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CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH,
JABALPUR

Original Application No. 81 of 2006

Jabalpur, this the 30th day of August, 2006

Hon'ble Dr. G.C. Srivastava, Vice Chairman
Hon'ble Shri A.K. Gaur, Judicial Member

Janak Kumar Singh,
Aged about 40 years,
Junior Engineer Gr.I (P/Way),
Beohari Rly. Q. No. RB/II/14-A,
Railway Station, Beohari,
Distt. Shahdol (MP).

Applicant

(By Advocate – Shri H.S. Verma)

V E R S U S

1. Union of India,
Through General Manager,
West Central Railway, Jabalpur.
2. General Manager,
West Central Railway, Jabalpur.
3. Divisional Rail Manager,
West Central Railway, Jabalpur.
4. Rajneesh Kuraiya, S/o. Shri
R.P. Kurariya aged about 39 years,
JEI Rly. Station Shridham,
Distt. Narsinghpur (MP).
5. Sanjay Vyas, S/o. Shri M.C. Vyas.
6. Rakesh Kumar Shrivastava.
7. Neeraj Kumar Shrivastava.
8. Shelendra Kumar Shrivastava.
9. Sanjay Choudhary.
10. M.K. Jain

Respondents

(By Advocate – Shri H.B. Shrivastava for respondents Nos. 1 to 3,
 Shri A. Adhikari for respondent No. 4 and
 Shri Sanjay Sanyal for respondents Nos. 5 to 10)

O R D E R

By A.K. Gaur, Judicial Member –

By means of this Original Application the applicants have claimed the following main relief:

“8.1 That, this Hon’ble Tribunal be pleased to quash the entire selection proceedings including the result published vide impugned order dated 30.11.2005 (Annexure A-1) declaring the same as illegal and ultravirous. As the respondent Railway have not follow the instructions laid down by the Railway Board. Annexure A-7.

8.2 That, this Hon’ble Tribunal be further pleased to direct the respondents to hold fresh selection in respect of the total number of post available as on date as the respondents have not asses the vacancies as per para No. 24.1 and 24.1.1 of guideline for selection issued by Railway Board on 20.10.1999. Annexure A-7.

8.3 That, alternatively, in case it is not felt necessary to quash the entire selection proceedings, this Hon’ble Tribunal be further pleased to direct the respondent no. 3 to interpolate the name of the applicant at Sr. No. 10, i.e. below Rajesh Kumar Gupta, as a candidate other than outstanding. In this case too is not possible, this Hon’ble Tribunal may kindly be pleased to direct the respondents Railways to assess the number of vacancies in grate 6500-10500 and hold supplementary selection and till then the operation of the panel published on 30.11.2005 as per Annexure A-1 may be held in obeyance.”

2. The applicant was appointed as Junior Engineer Grade-II on and from 19.10.1993. Vide the order dated 30.11.2005 the list of successful candidates who were finally selected for the post of Section Engineer after undergoing written test, was published (Annexure A-1). It is urged on behalf of the applicant that he was shocked to know that in the result of the written test the respondent No. 4 who was junior to him was shown as outstanding and the applicant did not find any place in the select list. The applicant has also filed the seniority list of PWI’s dated 27.2.1998 (Annexure A-2). According to the

applicant Shri Rajneesh Kuraria respondent No. 4 did not fulfill the requisite condition of continuous two years service as JE Grade-I, yet he was allowed to appear in the selection test which is contrary to the selection norms and as such the entire selection proceedings stands vitiated and is liable to be quashed. 18 candidates were called for written test as per Annexure A-3 and in this selection it is strange to note that 7 out of 10 candidates have been placed as outstanding which probably might not have happened in the history of the Railways and therefore requires minute investigation to ascertain whether or not there is any malafides intention behind it. The applicant had preferred a representation dated 8.12.2005 but no heed was paid to the said representation. It is extensively argued on behalf of the applicant that the entire selection proceedings required to be quashed because selection procedure has not been followed properly as ineligible candidate i.e. respondent No. 4 was allowed to take up the test though he had not completed two years as JE-I which was the main condition of the eligibility. According to the applicant the action of the respondents is wholly malafide and is violative of Article 14 and 16 of the Constitution of India.

3. The official respondents filed their detailed reply and denied the allegations of the applicant contained in the Original Application. According to the official respondents a selection of Section Engineer (Permanent Way) in the grade of Rs. 6500-10500/- was conducted by them. The said selection was notified on 14.7.2005 (Annexure R-2) for filling 14 posts which included; general category-10 posts, scheduled caste-1 post and scheduled tribe-3 posts. As per recruitment rules as provided in Indian Railway Establishment Manual (Annexure A-1) 20% of vacancies in the grade are to be filled by direct recruitment, through Railway Recruitment Board and departmental selection is to be made for only 80% of the vacancies. 21 employees including the applicant and the private respondent No. 4 were called for written test according to their seniority position. One

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employee named Parshuram Verma was subsequently declared as ineligible as he was under reversion and not eligible to be considered in the selection. 18 employees including the applicant were declared as having secured qualifying marks in the written test. Thereafter on the basis of the marks obtained in the written test, scrutiny of records, confidential reports, seniority position and marks on personality, leadership etc., marks were allotted by the nominated selection committee members and final list of successful candidates eligible to be placed on the panel of Section Engineer in the scale of Rs. 6500-10500/- was declared on 30.11.2005. The name of the applicant does not find a place in the final list notified on 30.11.2005 as per recommendations of the selection committee. The list of suitable candidates for empanelment was notified on the basis of the recommendation of the DPC and of approval of the competent authority. The specific stand taken by the official respondents in their counter reply is that the applicant has no locus standi in opposing this selection in which he has already participated without any protest and could not succeed in the selection on the basis of the recommendation of the selection committee. Hence, now he cannot challenge the legality and validity of the said selection. The application of the applicant is clearly barred by the principle of estoppels and acquiescence. The official respondents have also clearly stated that the applicant had not agitated the matter before attending the selection and have approached the Tribunal only after being found unsuitable by the selection committee, which is an afterthought. The official respondents have also contended that the OA can be dismissed on the ground of multiple reliefs as claimed in the OA.

4. We have heard learned counsel for the parties. During the course of argument the learned counsel for the applicant has clearly argued that number of candidates have been placed as outstanding arbitrarily. The learned counsel for the applicant has also argued that one Shri R.K. Gupta has been selected while he was given a major

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penalty charge sheet. The learned counsel for the applicant has also argued that one of the candidate namely Shri Neeraj Shrivastava has also been selected arbitrarily in as much as a major penalty was already imposed against him. According to the learned counsel for the applicant the assessment of the vacancies has not been done properly and mandatory training was not given before the selection/promotion.

5. It is argued on behalf of the official respondents that the candidates have been graded outstanding on the basis of the recommendations of the DPC. We have seen the minutes of the proceedings of the DPC produced before us and we are of the considered opinion that the candidates have been grading outstanding on the basis of the recommendations of the DPC and there is no illegality in the same. According to the learned counsel for the official respondents Shri R.K. Gupta was awarded a minor punishment of reduction of pay with non-cumulative effect. He could not be promoted due to the reason of minor penalty in operation till 31.12.2006 and he will be promoted after 31.12.2006. He has laid emphasis that there is no bar to the promotion of candidates who are awarded minor penalty and this fact has been made clear in the order of promotion (Annexure R-4). In the case of Shri Neeraj Shrivastava it has been argued on behalf of the official respondents that as per paragraph 215 of the Indian Railways Establishment Manual the condition of 2 years is required to be fulfilled at the time of actual promotion and not necessarily at the time of consideration for selection. He has been promoted only after completion of actual period of two years service in lower grade. According to the official respondents the assessment for vacancies has correctly been done as 14 including SC/ST candidates and probably the applicant is not aware of the 20% intake of direct recruitment through Railway Recruitment Board and accordingly miscalculated the vacancies of his own. The learned counsel for the official respondents have very vehemently argued that the applicant has not raised or pleaded violation of any statutory provision in the constitution of the selection committee

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or any other statutory provision required to be followed while conducting selection which was ignored by the respondents.

6. Having heard the learned counsel for the parties at length we are of the considered opinion that the applicant could not come up in the list of selected candidates on the basis of his less meritorious performance and due to the limited number of vacancies notified for the selection. We have seen that the applicant has appeared in the selection without any demur or protest and when he could not succeed in the selection he has questioned the validity of the selection on irrelevant grounds. In order to support the contentions of the learned counsel for the official respondents, he has placed reliance on the following decisions:

i) AIR 1976 SC 2458 - Dr. G. Sarna Vs. University of Lucknow,
 ii) AIR 1986 SC 1043 - Om Prakash Vs. Akhlesh Kumar,
 iii) AIR 1997 SC 2083 - University of Cochin Vs. N.S. Kanjoom Jacnamon & Others. It is a settled position by the Hon'ble Supreme Court that the candidate remaining unsuccessful in the selection process cannot subsequently challenge the correctness of the procedure of the selection. We have also seen the original records of the DPC and the guidelines produced by the official respondents for making promotion on the selection grade post in his guidelines for personal officers and members of the selection board. As per rule 11.52 any candidate who obtains more than 80% marks in aggregate is to be classified as outstanding. The respondents Nos. 5 to 8 and 10 are senior to the applicant and they have been classified as outstanding because they have obtained 80% aggregate marks. The respondent No. 9 is a Schedule Caste candidate and to whom the said rule does not apply. Hence, we are of the considered view that there is no irregularity in the selection process and the applicant has utterly failed to prove his case.

7. In view of the aforesaid observations the Original Application is dismissed. No costs.

A.K. Gaur
 (A.K. Gaur)
 Judicial Member
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Q.C. Srivastava
 (Dr. G.C. Srivastava)
 Vice Chairman