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CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 12.08.2011

OA No. 128/2007

Mr. P.P. Mathur, counsel for applicant.

Mr. V.S. Gurjar, counsel for respondent nos. 1 to 4.

Mr. Rajesh Kapoor, counsel for respondent no. 6 & 7.

Heard learned counsels for the parties. The O.A. is disposed of by a separate order on the separate-sheets for the reasons recorded therein.

Anil Kumar

(Anil Kumar)
Member (A)

J.K. Rathore

(Justice K.S. Rathore)
Member (J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 12th day of August, 2011

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)

OA No. 114/2007

Nand Singh Chouhan s/o Late Shri Hari Singh Chouhan r/o House No.222, C/27, Baniya Wali Gali Avadhpur, Johnsganj, Amjer, presently working as CBR, Grade-II, Shop No.28, under Deputy Chief Mechanical Engineer (Carriage), North Western Railway, Ajmer Division, Ajmer.

.. Applicant

(By Advocate : Shri C.B.Sharma)

Versus

1. Union of India through General Manager, North Western Zone, North Western Railway, Jaipur
2. Chief Works Manager (Loco), North Western Railway, Ajmer Division, Ajmer.
3. Deputy Chief Mechanical Engineer (Carriage), North Western Railway, Ajmer Division, Ajmer
4. Works Manager (Carriage), North Western Railway, Ajmer Division, Ajmer.
5. Shri Deependra Sharma, Technician Grade-III, Welder Shop no.28, Carriage c/o Deputy Chief Mechanical Engineer (Carriage), North Western Railway, Ajmer Division, Ajmer.

.....Respondents

(By Advocate : Shri V.S.Gurjar for resp. No. 1 to 4 and Shri Rajesh Kapoor for resp. No.5)

OA No. 128/2007

1. Manish Mohanani s/o late Shri Nihal Chand r/o House No.1102/2, Sant Ram Das School Ke Pass, Narsinghpura, Ramnanagar, Ajmer presently posted as Welder Gr.III, Carriage Workshop, Ajmer Division, North Western Railway, Ajmer.
2. Ramesh Chand c/o Kushal Pal Singh r/o 612/37, Patel Nagar, Gaddi Maliyan Road, Ajmer, presently posted as Technician, Workshop Ajmer Division, North Western Railway, Ajmer.
3. Ummed Singh Chauhan s/o Late Shri Mohan Singh Chauhan r/o Gali No.17, Tower Road, Kapil Nagar, Subash Nagar, Ajmer, presently posted as Fitter Gr.III, Carriage Workshop, Ajmer Division, North Western Railway, Ajmer.
4. Rajendra Kumar Sharma s/o Shri Pannalal Sharma r/o 930/41, Hanuman Nagar, Sarin Ki Dukan Ke Samne, Bihariganj, Ajmer, presently posted as C.B.R. Gr.II, Carriage Workshop, Ajmer Division, North Western Railway, Ajmer.

.. Applicants

(By Advocate : Shri P.P.Mathur)

Versus

1. Union of India through General Manager, North Western Railway, Jaipur
2. Chief Works Manager, Carriage and Loco, North Western Railway, Kota.
3. Deputy Chief Mechanical Engineer Carriage Workshop, Ajmer.
4. Chief Personnel Officer, North Western Railway, Jaipur
5. C.L.Meena, Assistant Personnel Officer, Ajmer Division, North Western Railway, Ajmer.
6. Lalit Kumar Dixit, Welder Gr.III, Ticket No.09428/22, 22 Department, Carriage Workshop, Ajmer Division, North Western Railway, Ajmer.

7. Vamaniya Annop Singh, CBR Gr.III, Ticket No.33297/28, 28 Department, Carriage Workshop, Ajmer Division, North Western Railway, Ajmer.

.....Respondents

(By Advocate : Shri V.S.Gurjar for resp. No. 1 to 4 and Shri Rajesh Kapoor for resp. No.6 and 7)

OA No. 81/2008

Kushal Pal Singh s/o Ramji Lal r/o 612/37, Patel Nagar, Gaddi Maliyan Road, Ajmer and presently posted as Technician (Trimmer) Grade-I Carriage Workshop, Department 26, Ajmer, North Western Railway, Ajmer Division,

.. Applicant

(By Advocate : Shri C.B.Sharma)

Versus

1. Union of India through General Manager, North Western Zone, North Western Railway, Jaipur.
2. Chief Works Manager (Loco Workshop), North Western Railway, Ajmer Division, Ajmer.
3. Deputy Chief Mechanical Engineer (Carriage), North Western Railway, Ajmer Division, Ajmer
4. Senior Personnel Officer (Loco Workshop), North Western Railway, Ajmer Division, Ajmer.
5. Shri Lalit Kumar Dixit, Technician Grade-III Welder, Ticket No.09828 Department 22, c/o Deputy Chief Mechanical Engineer (Carriage) North Western Railway, Ajmer Division, Ajmer.
6. Shri Deependra Sharma, Technician Grade-III, Welder Ticket No. 38908, department 28; c/o Deputy Chief Mechanical Engineer (Carriage), North Western Railway, Ajmer Division, Ajmer.
7. Shri Mukesh Kumar Technician Grade-III Fitter Ticket No.06191 department 22, c/o Deputy Chief Mechanical Engineer (Carriage) North Western Railway, Ajmer Division, Ajmer.

8. Shri Bamania Anoop Singh, Technician Grade-I CBR Ticket No.33297 Department 28, c/o Deputy Chief Mechanical Engineer (Carriage), North Western Railway, Ajmer Division, Ajmer.
9. Shri Ajit Singh Technician Grade-I Fitter Ticket No.09866 Department 22, c/o Deputy chief Mechanical Engineer (Carriage), North Western Railway, Ajmer Division, Ajmer.
10. Shri Raghubeer Saran Sharma, Technician Grade-I Welder Ticket No.02045 Department 22, c/o Deputy Chief Mechanical Engineer (Carriage), North Western Railway, Ajmer Division, Ajmer.
11. Shri Madhusudan Solanki Technician Grade-I Fitter Ticket No.10029 Department 22, c/o Deputy Chief Mechanical Engineer (Carriage), North Western Railway, Ajmer Division, Ajmer.
12. Shri Manoj Kumar Tak Technician Grade-I CBR Ticket No.43734 Department 28, c/o Deputy Chief Mechanical Engineer (Carriage), North Western Railway, Ajmer Division, Ajmer.

.....Respondents

(By Advocate : Shri V.S.Gurjar for resp. No. 1 to 4 and Shri Rajesh Kapoor for resp. No.5 to 12)

OA No. 586/2009

Mahesh Chand Gupta s/o Shri Gulab Chand Gupta r/o House 17/176, Bhagwan Niwas, Ram Dware Ki Gali, Purani Mandi, Ajmer and presently posted as Grade-II Painter, Carriage Workshop, Department 26, Ajmer, North Western Railway, Ajmer Division, Ajmer

.. Applicant

(By Advocate : Shri C.B.Sharma)

Versus

1. Union of India through General Manager, North Western Zone, North Western Railway, Jaipur

2. Chief Works Manager (Loco Workshop), North Western Railway, Ajmer Division, Ajmer.
3. Deputy Chief Mechanical Engineer (Carriage), North Western Railway, Ajmer Division, Ajmer
4. Senior Personnel Officer (Loco Workshop), North Western Railway, Ajmer Division, Ajmer.
5. Lalit Kumar Dixit, Technician Grade-III Welder, Ticket No.09828, Department 22, c/o Deputy Chief Mechanical Engineer (Carriage), North Western Railway, Ajmer Division, Ajmer.
6. Shri Deependra Sharma, Technician Grade-III, Welder Ticket No. 38908 department 28, c/o Deputy Chief Mechanical Engineer (Carriage), North Western Railway, Ajmer Division, Ajmer.
7. Shri Mukesh Kumar Technician Grade-III Fitter Ticket No.06191 department 22, c/o Deputy chief Mechanical Engineer (Carriage) North Western Railway, Ajmer Division, Ajmer.
8. Shri Bamania Anoop Singh, Technician Grade-I CBR Ticket No.33297 Department 28, c/o Deputy Chief Mechanical Engineer (Carriage), North Western Railway, Ajmer Division, Ajmer.
9. Shri Ajit Singh Technician Grade-I Fitter Ticket No.09866 Department 22, c/o Deputy Chief Mechanical Engineer (Carriage), North Western Railway, Ajmer Division, Ajmer.
10. Shri Raghubeer Saran Sharma, Technician Grade-I Welder Ticket No.02045 Department 28, c/o Deputy Chief Mechanical Engineer (Carriage), North Western Railway, Ajmer Division, Ajmer.
11. Shri Madhusudan Solanki Technician Grade-I Fitter Ticket No.10029 Department 22, c/o Deputy Chief Mechanical Engineer (Carriage), North Western Railway, Ajmer Division, Ajmer.
12. Shri Manoj Kumar Tak Technician Grade-II CBR Ticket No.43734 Department 28, c/o Deputy Chief

Mechanical Engineer (Carriage), North Western Railway, Ajmer Division, Ajmer.

.....Respondents

(By Advocate : Shri Mukesh Agarwal, proxy counsel for Shri N.C.Goyal)

OA No. 360/2010

1. Rajesh Sharma s/o Shri Asulal Sharma r/o 76/26, Nai Basti Ramganj, Ajmer, presently posted as Trimmer Grade-II Carriage Workshop, Ajmer Division, North Western Railway, Ajmer.
2. Mukesh Sharma s/o Shri Harihar Sharma r/o Gali No.14, Tanaji Nagar, Bhajan Ganj, Ajmer, presently posted as Fitter Gr.II, SSE 31, CC &W, Ajmer Division, Ajmer, North Western Railway, Ajmer.
3. Ramavtar Mittal s/o Shri Kapoor Chand. Mittal r/o House No.147/A, Panchwati Colony, Adrash Nagar, Ajmer, presently posted as Fitter Gr.II, SSE 31, CC &W, Ajmer Division, Ajmer, North Western Railway, Ajmer.
4. Satish Kumar r/o Shri Bhanwar Lal r/o House No.340/36, Lohakhan, Police Line, Ajmer presently posted as Fitter Gr.II, SSE 31, CC &W, Ajmer Division, Ajmer, North Western Railway, Ajmer.
5. Tulcharam Dehru s/o Shri Dayal Ram r/o Ashok Nagar Gali No.3, Narishala Road, Ajmer, presently posted as Welder Gr.I, Carriage Workshop, Ajmer Division, North Western Railway, Ajmer.
6. Chander Singh Chauhan s/o R.P.S.Chauhan r/o House No.35/37, Chetram Ke Kue Ke Samne Wali Gali, Avadhपुरी, Johns Ganj, Ajmer presently posted as Mechanic Gr.II, SSE 31, CC &W, Ajmer Division, North Western Railway, Ajmer.

.. Applicants

(By Advocate : Shri P.P.Mathur)

Versus

1. Union of India through General Manager, North Western Railway, Jaipur

2. Chief Works Manager, Carriage and Loco Workshop, North Western Railway, Ajmer Division, Ajmer.
3. Deputy Chief Mechanical Engineer, Carriage Workshop, Ajmer
4. Chief Personnel Officer, North Western Railway, Jaipur
5. Lalit Kumar Dixit, Welder Gr.III, Ticket No.09428/22, 22 Department, Carriage Workshop, Ajmer Division, North Western Railway, Ajmer.
6. Deependra Sharma, Technician Grade-III, Welder Ticket No. 38908 Department 28, c/o Deputy Chief Mechanical Engineer (Carriage), North Western Railway, Ajmer Division, Ajmer.
7. Mukesh Kumar Technician Grade-III Fitter Ticket No.06191 department 22, c/o Deputy Chief Mechanical Engineer (Carriage) North Western Railway, Ajmer Division, Ajmer.
8. Bamania Anoop Singh, Technician Grade-I Ticket No.33297 Department 28, c/o Deputy Chief Mechanical Engineer (Carriage), North Western Railway, Ajmer Division, Ajmer.
9. Ajit Singh Technician Grade-I Fitter Ticket No.09866 Department 22, c/o Deputy Chief Mechanical Engineer (Carriage), North Western Railway, Ajmer Division, Ajmer.
10. Raghubeer Saran Sharma, Technician Grade-I Welder Ticket No.02045 Department 22, c/o Deputy Chief Mechanical Engineer (Carriage), North Western Railway, Ajmer Division, Ajmer.
11. Shri Madhusudan Solanki Technician Grade-I Fitter Ticket No.10029 Department 22, c/o Deputy Chief Mechanical Engineer (Carriage), North Western Railway, Ajmer Division, Ajmer.
12. Shri Manoj Kumar Tak Technician Grade-II CBR Ticket No.43734 Department 28, c/o Deputy Chief Mechanical Engineer (Carriage), North Western Railway, Ajmer Division, Ajmer.

.....Respondents

(By Advocate : Shri Anupam Agarwal for resp. No. 1 to 4 and Shri Rajesh Kapoor for resp. No.5 to 12)

ORDER (ORAL)

All these OAs involving similar facts and the question of law are being disposed of by this common order.

2.0 Brief facts of OA No.144/2007, Nand Singh Chouhan are that respondent No.3 issued notification dated 14.11.2006 for conducting examination for promotion to the post of Junior Engineer Gr.II (JE-II) in the scale of Rs. 5000-8000 as intermediate mechanical apprentices under 25% quota notifying 9 vacancies from which one post was reserved for SC category and one for ST category from the serving employees and in pursuance to that applicant applied.

2.1 The respondents issued an eligibility list on 10.1.2007 (Ann.A/4) in which name of the applicant find place at Sl.No.53 and after holding examination, the respondents issued a panel dated 5.4.2007 placing 8 officials on panel in which Sl. No. 1, 2 and 3 were placed on the basis of grading 'outstanding'. Since the applicant's name does not find in the select panel Ann.A/1 dated 5.4.2007, therefore, this OA has been preferred, challenging the panel issued by the respondents.



2.2 On 17.4.2007, at the time of admission of the OA, this Tribunal granted interim relief in favour of the applicant and respondents were directed not to further act on the panel dated 5.4.2007 (Ann.A/1) and the same may be kept in abeyance till the next date.

2.3 Further on 4.7.2008, this Tribunal has considered the issue regarding ex-parte stay which was operating. The respondents have filed their reply in which it is stated that before passing the ex-parte interim stay, persons so selected have been sent for training and, as such, learned counsel for respondents prayed for vacation of the said ex-parte interim stay. Since the matter was fixed for hearing shortly, as such, the Tribunal thought it proper not to modify the ex-parte stay which continued from time to time, but it was made clear that if the matter is not heard on the next date of hearing, it will be open for the respondents to pray for vacation of interim order.

2.4 In this case, the main challenge is to the impugned panel dated 5.4.2007 (Ann.A/1). It is alleged that the panel declared on the basis of marks obtained in Part-A and B of question paper and nowhere prepared on the basis of 60% marks in each part as 60% marks are required in both the question papers separately for the reason that Part-A was related to objective questions whereas Part-B for descriptive question relating to work of Junior Engineer and both part



cannot be mixed and panel is required to be prepared on the basis of 60 % marks in aggregate. Further alleged that the respondents conducted examination in which manipulation regarding leakage of question paper and changing of front cover of answer sheets cannot be ruled out, since a news article is also published in the daily news paper.

2.5 Further the Selection Board which conducted selection and declared result is not as per the requirement of letter dated 3.3.1998 in which Junior Administrative Grade officer with the Senior Scale Officer are necessary in the Selection Board and the present selection was finalised by Senior Scale Officer with the class-II officer. Thus, the panel dated 5.4.2007 is against the procedure and the same is liable to be quashed and set-aside.

2.6 Further challenged on the ground that the respondents declared 38 officials successful and placed on panel only 8 officials from which Sl. No. 1,2 and 3 from the scale of Rs. 3050-4590, Sl.No. 4 to 7 from scale Rs. 4500-7000 and Sl.No.6 from scale Rs. 4000-6000 and applicant at present in the Grade-II cannot be left over from placing in the panel as per written examination and service record by way of positive selection. Thus, the applicant is entitled for selection as intermediate apprentice for promotion to the post of Junior Engineer Gr-II scale Rs. 5000-8000.



2.7 On the contrary, the respondent department has raised preliminary objection regarding maintainability of this OA as the applicant has prayed for intermediate apprentices scale Rs. 5000-8000 at appropriate place after re-examining his answer sheets with all consequential benefits and has further prayed for quashing the selection conducted by the official respondents. It is stated that the OA is not maintainable for the reason that the applicant after having participated in the selection process and having failed to achieve the desired/expected place in the select panel has challenged the selection, hence, the OA merits rejection on that count alone. In support of his submissions he placed reliance on the judgment of the Hon'ble Supreme Court in the case of Dhananjay Malik and Ors. vs. State of Uttaranchal and Others reported at (2008) 4 SCC 171 and more particularly referred to para-7 wherein the Hon'ble Supreme Court observed that the respondent-writ petitioners herein participated in the process of selection knowing fully well that the educational qualification was clearly indicated in the advertisement itself as BPE or graduate with diploma in Physical Education. Having unsuccessfully participated in the process of selection without any demur they are estopped from challenging the selection criterion inter alia that the advertisement and selection with



regard to requisite educational qualifications were contrary to Rules.

2.8 It is also stated at Bar that the successful candidates in the selection under challenge have already been sent for training and the panel Ann.A/1 has also been acted upon in view of the subsequent order issued by the competent authority which has neither been challenged nor brought to the notice of this Tribunal.

2.9 The maintainability of the OA has also been challenged on the ground that there are as many as 8 candidates whose right will be definitely affected by any order that may be passed in this OA by the Tribunal who are not made necessary parties in the OA. Therefore, in the absence of necessary parties, no adverse order behind their back can be passed by this Tribunal as held by the Hon'ble Supreme Court in the case of K.H.Siraj v. High Court of Kerala, reported at (2006) 6 SCC 395, which reads as under:-

"75. The writ petitions have also to fall on the ground of absence of necessary parties in the party array. Though the appellant-petitioners contend that they are only challenging the list to a limited extent, acceptance of their contention will result in a total rearrangement of the select list. The candidates will be displaced from their present ranks, besides some of them may also be out of the select list of 70. It was, therefore, imperative that all the candidates in the select list should have been impleaded as parties to the writ petitions as otherwise they will be affected without being heard. Publication in the newspaper does not cure this defect. There are only a specified definite number of candidates who had to

be impleaded, namely, 70. It is not as if there are a large unspecified number of people to be affected. In such cases, resort cannot be made to Rule 148 of the Kerala High Court Rules. That rule can be applied only when very large number of candidates are involved and it may not be able to pinpoint those candidates with details. In our view, the writ petitions have to fail for non-joinder of necessary parties."

2.10 Respondent No.5 also raised same preliminary objection regarding maintainability of the OA and in addition to the submissions made on behalf of the department (respondent No.5) submits that pay scale of Rs. 5000-8000 as mentioned in Ann.A/8 dated 3.3.1998 has been substituted vide Advance Correction Slip No.73 dated 15.3.1999 to Rs. 5500-9000, thus, since in the present matter the controversy is with regard to the post of J.En.-II scale Rs. 5000-8000, the scale which is lower than scale of Rs. 500-9000, therefore, the officers of Senior Scale could constitute the Selection Board.

3.0 OA No. 128/2007 was initially preferred by Chander Singh Chauhan and others. It is not out of place to mention here that OA No.114/2007 was filed by Shri Nand Singh Chauhan on 11th April, 2007 whereas this OA No.128/2007 was filed by Shri Chander Singh and others on 20th April, 2007 claiming the same relief to quash and set-aside the impugned order dated 5.4.2007 and 7.4.2007 (Ann.A/1 and A/2). This Tribunal at the time of admission vide order dated 23.4.2007 granted interim order directing the respondents not to further act upon the



panel dated 5.4.2007 (Ann.A/1) and the same may be kept in abeyance till the next date. Thereafter on 12.3.2008 hearing the submissions on behalf of applicant on MA No.70/2008 moved by one of the applicant Shri Kushalpal Singh, applicant No.9 in the OA for withdrawing his name from the array of the applicants as he intended to file a separate OA, in view of the submissions made in the MA, name of Shri Kushalpal Singh stood deleted from the array of applicants in OA No.128/2007. Further, on 19th February, 2010, some other applicants filed MA No.36/2010 for deleting their names from the array of applicants. The said MA was allowed and the applicants in the MA were deleted from the array of applicants in OA No.128/2007.

3.1 The respondents have filed their reply. In the reply, they have stated that before passing the ex-parte interim order, persons selected have been sent for training, as such, the respondents pray for vacation of ex-parte interim stay. The matter was fixed for final hearing and the Tribunal made it clear that in case the matter is not heard on the next date of hearing, it will be open for the respondent to pray for vacation of interim order.

3.2 This Tribunal vide order dated 30th March, 2010 passed in MA No.105/2010 filed by respondent No.5 and 6 against the order dated 19.2.2010 passed in MA No.36/2010 given liberty



to the respondents to raise all permissible objections at the time of hearing.

3.3 As observed in the case of Nand Singh, same grounds are taken in this OA by the applicants and the respondents also raised the same objections so far as maintainability of the OA as raised in the Nand Singh's case and same judgment has been relied upon by the respondents in their reply and provisions of Para 218 C of IREM are also referred which deals with constitution of Selection Boards.

4.0 Name of Kushalpal Singh is as applicant No.9 in OA No.128/2007 has preferred a fresh OA No.81/2008 before this Tribunal on 10th March, 2008 about a lapse of one year. At the time of calling upon the respondents by way of issuing notices on 12.3.2008 the Tribunal observed that appointment to be made pursuant to the notification dated 6.11.2007 shall be subject to the decision of this OA. It is alleged by the respondents that Shri Kushalpal Singh has withdrawn himself from OA No.128/2007 to file fresh OA to improve his case and has raised additional grounds which are not taken in OA No.114/2007 and 128/2007. Not only this, Shri Kushal Pal Singh by way of fresh OA impleaded respondent No. 5 to 12 and challenged the notification dated 14.11.2006, eligibility list dated 10.1.2007 and result dated 24.3.2007 (Ann.A/6, A/7 and A/2) and panel dated 5.4.2007 (Ann.A/1) and further



subsequent notification dated 6.11.2007 (Ann.A/17) on the ground that vide notification dated 14.11.2007 (Ann.A/6) 7 vacancies for OC category were notified instead of 9, as 2 anticipated vacancies likely to be occurred within 15 months period has not been included and the same was notified by subsequent notification dated 6.11.2007 (Ann.A/7), therefore, notification dated 14.11.2006 deserves to be quashed and set-aside.

4.1 Further challenged on the ground of qualification as respondents allowed two officials those having qualification of matriculation and respondents in the eligibility list dated 10.1.2007 (Ann.A/7) and further in panel dated 5.4.2007 placed one Shri Mukesh Kumar who was not having qualification of ITI/Act Apprentice or 10+2 science and this official has been placed as 'outstanding' inspite of the fact that he is not having qualification as per Railway Board Orders.

4.2 Further submits that the qualification should be on the date of application as held by the Apex Court in the case of Ashok Kumar Sonkar vs. Union of India and Ors., reported at 2007 6 (3) SLJ SC 420 and further in the case of Mohd. Sartaj and another vs. State of UP and ors., reported at 2006 (2) SLT 208 and also by the Full Bench of CAT-Guwahati in the case of Anju Mani Sonowal vs. Union of India and ors., reported at 2005 (3) ATJ 26. More or less the challenge to the impugned order



dated 5.4.2007 is on same grounds and also on new grounds to improve the case.

4.3 The respondents have raised preliminary objection regarding maintainability of the OA filed by Shri Kushalpal Singh and stated that written examination for the post of JE-II in the scale of Rs. 5000-8000 was held on 27.2.2007 and those who secured above 80% marks were placed at the top of panel in accordance with seniority. Since the applicant secured only 68.2% marks in the written examination, therefore, he was considered qualified for the purpose of inclusion in the panel. Thus, it is apparent on the face of record that the applicant failed to make out a case so as to invoke the jurisdiction of this Tribunal. It is further submitted that the eligible candidates who secured more than 60% marks, their result was declared and before issuance of the panel, a combined seniority was prepared and submitted to the competent authority and the panel was drawn in accordance with the policy instructions issued vide Railway Board letter dated 26.11.1986. Further submitted that the applicant appeared in the written test on 27.2.2007 and he was declared successful vide result dated 24.3.2007, hence the applicant now cannot challenge the legality, validity and correctness of the selection procedure after having participated in the same in view of the

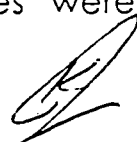


ratio decided by the Hon'ble Supreme Court in the case of Dhananjay Malik (supra).

4.4 Reply on behalf of private respondent Nos. 5 to 12 has also been filed by the learned counsel Shri Rajesh Kapoor. These respondents also raised preliminary objection that the applicant who was applicant in OA No.128/2007 raised many issues in this OA. The said issues could have been raised in the earlier OA. Now the applicant is not entitled to raise these issues by way of filing substantive OA and reiterated the submissions made in the case of Nand Singh Chauhan.

5. OA No.586/2009 has been filed by the applicant on 29th December, 2009 to challenge the selection conducted in the year 2006 and panel prepared on 5.4.2007 (Ann.A/2) on the similar grounds as has been raised by the applicants in OA No.114/2007, 128/2007 and 81/2008.

5.1 The respondents controverted the submissions put forth by the applicant on the ground that Ann.A/1 is the reply of representation of applicant which is submitted on 6.10.2009. Under the pretext that the representation has been decided on 16.11.2009, the applicant has filed this OA challenging the same panel of the year 2007 and the respondents have placed reliance on the judgment rendered in the case of Dhananjay Malik (Supra) and stated that the panel has been prepared and the selected candidates were allowed to



complete their training and at this stage the panel has attained finality and since the applicant has already appeared in the examination and in view of the ratio decided by the Hon'ble Supreme Court in the case of Dhananjay Malik (supra) the applicant is estopped to challenge validity of the selection process and also referred to para 2 of RBE No. 144/2007.


6. OA No.360/2010 has been preferred by Shri Rajesh Sharma and 5 others who were earlier applicant in OA No. 128/2007 challenging the same panel which has been challenged in the aforesaid OAs by the respective applicants and the same has been presented on 19th July, 2010 i.e. after a lapse of more than 3 years after completion of selection process.

6.1 The respondents have raised objection on the ground of delay and latches as the applicants have challenged the notification dated 14.11.2006 besides other orders of 2007 and 2008 in 2010 i.e. after lapse of more than 3 years. Further submits that the applicants have not moved any application seeking condonation of delay and thus it deserves to be dismissed on the ground of delay in view of the judgment of the Hon'ble Supreme Court in the case of D.C.S.Negi vs. Union of India and ors., in SLP (Civil) No.7956/2011 decided on 7.3.2011.



6.2 The applicant has prayed more or less same relief as has been claimed by the applicants in the aforesaid OAs and the respondents have also adopted same argument as advanced on behalf of the respondents in OA No.14/2007, 128/2007, 81/2008 and 586/2009. The applicants placed reliance on the judgment of this Tribunal dated 25th July, 2007 passed in OA No.464/2004 and the judgment passed by the Hon'ble High Court in D.B.Civil Writ Petition No.982/2009, Union of India and Anr. vs. Shiv Singh and Anr. on February 10, 2009.

7. As the applicants relied upon the judgment rendered in OA No.464/2004 wherein this Tribunal observed that the respondents agreed that the panel has been prepared strictly on the basis of seniority for those who had secured qualifying marks. Therefore, the OA filed by Shri Shivraj Singh Solanki was allowed. Being not satisfied with the judgment of this Tribunal it was assailed by the Union of India before the Hon'ble High Court in DB Civil Writ Petition No.982/2009 and the Division Bench of the Hon'ble High Court did not find the argument of the Union of India-Railway logical one because as and when competitive examination is conducted, a candidate having obtained higher marks has to be placed above the candidates getting lesser marks, and the panel is required to be drawn accordingly and upheld the judgment passed by the Tribunal.



8. Applying the ratio to the facts and circumstances of the aforesaid OAs, the panel in these OAs is prepared by the respondents strictly on the basis of the marks obtained. Thus, the ratio decided by this Tribunal as upheld by the Division Bench of the High Court is not applicable to the facts and circumstances of this case.

9. We have also carefully examined the judgment of the Hon'ble Supreme Court in the case of Dhananjay Malik (supra) referred to by the respondents. The respondents have raised preliminary objection regarding maintainability of these OAs and the Hon'ble Supreme Court in the case cited supra has category observed as under:-

"7. It is not disputed that the respondent-writ petitioners herein participated in the process of selection knowing fully well that the educational qualification was clearly indicated in the advertisement itself as BPE or graduate with diploma in Physical Education. Having unsuccessfully participated in the process of selection without any demur they are estopped from challenging the selection criterion inter alia that the advertisement and selection with regard to requisite educational qualifications were contrary to Rules."

10. We have also carefully examined the MA filed by Shri Kushalpal Singh and others with a view to file a substantive OA after withdrawal of their names from the array of applicants, but opportunity was given by this Tribunal to the respondents to raise just and valid objections at the time of hearing. We are fully convinced with the submissions made on behalf of the



respondents that the applicants withdrew themselves from the array of the applicants only to improve their case and to implead effective parties as respondents and to take additional pleas which are not taken at the time of filing the earlier OAs.

11. As discussed herein above, we find no illegality in the eligibility list issued on 10.1.2007 and the impugned panel dated 5.4.2007 which has been issued after approval strictly in accordance with the rules and the circulars issued by the respondents from time to time, as such, no interference is called for by this Tribunal.

12. Consequently, all the OAs being devoid of merit deserve to be dismissed, which are accordingly dismissed with no order as to costs.

(ANIL KUMAR)
Admv. Member

(JUSTICE K.S.RATHORE)
Judl. Member

R/

copy given vide

No. 1334 To 1336

30/8/11

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