

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

06.09.2011

OA No. 463/2010

Mr. S. Shrivastava, proxy counsel for
Mr. C.B. Sharma, counsel for applicant.
Mr. Anupam Agarwal, counsel for respondents.

Rejoinder
not filed
(69)
Learned proxy counsel for Shri C.B. Sharma, counsel for the applicant, seeks time to file rejoinder. Time as prayed for is granted. Put up the matter on 21.10.2011.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

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

Kumawat

21/10/2011 [OA 463/2010]

Mr. C.B. Sharma, counsel for applicant.
Mr. Anupam Agarwal, counsel for respondents.

Heard.

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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 21st day of October, 2011

CORAM:

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

OA No. 462/2010

Nandan Singh
s/o Shri Ram Lal, Ward No.44,
House No.46, Balaji Nagar,
Near Sunder Nagar, Kota Junction,
Kota and retired on 31.3.2008,
from the post of Driver Mail Express
(Loco Pilot), West Central Railway,
Kota, Rajasthan.

... Applicant

(By Advocate : Shri C.B.Sharma)

Versus

1. Union of India
through General Manager,
West Central Zone,
West Central Railway,
Jabalpur (M.P.)
2. Divisional Railway Manager,
West Central Railway,
Kota Division, Kota.
3. Senior Divisional Electrical Engineer (TRO),
West Central Railway,
Kota Division, Kota.

... Respondents

(By Advocate : Shri Anupam Agarwal)

OA No. 463/2010

Abdul Kayyum
s/o Shri Nathu Khan,
r/o 4 Ward No.44, Rang Talab, New Basti,
Kota Junction, Kota and retired
on 31.3.2009 from the post of
Driver Mail Express (Loco Pilot),
West Central Railway,
Kota, Rajasthan.

... Applicant

(By Advocate : Shri C.B.Sharma)

Versus

1. Union of India
through General Manager,
West Central Zone,
West Central Railway,
Jabalpur (M.P.)
- 2: Divisional Railway Manager,
West Central Railway,
Kota Division, Kota.
3. Senior Divisional Electrical Engineer (TRO),
West Central Railway,
Kota Division, Kota.

... Respondents

(By Advocate: Shri Anupam Agarwal)

ORDER (ORAL)

Since facts in OA No.442/2010 were different than those in OA Nos. 462 and 463 of 2010, as such, they are being decided by this common order involving similar question of law and facts. As discussed in OA No.442/2010, applicants earlier filed OA No.101/2007 before this Tribunal as they were



declared disqualified for the benefit of Safety Related Retirement Scheme for Drivers and Gangmen on the ground that they have not completed 33 years of qualifying service, although they were in the age group of 55 to 57 years.

2. The aforesaid OA was decided vide order dated 21st April, 2009 and the respondents were directed to reconsider the case of the applicants in terms of Para 2(vii) and (xi) of RBE No.04/2004 within a period of two months from the date of receipt of copy of the order.

3. After considering the case of the applicants, the applicants were found eligible for the benefit of Safety Related Retirement Scheme for Driver and Gangmen and after seeking retirement, their wards applied for appointment under the said scheme and they were called for to appear in the written examination, but in the written examination their wards were declared unsuccessful. Therefore, the present OAs are preferred by the applicants claiming writ, order or direction directing the respondents to extend benefit of the aforesaid scheme by allowing appointment to their sons by quashing order dated 30.11.2009 (Ann.A/1 in both the OAs) declaring assessment of the ward as null and void as the committee was constituted against the instruction (at Ann.A/14) with all consequential benefits. It is alternatively prayed to allow second chance for consideration as per



Board letter dated 25.7.2006 (Ann.A/20) and as per the procedure provided in the scheme at Ann.A/4 i.e assessment through respective Railway Recruitment Board not by Committee of three SAG officers by quashing letter dated 3.5.2010 (Ann.A/3) with all consequential benefits..

4. The learned counsel appearing for the respondents has raised preliminary objection regarding maintainability of the OA on the ground that the applicants have no locus to challenge the Ann.A/1 as their wards appeared in the written test and declared fail, as such, no cause of action is available to the applicants to challenge Ann.A/1. Further these OAs are not maintainable in view of the ratio decided by the Hon'ble Apex Court in the case of K.H.Siraz vs. High Court of Kerala and Cthers reported in JT 2006 (11 SC 424 and Union of India and others vs. S.Vinodh Kumar and Others reported in 2007 (80 SCC 100), wherein it is held that one cannot challenge the selection criteria after appearing in the same and after declaring unsuccessful.

5. Having considered the ratio decided by the Hon'ble Apex Court in the aforesaid judgments, in our considered view, the sons of the applicants/applicants after appearing and declaring unsuccessful cannot challenge the selection process at this stage, therefore, we find no illegality in the impugned order.



6. Further RBE No.64/2005 (Ann.A/14) relating to safety related retirement scheme for Drivers and Gangmen provides as under:-

"Pursuant to the introduction of the Safety Related Retirement Scheme (SRRS), vide above referred Board's letter, a number of proposals mooted further amendments/improvements/extension to the Safety Related Retirement Scheme were received from Zonal Railways and Federations. After considering the various suggestions, the Ministry of Railway (Railway Board) have decided that suitability for recruitment of wards of employees opting for retirement under this scheme will be assessed through a Committee as the level of Zonal Headquarters instead of RRB. For this purpose, a Committee of three SAG Officers may be constituted by the Zonal Railway consisting of one officer from Personnel, one from Mechanical/Electrical (depending upon the stream in which recruitment is being done) and one SAG officer from Civil Engineering Department...."

7. In view of RBE No.64/2005, the assessment was made by the Committee of three SAG officers of the zonal railway and the examination conducted by the said committee cannot be said to be contrary, as alleged by the applicants that as per clause 2(xiii) of RBE No.4/2004 the assessment should be done by the respective Railway Recruitment Board, and since the selection process was not conducted by the Railway



Recruitment Board, therefore, as per the applicants, the selection process is to be declared null and void.

8. As observed hereinabove, in the view the ratio decided by the Hon'ble Apex Court in the case of K.Z.Siraz and Vinodh Kumar (supra) and in view of RBE No.64/2004, we find no illegality in the examination conducted by the assessment committee and since wards of the applicants were declared fail, they cannot question the selection process after being declared fail.

9. Consequently, we find no merit in both these OAs, and therefore, these are dismissed being devoid of merit. No costs.

(ANIL KUMAR)
Admv. Member

(JUSTICE K.S.RATHORE)
Judl. Member

R/

Copy given vide
AO-1726 & 1727

31/10/11