

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 12.09.2012

OA No. 196/2009 with MA No. 135/2009

Mr. Amit Mathur, counsel for applicant.
Mr. V.S. Gurjar, counsel for respondents.

At the request of learned counsel for the applicant, put up the matter on 24.09.2012 for hearing.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

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

Kumawat

24/09/2012

OA No. 196/2009 With MA No. 135/2009

Mr. Amit Mathur, Counsel for applicant
Mr. V.S. Gurjar, Counsel for respondents

Heard.

O.A. and M.A. are disposed of by a separate order on the separate-sheets for the reasons recorded therein.

Anil Kumar
[Anil Kumar]
Member (A)

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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 24th day of September, 2012

CORAM :

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

1. **ORIGINAL APPLICATION NO. 196/2009**
WITH
MISC. APPLICATION NO. 135/2009

1. Rajeev Kulshresth son of Shri L.K. Kulshresth, aged about 36 years, resident of Iradat nagar, Agra, U.P.
2. Dinesh Kumar son of Shri Bhafwan Saraswat, aged about 36 years, resident of House No. 1888, Mohalla Bjebara, Station Road, Village and Post Achhnera, District Agrawa U.P.
3. Arun Kumar son of Shri Ram Dass, aged about 33 years, resident of A2/262, East Gokulpur Loni Road, Sadra, Delhi.
4. Surendra Kumar son of Shri Harkesh Singh, aged about 40 years, resident of House No. A/2/188 East Gokulpur, Loni Road, Sadra, Delhi.
5. Khem Chand Chaturvedi son of Shri Bhagwati Prasad Chaturvedi, aged about 36 years, resident of Jawahar Nagar Colony, Mahukalan, Gangapurcity, District Sawaimadhopur.
6. Abdul Sattar Ansari son of Shri Rustam Khan Ansari, aged about 39 years, resident of behind Verma Traders, Bapu Colony, Rangpur Road, Kota Junction.
7. Naruddin son of Shri Faijuddin, aged about 39 years, resident of Village and Post Makhanpur, District Firojabad, U.P.
8. Satya Narain Singh Verma son of Shri Badri Prasad, aged about 40 years, resident of Ward No. 19, House NO. 1, Meena Mohalla, Gangapurcity, District Sawaimadhopur.
9. Rajveer Singh son of Shri Bharat Singh, aged about 37 years, resident of Village and Post Sersa, District Mathura, J.P.
10. Yeshpal Singh son of Shri Pati Singh, aged about 34 years, resident of Parthvipura, Post Baharati Khas, Agra.
11. Swadesh Kumar Srivastava son of Late Shri S.C. Srivastava, aged about 37 years, resident of C/o Vardwan Pharma, 200, Azadganj, Sipri Bazar, Jhansi, U.P.
12. Sanju Mathew son of Late Shri P.K. Mathew, age about 40 years, resident of House No. 13, Mathew Bungalow, Nainagrah Nagar, Post Office, Jhansi, U.P.

13. Shree Chand son of Late Shri Mangal Singh, aged about 37 years, resident of Village Bhudarasoo Post Bhainsa Refinery, District Mathura, U.P.
14. Anoop Kumar Khare son of Shri Kailash Shankar Khare, aged about 40 years, resident of House No. 1295, Tandan Compound, Sipri Bazar, Jhansi, U.P.
15. Hafij Ahmed Khan son of Shri Hanif Khan, aged about 37 years, resident of Tej Compound, Nandanpura, Jhansi, U.P.
16. Irsad Ahmed Siddiki son of Late Shri Jahoor Ahmed Siddiki, aged about 40 years, resident of B-330 Deendayal Nagar, Jhansi.
17. Jai Prakash son of Shri Sultan Singh, aged about 35 years, resident of House No. 727, Sector M-6, Electric Loco Shed (Northern) Railway, Gajiyabad, U.P.
18. Mahesh Kumar son of Shri Veer Singh, aged about 35 years, resident of House No. 501, Khethwara, Post Silampur, North East Delhi.
19. Prem Kumar son of Shri Satpal, aged about 38 years, resident of 406, New Govindpura, Kankarkheda, Meerut Chhavani, U.P.
20. Abhitabh son of Late Shri Hit Lal Shah, aged about 36 years, resident of Village and Post Masharmia, P.S. Sonvarsa, District Sitamadhi, Bihar.

... Applicants

(By Advocate : Mr. Amit Mathur)

Versus

1. Union of India through Secretary, Railway Board, Rail Bhawan, New Delhi.
2. The General Manager (Establishment), Western Railway, Churchgate, Mumbai.
3. The Chairman, Railway Recruitment Board, Ajmer, Rajasthan.

... Respondents

(By Advocate : Mr. V.S. Gurjar)

2. **ORIGINAL APPLICATION NO. 575/2009**

1. Anil Kumar Jha son of Shri Akhilesh Jha, aged around 39 years, resident of RZF-73, Gali No. 4, Mahaveer Enclave, Palam Dabri Road, Near Palam Air Port, New Delhi.
2. Prashant Kumar son of Shri Heera Lal, aged around 39 years, resident of Near I.M.A. Hall, Club Road, Ramana, Mujafarpur, Bihar.
3. Brijesh Kumar Singh son of Shri Tej Narayan Singh, aged around 39 years, resident of Pahar Khan Ka Pokhra, Visheshwarganj, Gajipur, U.P.

... Applicants

(By Advocate : Mr. Amit Mathur)

Versus

1. Union of India through Chairman Railway Board, Rail Bhawan, New Delhi.
2. Chairman, Railway Recruitment Board, Ajmer.
3. General Manager, North Western Railway, Hasanpura, Jaipur.
4. General Manager, Northern Railway, Baroda House, New Delhi.

... Respondents

(By Advocate : Mr. V.S. Gurjar)

ORDER (ORAL)

The facts of OA No. 196/2009 and OA No. 575/2009 are similar and, therefore, they are being decided by a common order. The facts of OA No. 196/2009 is taken as a lead case. In this OA, the applicants have filed this OA praying for the following reliefs:-

"The Hon'ble Tribunal may kindly call for the entire record of the case and examine the same and by an appropriate writ, order or directions the impugned order dated 29.06.2000 (Annexure A/1) whereby the selection/panel issued in respect of the posts of Apprentice Diesel Assistant/Assistant Electrical Driver category 18 of Employment Notice No. 1/97 has been cancelled may kindly be set aside.

Further by an appropriate writ, order or directions, the railway administration may kindly be directed to accord appointment to the applicants pursuant to the selection/panel issued on 8.3.1998 (Annexure A/3) with all consequential benefits.

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 applicants.

The original application may kindly be allowed with costs."

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2. Learned counsel for the applicant submitted that in pursuance to advertisement No. 1/97 dated 30.07.1997, the applicants applied for the post of Apprentice Diesel Assistant/Assistant Electrical Driver categorized at No. 18. The applicants were called for written test, psychological test and interview. The selection Board prepared and issued final result/panel dated 08.03.1998 (Annexure A/3). There were numerous posts in the advertisement No. 1/97 and for some of the posts objections were raised but it was not for the post of Apprentice Diesel Assistant/Assistant Electrical Driver categorized at No. 18. After an inquiry, a notification dated 09.11.1998 was issued and some of the categories which were cancelled were shown in the said notification but the category No. 18 of the Advertisement No. 1/97 with regard to which the applicants had appeared was not cancelled (Annexure A/4).

3. Learned counsel for the applicant further submitted that the apprehending cancellation of the result/panel dated 08.03.1998, the applicants filed OA before this Tribunal. During the pendency of the OA, the respondents vide their letter dated 29.06.2000 (Annexure A/1) cancelled the selection in respect of the posts Apprentice Diesel Assistant/ Assistant Electrical Driver categorized at No. 18. Against the aforesaid action of the respondents, the applicants moved an application for amending the OA. Hon'ble Tribunal allowed the prayer made by the applicants and in compliance thereto, the applicant filed an Amended OA. Vide order dated 10.11.2000 (Annexure A/6), the

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Hon'ble Tribunal dismissed the OA filed by the applicants. Against this order dated 10.11.2000, the applicants preferred a Writ Petition before the Hon'ble High Court of Rajasthan at Jaipur Bench. The Hon'ble High Court dismissed the Writ Petition vide order dated 23.05.2001 (Annexure A/8). Against the order of the Hon'ble High Court dated 23.05.2001, the applicants preferred a SLP before the Hon'ble Supreme Court of India but that too was dismissed.

4. Learned counsel for the applicant further submitted that a CBI inquiry was conducted against the members of the Selection Board and CBI filed a Challan against the members of the Selection Board in the CBI Court. But the learned CBI Court after hearing the parties discharged all the persons at the state of framing of charge vide order dated 05.05.2008 (Annexure A/9).

5. Learned counsel for the applicant also argued that the applicants thereafter sent a legal notice to the Railway Authorities stating inter-alia that since basic ground for cancellation of the selection/panel has gone and there remains nothing to say that the applicants' selection was due to mal practice adopted by the Selection Board. It is also a fact that the officials who are the railway employees, they were further promoted to the next higher posts. In these circumstances, it was incumbent upon the railway authorities to consider the case of the applicants afresh and on availability of the vacancies appointments be given to the applicants.

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6. In OA No. 575/2009, the applicants had applied against the category No. 15 of the Employment Notice No. 1/97 and have mentioned the facts, which are similar to the facts of OA No. 196/2009.

7. Learned counsel for the applicant argued that the plea of the respondents that the present OA is barred by the principle of res-judicata is not applicable in this case. In the present case, subsequent event has given rise to fresh cause of action. He argued that since CBI Court has not framed charges against the officials against whom charge sheet was filed by the CBI, therefore, fresh cause of action has arisen. To support his averments, he referred to the judgment of the Hon'ble Supreme Court in the case of **State of Haryana & Others vs. M.P. Mohla**, 2007(1) SCC 457.

8. He also argued that since the Railway servants were charge sheeted by the CBI and have been given further promotion after being discharged by the Special Court, CBI Cases, as such the applicant should also be given appointment on the post of Apprentice Diesel Assistant/Assistant Electrical Driver under category No. 18 of Employment Notice No. 1/97 and to the post of A.S.M. under category 15 of the said Employment Notice and if necessary, the respondents be directed to create supernumerary post. To support his

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averments, the learned counsel for the applicants referred to the following judgments:-

- (i) Sunil Kumar Singh vs. Union of India & Others
AIR 2005 SC 609
- (ii) State of Kerala & Others vs. V.R. Kalliyankutty & Another
AIR 1999 SC 1305
- (iii) Harbans Lal vs. State of Rajasthan & Others
SB Civil Writ Petition NO. 2460/2007 decided on 28.10.2009 MANU/RH/1028/2009
- (iv) Shameem Khan vs. State of Rajasthan & Others
2003 (3) WLC 638
- (v) Raj Bahadur vs. State of Rajasthan & Others
1998 (3) WLC 83

Learned counsel for the applicant further submitted that both these OAs be allowed.

9. On the other hand, the learned counsel for the respondents admitted the fact of issuance of Employment Notice dated 1/97 for 18 categories including category nos. 15 and 18. He submitted that after the examination, the result was declared on 08.03.1998. However, in the meantime, the Central Bureau of Investigation received information through reliable source that during the period from May 1997 to March, 1998, the officials of the Railway Recruitment Board, Ajmer, entered into criminal conspiracy in order to extend undue favour to undeserving candidates in the recruitment process to various posts conducted by the Railway Recruitment Board, Ajmer. During investigation, the CBI found that large scale bungling and major irregularities having been committed with regard to selection/interview conducted by Shri Kailash Prasad, the then Chairman, Railway

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Recruitment Board, Ajmer. The CBI also filed a Challan in the Court of Special Judge, CBI, Jaipur. The category of posts in which irregularities/bungling was found also include Apprentice Diesel Assistant/Assistant Electrical Driver and Probationary Assistant Station Master. The Railway Board vide their letter dated 29.06.2000 considered in detail the nature of irregularities detected pursuant to CBI investigation in categories no. 18 and 15 of the Employment Notice NO. 1/97 issued by the Railway Recruitment Board, Ajmer and decided to cancel the panels of Apprentice Diesel Assistant Driver/ Assistant Electrical Driver and Probationary Assistant Master. It was further decided that all the candidates who had appeared in the above two written examinations may be called again for written examination and the selection may be processed afresh, candidates called for written re-examination may be allowed to and fro fresh travel by rail.

10. The applicants filed OA challenging the cancellation of the panel vide Railway Board letter dated 29.06.2000 before this Tribunal, which was dismissed vide order dated 10.11.2000 (Annexure A/6). The applicants being aggrieved by this order preferred a Writ Petition before the Hon'ble High Court of Rajasthan at Jaipur bench, which was dismissed by the Hon'ble High Court vide order dated 23.05.2001 (Annexure A/8). The applicants preferred SLP before the Hon'ble Supreme Court of India but that too was dismissed. Thus the action of the respondents of the cancellation of the panel dated 29.06.2000

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has been upheld even by the Apex Court. Therefore, the applicants cannot now claim the same relief in the present OAs.

11. Learned counsel for the respondents argued that acquittal of the Railway Recruitment Board's employees by the Court of Special Judge, CBI Cases, Jaipur will not give any legal right to the applicants for appointment against the panel which has already been cancelled and the cancellation has been upheld by this Tribunal, by the Hon'ble High Court of the Rajasthan (Jaipur Bench) as well as by the Hon'ble Supreme Court. He further argued that it is a settled law that mere empanelling does not confer any right for appointment, at the best, it is a condition of eligibility for the purpose of appointment and by itself does not amount to selection or creating any right to be appointed. To support his averments, he referred to the case of **State of Bihar vs. Secretariat Assistant Successful Examinees Union 1986 & Others**, 1994 SCC (L&S) 274.

12. He further argued that the select list prepared by the Selection Board was regarded by the Railway Board as a dubious select list, it cancelled that select list with a direction to make selection afresh and allowing the candidates who participated earlier to and fro travel by rail free of charge. Such an action of the respondents cannot be vitiated on any of the grounds pleaded by the applicants in the OA. To support his averment, he referred to the judgment of the **Union Territory of Chandigarh vs. Dilbagh Singh & Others**, 1993 SCC (L&S) 144. He also

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referred to the judgment of Hon'ble Supreme Court in the case of **Union of India vs. O. Chakradhar**, 2002 SCC (L&S) 361. In this case, the Hon'ble Supreme Court in Para 12 has held that "As per the report of the CBI the whole selection smacks of malafidès and arbitrariness.The Railway Board decision to cancel the selection cannot be faulted with. The appeal, therefore, deserves to be allowed." The order of the termination of the services of the respondents was upheld.

13. Learned counsel for the respondents also referred to the judgment of the Hon'ble Supreme Court in the case of **Chairman, All India Railway Recruitment Board & Another vs. K. Shyam Kumar & Others**, 2010 (6) SCC 614. In Para No. 50 of the said judgment, the Hon'ble Supreme Court has held as under:-

"50. We are also of the view that the High court was in error in holding that the materials available relating to leakage of question papers were limited and had no reasonable nexus to the alleged large scale irregularity. Even a minute leakage of question paper would be sufficient to besmirch the written test and to go for a retest so as to achieve the ultimate object of fair selection."

Learned counsel for the respondents pointed that the Hon'ble Supreme court in this case has held that even a minute leakage of question paper would be sufficient to besmirch the written test and to go for a retest so as to achieve the ultimate object of fair selection. In this case also, the Railway Board has cancelled the selection process and have given an opportunity to all those who appeared again and also provided railway transport free of costs. Therefore, there is no injustice with any of the

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applicants who have applied against against the said Employment Notice. Learned counsel for the respondents further argued that the applicants have not suffered legal injury and, therefore, they are entitled to any legal remedy. The action of the respondents is perfectly legal, valid and in consonance with the service law. Therefore, these OAs have no merit and these should be dismissed with costs.

14. Heard the learned counsel for the parties and perused the relevant documents on record and the case law referred to by the learned counsel for the parties. It is not disputed that the respondents issued an advertisement no. 1/97 for filling up the post of Apprentice Diesel Assistant/ Assistant Electrical Driver (category 18 of the Employment Notice No. 1/97) and Probationary Assistant Station Master (Category 15). The examination was conducted for both these posts. However, the CBI received information from reliable source that during the period from May, 1997 to March 1998, the officials of the Railway Recruitment Board, Ajmer entered into criminal conspiracy in order to extend undue favour to certain undeserving candidates in the recruitment process to various posts conducted by the Railway Recruitment Board, Ajmer. During the investigation, the CBI found a large number of bungling and major irregularities having been committed with regard to the selection/interview conducted by Shri Kailesh Prasad, the then Chairman, Railway Recruitment Board, Ajmer. The CBI also filed a Challan in the Court of Special Judge, CBI

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cases, Jaipur. The category of various posts where irregularities/bungling have been found by the CBI also include the Apprentice Diesel Assistant/ Assistant Electrical Driver and Probationary Assistant Station Master. Therefore, the Railway Board cancelled the said selection vide order dated 29.06.2000 (Annexure A/1). This cancellation of selection was challenged by the applicant before the CAT, Jaipur Bench. The CAT Jaipur Bench upheld the cancellation of the panel. Being aggrieved by this order, the applicant preferred a Writ Petition before the Hon'ble High Court (Jaipur Bench), which was also dismissed. The applicants preferred an SLP before the Hon'ble Supreme Court of India but that too was dismissed. Now the main contention of the applicants is that since the officials of the Railway Recruitment Board were discharged by the Special Judge, CBI Cases, Jaipur, therefore, the applicants have a fresh cause of action and they should be given appointment against that selection even if the respondents have to create supernumerary post. We have carefully gone through the case law referred to by the learned counsel for the applicants in support of his averments but we are of the view that the ratio laid down by the Hon'ble Supreme Court and the Hon'ble High court in the cases referred to by the learned counsel for the applicant is not applicable under the facts & circumstances of the present case. On the contrary, the ratio laid down by the Hon'ble Supreme Court in the case of **Chairman, All India Railway Recruitment Board & Another vs. K. Shyam Kumar & Others**, 2010 (6) SCC 614, is squarely applicable under the

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facts & circumstances of the present case. In this case, the Hon'ble Supreme Court in Para No. 50 of the judgment has held that even a minute leakage of question paper would be sufficient to besmirch the written test and to go for a retest so as to achieve the ultimate object of fair selection. In the present OA, the CBI had found large scale of bungling and major irregularities having committed with regard to the selection/interview conducted by Shri Kailash Prasad, the then Chairman, Railway Recruitment Board, Ajmer. Therefore, the action of the respondents in canceling the entire selection cannot be said to be arbitrary/illegal. This point has already been adjudicated upto the level of Hon'ble Supreme Court. Merely on the ground that the officials have been discharged by the Special Judge, CBI Cases, Jaipur will not create equity or legal right in favour of the applicants. The Hon'ble Supreme Court in Para No. 9 in the case of **Union Territory of Chandigarh vs. Dilbagh Singh & Others**, 1993 SCC (L&S) 144, has held that:-

"9.failure on the part of the complaint to establish charges of corruption levelled against the member of the Selection Board could not have saved the select list, if it was otherwise found to be dubious. The select list which was cancelled by the Chandigarh Administration was found by it to have been prepared in unfair and injudicious manner, in that the interview marks purported to have been awarded by the members of the Selection Board for the performance of candidates at their interview were either inflated to push up the candidates who had got poor marks for their educational qualification or deflated to pull down the candidates who had got high marks for their educational qualifications. That select list was also found to have been prepared without adopting common eligibility criteria, for all candidates. When the said reasons formed the basis for the Chandigarh Administration to cancel the select list of the Selection Board, the fact that charges of corruption leveled against the members of the Selection Board in the preparation of

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that select list had not been established by direct evidence produced in that regard, can make no difference."

The ratio laid down by the Hon'ble Supreme court in this case is squarely applicable under the facts and circumstances of the present OA. It would not make any difference if the officials of the Railway Recruitment Board were discharged by the Special Judge, CBI Cases, Jaipur. During the investigation, the CBI found large scale of bungling and major irregularities have been found in the selection process. The respondents gave an opportunity to all the candidates who appeared in the earlier selection to re-appear and also provided to & fro transport by the Railway to appear in the examination. The applicants chose not to appear in the examination again. The action of the respondents in providing opportunity to all the candidates to re-appear was quite just, fair and proper under the circumstances.

15. Thus looking from any angle, we are of the view that the applicants have failed to make out any case in their favour.

16. Consequently, both the OAs being devoid of merit are dismissed with no order as to costs.

17. In view of the order passed in the OA, MA No. 135/2009 filed along with OA No. 196/2009 for condonation of delay is disposed of accordingly.

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18. A copy of this order may also be placed in the file of OA No. 575/2009 (Anil Kumar Jha & Others vs. Union of India & Others).

(Anil Kumar)
Member (A)

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

AHQ