

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 25th day of February, 2010

ORIGINAL APPLICATION NO. 88/2006

CORAM:

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

1. Jansi son of Roshan aged about 59 years, resident of Near T.R. D. Colony, Sawaimadhopur, at present working as Keyman (Chabiwala), Office of S.S. Eng. (P.Way), Sawaimadhopur.
2. Ediya son of Aaidal, aged about 58 years, resident of Quarter No. 148-B, Railway Colony, Metre Gauge, Sawaimadhopur. At present working as Keyman Office of S.S. Eng. (P.Way), Sawaimadhopur.

.....APPLICANTS

(By Advocate: Mr. P.V. Calla)

VERSUS

1. The General Manager, West Central Railway, Jaipur.
2. Divisional Railway Manager, Kota Division, West Central Railway, Kota Junction.
3. Shri Badri Lal son of Shri Heera Lal, Gangmate. Office of Senior Section Engineer (P.Way), Sawaimadhopur.
4. Shri Kanhaiya son of Shri Kalu, Gangmate. Office of Senior Section Engineer (P.Way), Sawaimadhopur.
5. Shri Radhey Shyam son of Shri Madho, Gangmate. Office of Senior Section Engineer (P.Way), Sawaimadhopur.

.....RESPONDENTS

(By Advocate: Mrs. Shabnam proxy to Mr. T.P. Sharma)

ORDER (ORAL)

The applicants have filed this OA thereby praying for the following reliefs:-

- "(i) Impugned panel dated 16.2.2006 may kindly be declared illegal in so far as it relates to the private respondents and the official respondents may be directed to conduct the selection by taking interview."

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- (ii) the action of the respondents in holding the selection for the post of Gangman through written paper as unconstitutional. In case any order posting the respondents is issued during the pendency of this OA, the same may also be declared illegal.
- (iii) Any other relief to which the applicants are found entitled in the facts and circumstances of the present case, may also be granted in favour of the applicant.
- (iv) the Original application may kindly be allowed with costs."

2. Briefly stated, facts of the case are that, the respondents proposes to conduct selection for the post of Gangmate pertaining to different units and for that purpose a notification dated 10.08.2005 (Annexure A/4) was issued. Here we are concerned with the selection made for Sawaimadhopur unit. As can be seen from the order dated 10.08.2005 (Annexure A/4), the name of 8 persons were found in the eligibility list in respect of Sawaimadhopur Unit including the names of the applicants. As can be seen from the said notification, the selection has to be made on the basis of written examination only. Perusal of this order further reveals that the break-up of vacancies unit wise has been given and 3 vacancies were available so far as Sawaimadhopur Unit is concerned, out of which 2 vacancies were meant for General Category and one was reserved for Scheduled Caste category. The written examination was to be conducted on the basis of syllabus enclosed with that notification. Subsequently, the respondents prepared the panel of selected candidate, which was notified vide letter dated 16.02.2005 (Annexure A/1). So far as Sawaimadhopur Unit is concerned, the names of 4 persons were included in the panel but the names of the applicants were not there in the panel. As such, the applicants have filed this OA thereby praying for quashing the aforesaid panel. The applicants have also impleaded selected persons as respondents nos. 3 to 5 in the OA. It is on the basis of these facts, the applicants have filed this OA.

3. Notice of this application was given to the respondents. The respondents have filed reply. The facts, as stated above, have not been disputed. It has been categorically stated that no doubt the applicants were senior as per eligibility list but the criteria for selection

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was written examination and those who have secured higher marks have been placed in the said panel to the post of Gangmate. Accordingly, respondents nos. 3 to 5 were selected.

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

5. Learned counsel for the applicant has argued that since the question papers were outside the syllabus, as prescribed by the Department, as such applicants could not qualify the examination. Thus according to the learned counsel for the applicants, the entire process of selection has vitiated and the panel so prepared has to be quashed.

6. On the contrary, learned counsel for the respondents while drawing out attention to Para No. 4.7 of the reply affidavit has categorically stated that the question were prepared in accordance with prescribed syllabus provided to the individuals, as such the applicants who have failed cannot make any grievance at this stage.

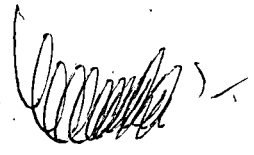
7. We have given due consideration to the submissions made by the learned counsel for the parties. We are of the view that it is not permissible for us while exercising the power of judicial review to go into this disputed question of facts whether question paper was prepared as per prescribed syllabus. Fact remains that the same paper was given to all the eligible candidates and all the eligible candidates were assessed on the basis of answer given to such question papers. As such we find no infirmity in the action of the respondents whereby respondents nos. 3 to 5 have been empanelled and given appointment based on their performance in the written examination. That part the applicants cannot be allowed to challenge the selection criteria after participating and declaring unsuccessful in it. The matter on this point is no longer res-integra. The Apex court has repeatedly held that a candidate who had failed in the selection cannot challenge the selection procedure/criteria after participating in the selection. At this stage, it will be useful to quote decision of the Apex Court in the case

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of Sanjay Kumar and others vs. Narinder Verma and others, 2006 (2) SCSLI 135. Similar view was also taken in the cases of University of Cochin vs. N.S. Kamboon Jamma and others, AIR 1977 SC 2083; Unemployed Union Kalkota vs. State of Jammu & Kashmir, 1998(2) SCT 685 and Union of India & Another vs. H. Chandra Sekharan & Others, 1998 (3) SCC 694.

8. For the foregoing reasons we are of the view that the applicants have not made out any case for our interference. Accordingly, the OA is dismissed with no order as to costs.


(R.L. KHATRI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

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