in the result of the written test. If this was the reason for cancellation of the test, the remedy lay in getting the answer books re-valued by other competent persons or authorities and thereafter declaring the result. For this purpose, it is not necessary that the entire test held earlier should be cancelled and a fresh test should be held. This Tribunal has already granted a stay against holding of a fresh test.

2. In the circumstances, the notification regarding holding of a fresh test is quashed. The answer books of the test already held may be got re-valued in the light of the directions given above, and result of the test held earlier may be declared at the earliest."

The position that emerged after passing of the above order by the Tribunal was that the notification Ann.A5 by which fresh selection was proposed to be held stood cancelled. Thus, even if the process of selection held vide notification Ann.A5 dated 10.11.1991 had been completed, it could not have been acted upon in view of the order of the Tribunal by which the earlier selection process also stood revived. The respondents were, therefore, justified in taking the selection process initiated vide notification Ann.A6 to its logical conclusion and in not acting upon the selection process initiated vide Ann.A5.

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Maybe the applicants in the present OA were not respondents in OA No. 404/1991 in which the order dated 18.5.1993 was passed but fact remains that the order dated 18.5.1993 stands undisturbed or unmodified. Whether or not the reasons given by the applicants in the present OA for not moving a Review Application against the said order are justified, this order stands as it cannot be reviewed in the present proceedings. Whether the order dated 18.5.1993 is proper or not is not an issue which can be raised in this OA. Even if the applicants feel that any injustice has been caused to them because of the order dated 18.5.1993 passed by the Tribunal or due to lack of any communication from the respondents to the applicants at any stage about the pendency of OA No. 404/1991, all that can be said at this stage is that the applicants should have remained vigilant about their rights at all stages and should have gathered appropriate information and taken necessary action in pursuance thereof at the proper time.

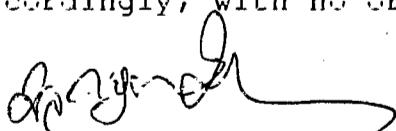
11. Question now is whether the vacancies arising subsequent to those filled up by the selection process which stood revived by the order of the Tribunal or any earlier vacancies can be filled up on the basis of the selection in which the applicants have appeared. As already noted above, the factual position is that the selection process initiated vide notification Ann.A5 dated 12.11.1991 stood cancelled by the order of the Tribunal dated 18.5.1993. The legal position is that no action can be taken on the basis of the selection process which has already been quashed by the Tribunal and when the order quashing it has become final. This selection process or the result thereof does not stand saved for even the

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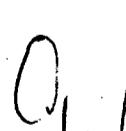
limited purpose of filling up of the vacancies arising subsequent to the selection process which stood revived by the Tribunal's order. In these circumstances, we cannot grant any relief to the applicants. The Tribunal's order dated 28.6.1995 in OA No. 591/1993 on which reliance has been placed by the learned counsel for the applicants is on different facts and, therefore, has no applicability to the present case. The prayers for the reliefs claimed both in the OA and MA No. 203/1997 are, therefore, rejected.

12. The selection vide notification dated 23.6.1997 annexed to the MA No. 203/97 was to be held on 3.8.1997. We had directed that the selection process should not be stayed but appointments shall not be made till the next date. If the written examination has already been held on that date and if the applicants were also called upon to appear in the said selection process, the respondents shall grant an opportunity to the applicants in the present OA to appear in a supplementary examination as part of the said selection. If the applicants appear in the supplementary examination, the selection process should be finalised by the respondents in accordance with the prescribed procedure also taking into consideration the candidature of those who appear in the supplementary examination.

13. The OA and MA both stand disposed of accordingly, with no order as to costs.


(Ratan Prakash)

Judicial Member


(O.P. Sharma)

Administrative Member