

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 3rd day of ~~January~~^{Feb}, 2010

ORIGINAL APPLICATION No.403/2007

CORAM:

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

Arun Kumar Upadhyay
s/o Shri Ram Prasad Upadhyay,
r/o RE Type III Q.No.9-B, Rly.Colony, Kota Jn.
Presently working as Technician Grade-I,
In the Office of SSE (Remote Control),
T.R.D. Kota.

.. Applicant

(By Advocate: Mr. S.S.Solanki)

Versus

1. Union of India through the General Manager, West Central Railway, Jabalpur (MP)
2. The Divisional Railway Manager, Kota Division, West Central Railway, Kota.
3. Mahendder Mohan-Technician GR-I (PSI/TRD) Kota, C/o Sr. Divisional Electrical Engineer, TRD, WCR, Kota.
4. Anand Kumar Varun Technician GR-I (RC/TRD) Bayana, C/o Sr. Divisional Electrical Engineer, TRD, WCR, Kota
5. Nages Kumar Saraswat Technician GR-I (PSI/TRD) Bharatpur, C/o Sr. Div. Electrical Engineer TRD, WCR, Kota.

... Respondents

(By Advocate: Mr. Anupam Agarwal for R. 1 and 2 and Shri S.Shrivastava, for R.3 and 4)



ORDER

Per Hon'ble Mr. M.L.Chauhan, M(J)-

The applicant has filed this OA thereby praying for the following reliefs:-

"It is therefore, humbly prayed that this Hon'ble Tribunal may very graciously be pleased to allow this Original Application, call for entire confidential record relating to the examination LDCE quota Junior Gr.II dated 23.11.2006 including the copy of Examination and grant the following reliefs:-

- a) Quash and set aside the impugned orders and letters (Annexure A-1, A-2, A-3 and A-4) and direct the respondents to recast the panel of the successful candidates on the basis of actual marks obtained in LDCE and if the applicant's name finds place in the panel he may be promoted on the post of Jr. Engineer Gr.II with all consequential benefits including promotion, fixation actual salary and seniority from the date of now empanelled candidates.
- b) Cost of the original application may be awarded in favour of the applicant.
- c) Any other relief or order or direction which this Hon'ble Court may deem fit and proper be also passed in favour of the humble applicant.

2. Briefly stated, facts of the case are that the department took steps for filling up three posts of Junior Engineer Gr.II (JE-II) in the scale of Rs. 5000-8000 through Limited Departmental Competitive Examination (LDCE) by way of selection under para 219 of the IREM Vol.I. All those persons who have completed three years of service in the grade of Rs. 3050-4590 and above were eligible for appearing in the said examination. The applicant being eligible appeared in the written test held on 11.11.2006, result of which was declared on 23.11.2006 (Ann.A/1). On the basis of the result of the written examination three persons were placed on panel vide order dated

h

15.12.2006. Although the applicant has not impleaded these three selected persons as respondents in this OA, however, subsequently these three persons who have been empanelled have been impleaded as respondent No. 3 to 5 in this OA. Since name of the applicant does not find in the panel dated 15.12.2006 he has filed this OA on 14.11.2007 thereby contending that the panel prepared by the department was not prepared on the basis of the total marks obtained in the LDCE examination but the same was prepared on the basis of seniority. For that purpose, the applicant has placed reliance upon the judgment of this Tribunal in OA No.464/2004; Shivraj Singh Solanki vs. Union of India decided on 25.7.2007 which decision was subsequently affirmed by the Hon'ble High Court whereby the panel prepared by the department on the basis of the provisions contained in para 219 of IREM Vol.I read with Railway Board circular dated 26.11.86 was quashed and direction was given to the department to recast the panel of successful candidates on the basis of total marks obtained in the LDCE and to promote the applicant to the post of JE-II in case he finds place in the panel alongwith consequential benefits. It is on the basis of the aforesaid judgment, the applicant has filed this OA thereby praying for the aforesaid reliefs.

3. Notice of this application was given to the respondents. The respondent No. 1 and 2 have filed reply. Respondent No.3 and 4 have also filed separate reply. So far as the stand taken by the respondents in the reply is that the panel was correctly prepared in the light of the provisions contained in Para 219 of the IREM read

42

with Railway Board instructions dated 26.11.1986 (Ann.R/1) which stipulates that panel should be drawn up on the basis of the seniority from amongst those who qualify and for that purpose a person should secure 60% marks. However, as can be seen from the instructions dated 26.11.1986, it is further stipulated that a candidate who secures above 80% marks should be placed at the top of the panel without any restriction as of their number but maintaining the inter-se seniority among themselves and total number to be empanelled will be limited to the number to be taken as Inter Apprentices against the prescribed quota. It is further stated that the judgment as quoted by the applicant is not applicable in the instant case as the said judgment was rendered where the selection was conducted at Headquarter level. It is stated that in the instant case the selection has been conducted at Divisional level. Therefore, the rule so referred by the applicant is not applicable. In para-15 of the reply, the official respondents have also stated that the applicant has failed to secure requisite merit position, inasmuch as, even if the final panel is prepared on the basis of merit against three requisite vacancies, name of the applicant comes at Sl.No.8.

4. The applicant has not filed rejoinder thereby controverting the submissions made by the official respondents in the reply affidavit that even if the panel is prepared on merit in terms of the judgment relied upon by the applicant even then the name of the applicant cannot be kept in the panel as his position in the merit list will be at Sl.No.8 against three vacancies.

6/

5. Respondents No. 3 and 4 in their reply while justifying their selection have placed on record letter dated 29.8.2008 addressed to respondent No.3 whereby the candidate who have qualified the examination of Welfare Inspector in the scale of Rs. 5000-8000 has been declined such appointment on the ground that he has already joined the equivalent post of JE-II in the same scale. It is case of respondent No.3 that in view of these peculiar facts and circumstances of the case, in case the impugned selection is quashed, it will cause hardship to the respondent No.3, inasmuch as he though empanelled and selected for the post of Welfare Inspector has been declined the said appointment solely on the ground that he has joined the post of JE-II.

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

7. The official respondents have justified their action on the ground that the applicant is not entitled to any relief for the reason that he chose to challenge the selection process only after the judgment was rendered by this Tribunal in the case of Shivraj Singh Solanki (supra) which judgment was delivered on 25.7.2007 whereas the OA was filed on 14.11.2007, as such, the applicant is precluded from challenging the selection at this belated stage especially when the applicant has not challenged validity of para 219 of IREM read with Railway Board instructions dated 26.11.1986 (Ann.R/1) on the basis of which the selection was conducted. On the contrary, the learned counsel for the respondents has drawn our attention to representation dated 30.11.2006 addressed to the DRM, Kota, thus,

cc

according to the applicant, the contention raised by the official respondents is without any basis.

8. We have given due consideration to the submissions made by the learned counsel for the parties. We are of the view that the applicant is not entitled to any relief for the reasons stated hereinbelow.

As can be seen from the prayer clause, the applicant has prayed for quashing and setting aside letter at Ann.A/1, A/2, A/3 and A/4 and at the same time has prayed that the respondents be directed to recast the panel of successful candidates on the basis of actual marks obtained in LDCE. According to us, the said relief cannot be granted to the applicant, inasmuch as, as per order dated 23.11.2006 (Ann.A/1) result of JE-II examination was declared by the respondents whereby 14 persons were declared to have qualified that written test. Name of the applicant also find mention in this document. In case Ann.A/1 is quashed which form basis for forming the panel, it is not understood how the panel can be prepared without declaration of any result. Further, as can be seen from para-1 of the OA, the applicant under the heading 'aggrieved by the following orders' at item No.1 has mentioned the order dated 23.11.2006 whereby result of the selection for the post of JE-II under LDCE 25% quota was declared in reference to order dated 27.6.2006, 21.9.2006 and 31.10.2006. Thus, even on this score, the applicant is not entitled to any relief.

Even for arguments sake if this plea of the applicant is ignored even then the applicant is not entitled to any relief. The respondents

4/

in Para 15 of the reply affidavit have categorically stated that even if the panel is prepared on the basis of the merit, as prayed for by the applicant, even then the name of the applicant will be at Sl.No.8 meaning thereby that there will be 7 persons over and above the applicant. Admittedly, there are three posts and three persons have to be placed on panel. The persons who will be entitled to be placed on panel in terms of Solanki's judgment is not before us. Even if the panel is set-aside, the applicant cannot be granted relief. On the contrary, persons who have been selected pursuant to the provisions contained in para 219 of the IREM read with Railway Board instructions dated 26.11.1986 will suffer irreparable loss, inasmuch as, one of the respondents i.e. respondent No.3 who has also qualified the selection of Welfare Inspector has been declined appointment on the post of Welfare Inspector on the ground that he has already been selected and joined on the post of JE-II. Thus, it will not be equitable at this stage to quash the panel dated 15.12.2006 (Ann.A/2) especially when the person who may be entitled to be placed on panel pursuant to Solanki's judgment is not before us and no such relief can be granted in their favour.

Yet for another reason, the applicant cannot be granted any relief in view of the law laid down by the Apex Court in the case of Dhananjay Malik and Ors. vs. State of Uttaranchal and Ors. (2008) 1 SCC (L&S) 1005 whereby the Apex Court has held that candidates unsuccessfully participated in the process of selection without any demur are estopped from challenging the selection criteria. It was

tel

further held that if they had any valid objection, they should have challenged the advertisement and selection process without participating in the selection. The ratio as laid down by the Apex Court in the case of Dhananjay Malik (supra) is also attracted in the instant case. Even on this ground, the applicant is not entitled to any relief.

9. Thus, viewing the matter from any angle, we are of the view that the applicant is not entitled to any relief, even if the panel is redrawn on the basis of the judgment rendered by this Tribunal in the case of Shivraj Singh Solanki (supra.)

10. For the foregoing reasons, the OA is dismissed with no order as to costs.


(B.L. KHATRI)

Admv. Member

R/


(M.L. CHAUHAN)

Judl. Member