

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
CIRCUIT COURT SITTING AT GWALIOR

Original Application No. 165/2004

Jabalpur, this the 6th day of May, 2005

Hon'ble Mr. R.P. Singh, Vice Chairman
Hon'ble Mr. Madan Mohan, Judicial Member

Shri Anil Kushwaha,
S/o Shri Kok Singh Kushwaha
C/o Ram Kripal Singh
Qtr.No.100, Block No.4,
Double Storey, Badi Line
Gwalior(M.P.)

Applicant

(By Advocate - Shri Prashant Sharma)

VERSUS

1. Minister of Railways
Rail Bhawan
New Delhi.
2. The General Manager,
North Central Railway,
Jabalpur(M.P.)
3. The DRM
Central Railway, Bhopal(M.P.)
4. Shri Abun Kumar Rao
Sr. Add. Managing Director
& Mukhya Satrakta Adhikari
Central Railway
Mumbai.
5. Shri R.K. Jain
Sr. D.S.T.E.
Central Railway, Bhopal(M.P.)
6. Shri K.B. Nagaich Ji
Sr. D.P.O. Bhopal(M.P.)

RESPONDENTS

(By Advocate - Shri Raja Sharma on behalf of Shri V.K. Bhardwaj)

O R D E R

By Madan Mohan, Judicial Member -

By filing this original application, the applicant has sought the following main relief :-

"(1) to quash the impugned order of selection dated 24.1.2001!"

2. The brief facts of the case are that the applicant was issued a letter dated 2.1.01 to attend the office of the respondents on 23.1.01 for recruitment in Class-IV posts against sports quota. The selection committee considered the applicant alongwith other candidates and selected the candidates as per their

performance and empanelled the meritorious players. However the applicant was not selected. Against his non-selection, the applicant had approached the Assistant Labour Commissioner, Bhopal for conciliation proceedings under Industrial Disputes Act, 1947. As there was no relationship between the employer and employee, the conciliation proceedings failed. Hence, the applicant has filed this OA.

3. The respondents in their reply have stated that the selection committee was consisting of specialists(Coach and senior Players) for each game notified.. After selection, a select list was published on 7.2.2001. Against his non-selection the applicant had approached the Assistant Labour Commissioner, Bhopal and the Assistant Labour Commissioner Bhopal, has passed order dated 29.4.2003 wherein a complaint of the applicant was examined which was converted into Industrial dispute and the Assistant Labour Commissioner has held that due to divergent views of both the parties, the conciliation proceedings were failed and the Assistant Labour Commissioner has suggested both the parties for arbitration proceedings and the same fact has been accepted by the applicant. However, instead of approaching for arbitration proceedings, the applicant has come before this Tribunal. In view of the aforesaid facts the OA deserves to be dismissed.

4. Heard the learned counsel for the parties and carefully perused the records.

5. After hearing the learned counsel for the parties and on careful perusal of the records, we find that the applicant had participated in the selection held on 24.1.2001 and on the basis of recommendation of the selection committee, the selected person were appointed. As the applicant was not selected, he had earlier gone for conciliation proceedings before the Assistant Labour Commissioner. After failure

of the conciliation proceedings, he has approached this Tribunal. We also find that on the basis of the selection which was held on 24.1.2001, appointment orders were issued on 7.2.2001. The applicant has not challenged the appointment orders of selected persons. He has also not impleaded the selected persons while they ^{were} necessary party and no adverse order can be passed against the persons who were selected in the year 2001. The applicant had also approached this Tribunal in the year 2004 against the selection, which was held in the year 2001. It is well settled proposition of law by the Hon'ble Supreme Court in the case of **Om Prakash Vs. Akhilesh Kumar**, AIR 1986 SC 1043 that :-

“ Having appeared in a test, one cannot question its validity after failing in the test or finding himself unlikely to pass. There is no estoppel against challenging the rules of examination even after appearing in the test”.

6. In view of the above ruling of the Hon'ble Supreme Court and also the aforesaid facts and circumstances of the case we do not find any merit in this OA. Accordingly, the OA is dismissed. No costs.

(Madan Mohan)
Judicial Member

(M.P.Singh)
Vice Chairman

skm

प्राप्तिकर्तन सं. औ/व्या..... जगदलपुर, दि.....
प्रतिनिधि अज्ञे दिन:-
(1) सचिव, उच्च व्यायालान वार दि. २००५/०६/०५, जगदलपुर
(2) आवेदन श्री/श्रीमती/इ..... के काउंसल
(3) प्रत्यर्थी की/किए/इ..... के काउंसल
(4) व्यायालान, केन्द्रल, जगदलपुर, बाहुदारी
सुचना एवं आवश्यक वार्तावाली हेतु

उप अधिकारी

Prashant Jhunjhunwala
V.K. Bhowmik
P.D. Patel.

quesd
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