

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH

JAIPUR, this the <sup>23</sup> day of September, 2009

**ORIGINAL APPLICATION No.479/2008**

CORAM:

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

Jagdish Meena  
s/o Late Shri Chhagan Lal,  
working as Officer Superintendent-I,  
Carriage Estd.III, in the scale  
Rs. 6500-10500, r/o Gadi Maliyan,  
Johns Ganj, Behind Shop of  
Shri Nauratmal Master,  
Ajmer.

.. Applicant

(By Advocate: Shri Nand Kishore)

Versus

1. Union of India through General Manager, North Western Railway, Hasanpura Road, Jaipur.
2. Chief Works Manager, North Western Railway, Ajmer Workshops, Ajmer.
3. Shri Roop Chand Bhati, OS-I, Establishment Section, Carriage Workshop, Ajmer.

... Respondents

(By Advocate: Shri Anupam Agarwal for resp. No.1&2 and Shri  
C.B.Sharma for resp. No.3)

## ORDER

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

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

- i) The respondents may be directed by an appropriate order, writ or directions to amend the panel incorporating the name of the applicant in the written examination as well as in the panel A/1 & A/2 respectively.
- ii) Any other directions and orders which is deems proper in the facts and circumstances of the case may kindly be allowed to the applicant.

2. Briefly stated, facts of the case are that the respondents issued a notification for filling up 7 posts of Chief Office Superintendent (COS) in the scale of Rs. 7450-11500 vide notification dated 28.2.2005 thereby enclosing eligibility list of candidates who were found fit for appearing in the selection test. It may be stated here that since there were 7 posts of COS, names of 21 persons as per seniority list were incorporated in List-A of the eligibility list and names of 11 persons were incorporated in List-B. The persons from List-B were eligible for selection only if persons in List-A show their unwillingness to appear in the selection test. Name of the applicant find mention at Sl.No. 6 in the eligibility List-A. The applicant appeared in the said selection. The respondents declared result of the said selection vide order dated 28.6.2006 (Ann.A/2) whereby only 10 persons have qualified the written test and name of the applicant did not find in the said list. Subsequently, the respondents have also prepared a panel of 7 persons vide order dated 4.7.2006 (Ann.A/1). Since the applicant has not qualified the selection test,

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he filed OA No.234/2006 before this Tribunal thereby praying for quashing the notification dated 28.2.2005 and result declared vide letter dated 28.6.2006. The grievance of the applicant in that case was that the applicant who belongs to ST category and no post has been notified for that category whereas all the 7 posts were notified to be filled in from general category. From the material placed on record, it is also evident that subsequently the applicant sought certain information under the RTI Act and vide letter dated 23.4.2007, the applicant was informed that he has obtained 57.5 marks out of 100 marks and he was also supplied question paper and key of the question paper. It is the case of the applicant that thereafter he also asked for copy of the answer sheets of the questions attempted by the applicant which was made available on 5.6.2007. Further case of the applicant is that he has supplied this information to his advocate and requested him to amend the petition. However, subsequently he engaged another counsel and Misc. Application No.374/2008 was filed on behalf of the applicant thereby praying for amendment in the OA in the light of the information received under the RTI Act. However, this Tribunal instead of granting opportunity to the applicant to amend the OA, disposed of the OA vide order dated 17.11.2008 whereby opportunity was granted to the applicant to file substantive OA. The case of the applicant is that immediately thereafter this OA was filed on 28.11.2008 alongwith application for condonation of delay thereby praying that period during which he was pursuing the



earlier OA in this Tribunal may be constituted sufficient cause for condonation of delay.

At this stage, it may be stated that in this case, the applicant has made challenge on entirely different ground and not on the ground which he has raised in the earlier OA i.e. determination of vacancy. As can be seen from para 4 (x) of the OA, case of the applicant is that question No. 1(ix), 1(x), 2(vi), 2(vii) and 2(x) which he has attempted correctly but answer of these questions has not been correctly reflected in the key prepared by the respondents, as such, he was entitled to 5 marks on this account and in that eventuality, the total marks obtained by the applicant would come to 62.5 marks. Thus, according to the applicant, since he has obtained more than 60 marks, he is entitled to be empanelled by virtue of his seniority.

The applicant has impleaded only one person i.e. Shri Roop Chand Bhati as respondent No.3 in this OA whose name is mentioned at Sl.No.7 of the panel Ann.A/1. The basis on which the applicant claims that the answer given by the applicant was correct and the key prepared by the respondents was wrong is mentioned in para 4.10 and thus reads:-

Sl. No.	Question.	Exam. Held on 29.12.2005		Exam.held on 19.11.2007		Right reply as per Documents	
		Q.No.	Applicants Answer	Key shows	Q.No.		Key shows
1.	There are... RRBs in the country.	1(ix)	19	17	5(ix)	20	19 (A/8)

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2. Central Government Office observes... holidays in a calendar year.	1(x)	15	12	5(x)	16	15 (A/9)
3. A son above the age of 21 years who is studying can use his father's/ mothers privilege pass for traveling	2(vi)	True	False	6(vi)	True	True (A/10)
4. GM can appoint 4 persons against cultural quota every year in either 'C' and 'D' categories	2(vii)	True	False	6(vii)	True	True (A/11)
5. Night duty allowance is payable to all Group 'C' Employees	2(x)	False	True	6(x)	True	False (A/12)

It is on the basis of these facts, the applicant has filed this OA thereby praying for the aforesaid reliefs.

3. Notice of this application was given to the respondents. The respondents No. 1 and 2 have filed reply thereby raising objections regarding the limitation and also stated that once the applicant has participated in the selection process, he cannot challenge the outcome of the selection. On merit, it has been stated that as per item No. 311 and 313 of the instructions, the panel so prepared by the competent authority remains operative for 2 years or till its expiry, whichever is earlier. One can represent within two months from the date of notification of the said panel. Accordingly, no

consideration can be made after the expiry of panel or its currency. It is further stated that the applicant has tried to compare his answers with that of earlier examination. In fact, such a course is not available to the applicant. Further, the applicant has failed to challenge the same so as to seek the relief. It is further stated that the applicant has failed to protest in this regard either during the examination or subsequent to it. He kept mum since the declaration of result till the filing of the present OA. As such, he has no right to challenge the same at such belated stage.

4. The respondent No.3 has not filed any reply.

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

6. The learned counsel for the applicant argued that in view of the law laid down by the Apex Court in the case of The Secretary, West Bengal Council of Higher Secondary Education vs. Ayan Das and Ors., 2007 (4) SCT 462 where the Apex Court held that in exceptional cases, the court can direct production of answer script in order to see whether some question have not been evaluated or that evaluation has been done contrary to the norms fixed for examination and also that where there was scope of re-assessment. On the contrary, the learned counsel for the respondents has opposed claim of the applicant on the ground of - (a) limitation, (b) that the applicant has never protested before the authorities at any time and even after he has sought information under RTI Act on 23.4.2007 and 5.6.2007 and (c) that the judgment rendered by the Apex Court was in different factual context.

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At this stage, we may state that It is not a case of such nature where the key was wrongly applied but the case of the applicant is that key prepared by the respondents is wrong. The applicant has also not impleaded necessary parties who will be affected, as such, no effective relief can be granted to the applicant, besides the fact that validity of the panel cannot be challenged after expiry of the same.

7. We have given due consideration to the submissions so made by the parties. From the facts as stated above, it is evident that selection for filling up of 7 posts of COS was notified vide notification dated 28.2.2005 thereby enclosing names of 21 officials who were eligible for selection as per seniority at the first instance, as find mention in List-A. It is not disputed that name of the applicant find mention at Sl.No.6. As can be seen from notification dated 28.2.2005 (Ann.A/3), this list was prepared as per seniority. The grievance of the applicant is that for 5 questions attempted by him, as reproduced in the earlier part of the judgment, he has given correct answer whereas the key prepared by the department was wrong, as such, he is entitled to 5 additional marks and if these 5 marks are added to the marks which he has obtained, the applicant has qualified the selection test and he was entitled to be empanelled as per his position in the eligibility list where his name find mention at Sl.No.6. According to the learned counsel for the applicant, the answers as reflected in the key are not correct and by the reasoning given by the applicant the answer key as prepared by the department is definitely wrong. On the contrary,

the learned counsel for the respondents has drawn our attention to the question at Sl.No.5 which relates to the question whether night duty allowance is payable to Group-C employees ? The applicant has answered the question as 'false' whereas in the key the correct answer is 'true'. In order to support this issue, the respondents has place reliance upon Ann.A12, which is a letter written by the Senior Divisional Manager, Ajmer. Perusal of this letter show that in terms of Para-4 of the information under RTI Act, it has been informed that night allowance to employees in the Accounts Department in the scale of Rs. 7450-11500 is not payable. Thus, from perusal of this letter it is evident that the question attempted by the applicant was not correct. The question related to payment of night duty allowance in respect of Group-C employees whereas vide Ann.A/12, the information given under RTI Act was regarding officials of the Accounts Branch who were in the grade of Rs. 7450-11500 i.e. not in Group-C, but in higher category. Thus, one of the instances given by the respondents to show that contention as raised by the applicant that the key prepared by the department is demonstratively wrong, cannot be accepted. Further, we are of the view that in case the applicant has any grievance on this aspect, we are not proper forum to agitate such matter. It was permissible for the applicant to raise such grievance before the appropriate authority at the first instance. The facts remain that till date, the applicant has not raised such grievance qua this aspect. Thus, in exercise of power of judicial review we do not think it proper to interfere at this stage, more particularly, when the validity of the

panel has already expired and in view of the law laid down by the Apex Court in the case of Nadia Distt. Primary School Council and Anrs. Vs. Sristidhar Biswas and Ors., (2008) 2 SCC (L&S) 946 where it was held that court cannot treat a panel alive for long and appointment can be given to a person in the existing vacancy and not against the future vacancies. Further the Apex Court in the case of Union of India and Others vs. B.Valluvan and Others, (2007) 1 SCC (L&S) 28 has held that panel get exhausted after all the vacancies are filled up and thereafter it cannot be kept alive or operated for future vacancies.

8. That apart, the applicant is also not entitled to relief on the ground that the applicant has not impleaded necessary parties in this OA as respondents. The applicant has impleaded only one Shri Roop Chand Bhati as respondent in this OA whose name find mentioned at Sl.No.7 of the panel. As can be seen from the eligibility list at page No.17, Ann.A/3 there are 5 persons senior to the applicant and out of 5 only one person senior to the applicant has been empanelled whereas other 4 persons have not qualified the selection which are similarly situated to that of the applicant. In case we give direction to the respondents to re-evaluate the answer sheets again on the basis of 5 questions attempted by the applicant for which the key prepared by the department was not correct according to the applicant, in that eventuality, the entire exercise will have to be done in respect of all 21 persons including 4 persons who were senior to the applicant and could not be empanelled and it will not be equitable to confine such exercise to

applicant alone. This will result into preparation of fresh panel/select list and will affect the rights of seven persons who had already been appointed pursuant to panel Ann.A/1. According to us, such a course is not permissible at this belated stage. Further, if the re-evaluation of the aforesaid 5 questions is confined to the applicant and the applicant obtains requisite marks and qualifies in the selection test, persons from SL.No.2 to 6 whose name find mention in the panel dated 4.7.2006 (Ann.A/1) will rank junior to the applicant as they are junior to the applicant as per eligibility list Ann.A/3 page 17. Besides that, name of respondent No.3 shall have to be deleted from the panel. As already stated above, the applicant has only impleaded respondent No.3, Shri Roop Chand Bhati, as one of the respondents and he has not impleaded persons from Sl.No. 2 to 6 as respondents, who have been empanelled and will have to be definitely shown junior to the applicant. Thus, right of these persons will be affected for further promotion as seniority is one of the consideration for further promotion in the higher grade. As such, no effective relief can be granted to the applicant in view of the law laid down by the Hon'ble Apex Court in the case of Prabodh Verma vs. State of U.P., 1984 SCC (L&S) 704 where the Apex Court has held that no effective relief can be granted to person without impleading necessary parties.

9. Thus, viewing the matter from any angle, we are of the view that no relief can be granted to the applicant at this stage, more particularly, when direction for re-evaluation of the aforesaid 5 question of the applicant on the basis of key prepared by the

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department cannot be confined to the applicant alone on the face of the claim of senior persons to the applicant who might have attempted such questions but could not obtain requisite marks for their empanelment on the basis of the key so prepared by the department.

10. The other contention raised by the learned counsel for the respondents i.e. the present OA cannot be entertained at this stage on account of limitation as well as that the applicant has participated in the selection without challenging the selection and even no protest has been made before the authorities till today, need not be gone into.

11. For the foregoing reasons, we find no merit in this OA, which is accordingly dismissed with no order as to costs.

12. In view of the order passed in the OA, no order is required to be passed in MA No.388/2008, which shall stand disposed of accordingly.

  
(B.L. KHATRI)

Admv. Member

R/

  
(M.L. CHAUHAN)

Judl. Member