

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 03rd day of May, 2011

ORIGINAL APPLICATION NO. 385/2007

CORAM

HON'BLE MR. JUSTICE K.S. RATHORE, JUDICIAL MEMBER
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Vijay Verma son of Shri Hari Prakash, aged about 41 years, resident of B-39, Anand Vihar Railway Colony, Jagatpura, Jaipur and presently working as Assistant Computer Programmer under Chief Mechanical Engineer, North Western Railway, Jaipur.

.....Applicant

(By Advocate: Mr. C.B. Sharma)

VERSUS

1. Union of India through the General Manager, North Western Zone, North Western Railway, Jaipur.
2. Chief Personnel Officer, Office of General Manager, North Western Railway Zone, North Western Railway, Jaipur.
3. Shankar Lal Meena son of Shri Rampal Meena, resident of Plot No. 5, In front of Balti Factory, Agra Road, Jaipur.

.....Respondents

(By Advocate: Mr. V.S. Gurjar – Respondents nos. 1 & 2
Mr. Anupam Agarwal – Respondent no. 3)

ORDER (ORAL)

The present OA is directed against the provisional panel dated 24.10.2007 issued by respondent no. 1 by which three officials have been placed on panel for promotion to the post of Legal (Law) Assistant scale Rs.6500-10500 and order dated 24.07.2007 by which result of the written test has been declared in which the name of the applicant does not find place because respondents in Section B of Question Paper mentioned alternative answer as True/False or Yes/No or Right/Wrong and in the key of answers, respondents mentioned



incorrect answer by which examination of answer sheets cannot be said just and fair and officials like the applicant were deprived from due promotion. The main challenge to the impugned order 24.10.2007 (Annexure A/1) and order dated 24.07.2007 (Annexure A/2) is on the ground that applicant found four answers have been wrongly mentioned in the key of answers i.e. Annexure A/7. It is further contended that the said four questions having two marks of each questions and in case the answer sheet of the applicant is re-assessed, the applicant could have got 8 marks and after adding 8 marks, the applicant falls within the zone of consideration and was eligible to called for viva-voce test. According to the applicant, since the assessment was not correctly made and the marks are given on the basis of wrong answers, the action of the respondents is arbitrary, illegal and unjustified and also against the provisions of Article 14 & 16 of the Constitution of India.

2. It is further contended that question paper was divided into two Sections i.e. 'A' and 'B' for equal marks of 50 and Section B was to be assessed on the basis of answers given in the question paper and as per key of the answers given in the question made available to the applicant, some answers were wrongly mentioned by the respondents and on that basis assessment cannot be said to be justified and fair and the same is liable to be quashed and set aside. Thus the applicant is not at fault and it is the fault of the respondents who have not assessed the answer sheet as per right answers and deprived the officials like the applicant from due selection.

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3. Per contra, learned counsel for the respondents strongly controverted the facts and challenged the maintainability of the OA on the ground that since the applicant had appeared in the examination and was declared unsuccessful and had participated in the selection process. Further the applicant had suppressed the material fact as he had not disclosed material fact as this Tribunal while issuing notices to the respondents considered Annexure A/4 and Annexure A/7. At that time learned counsel for the applicant submitted that as can be seen from Answer sheet (Annexure A/7), four answer of the questions are tentatively wrong i.e. question NO. 1(b), 1(f), 4(v) and 4(vi). As such the applicant has not been properly assessed by the Selection Committee, which had resulted into non paneling of the applicant. Applicant also drawn our attention towards letter dated 11.10.2007 (Annexure A/8) where he has made representation to the Chief Personnel officer, North Western Railway in this regard. Considering the aforesaid facts, ex-parte interim order was granted on 30.10.2007 directing the respondents not to implement the panel dated 24.10.2007 (Annexure A/1), if not already implemented. It is also categorically stated by the respondents that on 03.02.2007, when the sealed packets of the question papers were opened, there was a correction slip in the sealed envelope and accordingly corrections were carried out in question paper. In Question Number 1(b) correction was carried out by striking out the word 'provided to" and was to be replaced by "prohibited under". Similarly, in question No. 1(f) "9" was to be inserted after rule before of so as to read "rule-9" of.... Similarly, in question 1(c) option "True or False" was provided to choose from to answer the question. In question No. 3 (iii) "Minimum" was to be inserted at the beginning of the question. Under Question NO. 4, there



were all six questions, out of which any five were to be answered and therefore in the heading of question no. 4 say yes or no, the choice to answer "(any five)" was provided by way of correction. Similarly the word "Any" was corrected to be read as "An". So also under question no 5(2), Railway Servants (D&AR) Rules "1986" was corrected with reference to the year so as to read "1989" this correction was made by the applicant and has been answered correctly. Thus, it is apparent on the face of record that the applicant has not brought to the notice of this Hon'ble Tribunal these material facts whereby corrections were carried out in the question paper with regard to the mistakes/eros and all the candidates taking examination including the applicant, started answering, the question paper, did carry out the above noted corrections in accordance with the correction slip which was enclosed alongwith the question paper in the sealed envelope containing the question papers. These facts are also fortified in view of the fact that the question paper was bilingual in Hindi and English but the applicant did not enclose the Hindi version of the question paper for obvious reasons wherein also some typographical errors were got corrected before the candidates were called upon to answer the question paper. Thus it is apparent on the face of record that the applicant has suppressed these material facts and has made an unsuccessful attempt to overreach this Tribunal. These facts are also fortified in view of the correction slip (Annexure R/2A and Annexure R/2B).

4. With regard to suppression of material fact, learned counsel for the respondents further submitted that bare perusal of Annexure A/1 would reveal that there were as many as 3 candidates whose rights have been effected by the interim order granted by this Tribunal on



30.10.2007. He placed reliance on the judgment of the Apex Court in the case of **K.H. Siraj vs. High Court of Kerala**, 2006 (6) SCC 395 and more particularly Para No. 75 of it, 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 there 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 selected 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 also."

5. The respondents further challenged the maintainability of the OA on the ground that in Para No. 8 of the OA, relief sought by the applicant is not maintainable for the reasons that applicant after participation in the selection process and having failed to achieve the desired/expected place in the select panel has challenged the selection and it is settled law that a candidate after having participated in the selection process cannot turn back and challenge the selection realizing his failure. The law on this point is no longer res-integra. The respondents have placed on record the complete question paper dated 03.02.2007 (Annexure R/3) which conclusively proves that the applicant has not brought to the notice of this Hon'ble Tribunal the correct material facts and the effect that corrections were carried out



under Selection B of the question paper in Question No. 1 by striking out "providing to" and inserting "prohibited under" in place thereof. Similarly, under question 1(c) "(TRUE OR FALSE)" option was inserted after the question and in question 1(f) "9" was inserted between rule and of. There were certain other corrections which were carried out in the question paper like under question (iii) word "Minimum" was inserted and choice of answering "(any five)" under question no. 4 was provided and question No. 4 (iv) word "Any" was corrected to read as "An" and under Question No. 5(2) word "rules" was inserted and year "1986" was corrected to read as "1989". In the Hindi version under question 1 (i) पंचात् was struck out आविष्टिराज् was inserted instead. Similarly question NO. 2 (अ) was to read as question No. 2 (व) and question no. 2 (व) was to read as question NO. 2(अ). Under part B question No. 1(व) करराजा was struck out and word फैटडी was inserted instead. Under the question NO. 1(ह) "01.04.1986" was struck out to read as "15.04.1987". Similarly under question 2, choice to answer "(any five)" was offered and certain other corrections were made as shown in the question paper.

6. The respondents also submitted that examination report was prepared by Shri M.S. Gaharwal SPO/RP, J.N. Meena APO/HQ and Shri K. Singodia APO/R and place the same on record as Annexure R/4(A), R/4(B) and R/4(C) respectively. Thus as per the correction made, as stated hereinabove, even if the applicant is granted full marks with reference to the questions which have been referred to by him as allegedly wrongly framed even he has failed to secure the minimum 60% marks which must be secured by a candidate so as to be eligible to be called for viva-voce. The respondents also submitted that there

19

was no seniority marks in the selection but the panel was prepared in order of seniority and the outstanding candidate was placed on the top of the panel. Accordingly, Shri Rajendra Kumar Gaur, who is outstanding, was placed on the top of the panel and Shri Brijesh Chandra Gaur, who was the senior most amongst the successful candidates was placed on the panel in order of his seniority and Shri S.L. Meena (ST) has been placed on the panel on the post reserved for ST.

7. The respondents further submitted that the questions as corrected in accordance with the correction slip were provided to the applicant but the applicant had ignored the correction slip. But the applicant in the rejoinder to the reply denied that correction slip was provided prior to commencement of the examination was made available to the candidates and invigilators and reiterated that the sole process cannot be said to be justified and proper and the candidates those awarded as outstanding are not in a position to get more than 80% marks and by wrong action of the respondents, candidates like the applicant were deprived from due selection. It was also denied that the applicant is not able to get minimum marks as stated in the reply.

8. Respondent no. 3, Shankar Lal Meena, was not impleaded as party respondents in the OA filed by the applicant. Therefore, he moved an MA No. 260/2007 thereby praying that he may be impleaded as party respondent no.3 to this OA as he has been adversely affected by the interim stay granted by this Tribunal as he is one of the candidates to be selected for the post of Law Assistant. The said MA was allowed by this Tribunal vide order dated 14.11.2007.

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Thereafter respondent no. 3 submitted his reply stating therein that relief sought by the applicant cannot be granted as he had challenged the selection after undergoing the same and the same is not permissible as per law. Respondent no. 3 further submitted that the applicant is a general category candidate while no ST candidate has challenged the selection. Thus the challenge so made deserves to be restricted to the post belonging to general category only.

9. Having heard the rival submissions of the respective parties and upon careful perusal of the material available on record and the judgments referred to by the respondents, it is not disputed that the applicant was not called for viva voce test vide order dated 24.07.2007 (Annexure A/2). The applicant submitted that if the questions no. 1(b), 1(f), 4(v) and 4(vi) were considered as correct then he could be able to secure 8 more marks and after adding 8 marks, he is able to secure 60% marks being eligible for viva voce but the corrections were carried out before the commencement of the examination and the corrections slips were made available to each of the candidates including the applicant. This fact has been concealed by the applicant and no where reference to this effect has been given by the applicant in the OA. Even otherwise also, if the applicant is granted marks to these questions which have been referred to by him as allegedly wrong, even then he failed to secure the minimum 60% of marks. This statement is made by the respondents on oath. Thus in any manner, the applicant is not eligible to be called for viva-voce test. The select panel dated 24.10.2007 prepared by the respondents requires no interference by this Tribunal as the contentions of the applicant are mainly based on the conjunctures and surmises. Accordingly, we find

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no merit in the OA and the same is deserved to be dismissed being bereft of merit. The ex-parte interim stay granted by this Tribunal vide order 30.10.2007 shall stand vacated.

10. With these observations, the OA is dismissed with no order as to costs.

Anil Kumar

(ANIL KUMAR)
MEMBER (A)

K. S. Rathore

(JUSTICE K.S. RATHORE)
MEMBER (J)

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