

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH

JAIPUR, this the 12<sup>th</sup> day of December, 2008

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)  
HON'BLE MR. B.L.KHATRI, MEMBER (ADMINISTRATIVE)

**ORIGINAL APPLICATION No.434/2006**

Surja Ram Meena  
s/o Shri Dhanna Ram Meena  
working as Fitter Grade-I,  
Scale Rs. 4500-7000,  
r/o H.No.200, Mishar Colony,  
Phulera, Distt. Jaipur.

.. Applicant

(By Advocate: Mr. Nand Kishore))

Versus

1. Union of India  
through the General Manager,  
North Western Railway,  
Hasanpura Road, Jaipur
2. Divisional Railway Manager,  
North Western Railway,  
Power House Road,  
Jaipur
3. Shri Om Prakash  
s/o Shri Gangaram,  
Senior Fitter (MCF)  
c/o Diesel Foreman,  
North Western Railway,  
Phulera.

.. Respondents

(By Advocate: Mr. R.G.Gupta)

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## ORIGINAL APPLICATION No.198/2007

Surja Ram Meena  
 s/o Shri Dhanna Ram Meena  
 working as Fitter Grade-I,  
 Scale Rs. 4500-7000,  
 r/o H.No.200, Mishar Colony,  
 Phulera, Distt. Jaipur.

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.. Respondents

(By Advocate: Mr. R.G.Gupta)

O R D E R

Per Hon'ble Mr. M.L.Chauhan

By way of this common order, we propose to dispose of these OAs filed by the same applicant.

2. In OA No.434/2006, the grievance of the applicant was that eligibility list dated 10.7.2006 (Ann.A1) has not been correctly prepared for the purpose of selection to the post of Junior Engineer Grade-II (Electrical) scale Rs. 5000-8000 whereas name of the applicant has been shown at Sl.No.9 and that of one Shri Om Prakash at Sl.No.4. According to the

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applicant, <sup>eligibility</sup> has to be prepared in terms of Railway Board direction vide order No. EP 830/45/3 dated 17.3.1986 wherein it has been stated that for the post of Chargeman (Junior Engineer) seniority should be deciding factor. For that purpose, the learned counsel for the applicant has drawn our attention to the seniority list of Group-C employees circulated vide order dated 31.3.2004 wherein name of the applicant was shown at Sl.No.11 and that of Shri Om Prakash at Sl.No.20. It may be stated that pursuant to the said eligibility list, the respondents declared result of the qualified candidates for selection to the aforesaid post vide order dated 28.9.2006 (Ann.A2) wherein name of the applicant find mention at Sl.No.4 and that of Shri Om Prakash at Sl.No.2.

3. Based on these facts notices were issued to the respondents and this Tribunal vide order dated 21.11.2006 also granted interim stay to the extent that respondents were directed to keep one post of Junior Engineer Grade-II vacant till the next date which stay has been extended from time to time.

4. The respondents in the reply have stated that selection process for appointment to Junior Engineer Grade-II (Electrical) in the scale of Rs. 5000-8000 has been cancelled vide order dated 9.3.2007 (Ann.R1). It is further stated that respondents issued a new

seniority list in which name of the applicant find mention at Sl.No.8 and that of respondent No.3 at Sl.No.17. Thus, according to the respondents, the present OA does not survive.

5. Since, on the basis of the material placed on record and in view of the subsequent development the selection process for the post of Junior Engineer Grade-II as initiated by the respondents was cancelled, the applicant has challenged the impugned order dated 18.1.2007 by filing OA No. 198/2007 in which besides this order, another notification dated 11.5.2007 has been challenged whereby the respondents have initiated selection process by preparing eligibility list dated 11.5.2007 (Ann.A2) in which name of the present applicant has been mentioned at Sl.No.6 in List-A of the eligibility list and that of Shri Om Prakash find mention in list-B of the eligibility list. This Tribunal while issuing notices vide order dated 6.6.2007 has also stayed operation of the impugned notification Ann.A2 till the next date which stay has been extended from time to time. The grievance of the applicant is that the earlier panel has been cancelled without any reason and the applicant has acquired right for promotion based on earlier select list having qualified the written examination.

6. The respondents have filed reply. In the reply, the respondents have given reasons as to why earlier selection was cancelled and new selection process for filling up the aforesaid post of Junior Engineer Grade-II was initiated. In the reply, the respondents have also stated that as per eligibility list issued vide notification dated 10.7.2006, which was subject matter in earlier OA and Ann.A3 in this OA, both the applicant as well as private respondent Shri Om Prakash were eligible to appear in the selection to the post of Junior Engineer Grade-II for rankers quota. Since the earlier seniority list was not prepared in terms of Railway Board instructions dated 22.2.2005 which stipulates that on promotion in MCM the seniority will not be above Grade-I and it will in the Grade-I, as such, the seniority list of MCM Grade-I was amended vide office letter dated 18.1.2006. It is further stated that consequent upon this amended seniority list, eligibility list for selection was also changed and the entire selection was cancelled vide letter dated 9.3.2007. Thus, in view of this development notification dated 11.5.2007 (Ann.A2) was issued for the purpose of fresh selection.

7. The applicant has filed rejoinder and in the rejoinder the applicant has placed reliance on the decision of the Apex Court on the case of Andhra Pradesh Public Service Commission vs. Chandra M. Reddy

and Ors., SLJ 2007 (2) 196 (SC) thereby stating that correcting the error or mistake is not sufficient ground to cancel the list of successful candidates.

8. We have heard the learned counsel for the parties and gone through the material placed on record.

9. From the material placed on record, it is evident that the respondents undertook selection process for filling up 3 posts of Junior Engineer Grade-II scale Rs. 5000-8000. For that purpose eligibility list was to be prepared based upon the seniority in MCM Grade-I/Electrical Fitter Grade-I. Admittedly, eligibility list as issued vide notification dated 10.7.2006 (Ann.A1 in OA No.434/06) was not prepared in the aforesaid terms. Feeling aggrieved, the applicant has filed OA No.434/06 whereby stating that private respondents Shri Om Prakash cannot be placed senior to the applicant and also challenging the office order dated 28.9.2006 (Ann.A2 in OA No.434/06) whereby the applicant and private respondents have qualified the written examination. However, name of the private respondent figures at Sl.No.2 above the applicant whose name find mention at SL.No.4. This mistake was rectified by the respondents by issuing the revised seniority list whereby name of the applicant was shown above the private respondents. There is no dispute between the parties regarding this fact. The case of

the applicant is that instead of canceling the entire selection, the respondents ought to have proceeded further by preparing a select list on the basis of written examination which was qualified by the applicant as per office order dated 28.9.2006 (Ann.A2). In other words, according to the applicant, his name should have been shown at Sl.No.2 in place of the private respondent Shri Om Prakash and name of private respondent should have been shown at Sl.No.4 in place of the applicant and thereafter respondents should have proceeded further by making panel/select list which panel/select list was to be prepared by awarding marks of the service record and in case the applicant is selected and his name find mention in the panel, in that eventuality, the respondents should be directed to give promotion to the applicant.

Though the submission made by the learned counsel for the applicant appears to be attractive, but according to us, the same requires out right rejection. It is not disputed and cannot be disputed that selection process has to be initiated on the basis of the eligibility list and eligibility list has to be prepared on the basis of number of vacancies available. Since there were 3 vacancies available for selection to the post of Junior Engineer Grade-II, as such, only 9 persons could have been made eligible to appear in the written examination whose names find mention in List-A. Further, it can be seen from the

eligibility list, name of certain persons are also included in List-B and persons in List-B can appear in the selection only when any one candidate in List-A show his unwillingness. Admittedly, in the earlier eligibility list as issued vide notification dated 10.7.2006, name of the applicant as well as private respondent find mention in List-A, as such, they appeared in the written examination and qualified the written test vide office order dated 28.9.06 (Ann.A2). Since this eligibility list was prepared on the basis of wrong criteria and the grievance of the applicant was that his name should have been find mention at Sl.No.4 instead of Sl.No.9 in place of private respondent, thus, there being infirmity in the eligibility list, it was not open for the respondents to prepare select list on the basis of wrong eligibility list. The respondents have given a valid reason for canceling the entire selection process and not to proceed further on the basis of result declared vide order dated 28.9.2006 as according to the respondents, the entire eligibility list has undergone change. The respondents have drawn our attention to fresh eligibility list dated 11.5.2007 whereby name of the applicant find mention in List-A whereas name of private respondent find mention at Sl. No.2 in List-B. Thus, based on this revised eligibility list, the private respondent was ineligible for the purpose of selection to the post of Junior Engineer Grade-II and

he could not have appeared in the written examination. Thus, the selection process as carried out by the respondent vide earlier notification in which respondent No.3 has been declared pass could not have been acted upon, inasmuch as, in view of the revised eligibility list, respondent No.3 could not have been allowed to appear in the written examination being not eligible as his name find mention in List-B. Thus, the respondents have no option but to cancel the entire selection process. Thus, according to us, there is no infirmity in the action of the respondents whereby they have cancelled the earlier selection and has undertaken afresh selection based upon notification dated 11.5.2007 in which the applicant is also eligible to appear.

The law cited by the learned counsel for the applicant is not applicable in the facts and circumstances of this case, inasmuch as, in this case only the respondents have initiated the process for the purpose of making selection to the post of Junior Engineer Grade-II which has not been culminated into final select list/panel. Only result of written test was declared thereafter the suitability of the qualified candidates has to be assessed on the basis of service record. It is only thereafter that the selection process is complete and select list/panel is prepared. In the instant case, no select panel was prepared. Under these circumstances, the applicant has

got no indefeasible right to seek mandamus from this Tribunal to the effect that respondents should proceed further on the basis of written examination and prepare a panel and give appointment to him.

The matter on this point is no longer res-integra. The Hon'ble Supreme Court in the case of State of M.P. and Ors. Vs. Sanjay Kumar Pathak, (2008) 1 SCC (L&S) 207 has held that the candidates in the absence of arbitrariness, unfairness or malafide had no right to insist that earlier process must be completed. In the case before the Apex Court the select list was not prepared and the process was held on the basis of tabulation of marks. Under these circumstances, the Apex Court held that it is well known that even selected candidates have no right in that behalf. In the circumstances of this nature, no appointment can be made by the State in the absence of select list. The State could not substitute itself for the Selection Committee. Further more, ordinarily the writ court should not in the absence of any legal right act on the basis of sympathy alone. The reasoning given by the Apex Court in the case of Sanjay Kumar Pathak (supra) is squarely applicable in the facts and circumstances of this case. We have already held that the respondents could not have proceeded on the basis of the result declared pursuant to the earlier selection as admittedly respondent No.3 who has been declared pass on the basis of wrong

eligibility list was not eligible for appearing in the written examination as per the subsequent eligibility list. Thus, according to us, the respondents have given a valid reason for cancellation of the earlier panel. The case law cited by the applicant is not applicable in the fact and circumstances of the case. As can be seen from the judgment of the C.M.Reddy (supra) as relied upon by the applicant wherein the select list was cancelled for the purpose of correcting the factual mistake. The judgment was rendered in that context. The Apex Court held that correcting an error or mistake is not sufficient ground for cancellation of the list of successful case. In the instant case, as already stated above, the selection process was not complete and select list was not prepared. Thus, the decision relied upon by the applicant is of no avail to the applicant.

10. For the foregoing reasons, both the OAs are bereft of merit, which are accordingly dismissed with no order as to costs.

11. The interim direction granted by this Tribunal in both these OAs shall stand vacated.

  
(B.L.KHATRI)

Admv. Member

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(M.L.CHAUHAN)

Judl.Member