

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 07.07.2014

OA No. 204/2011

Mr. C.B. Sharma, counsel for applicant.
Mr. Anupam Agarwal, counsel for respondent Nos. 1 & 2.
None present for respondent nos. 3 to 5.

Heard learned counsel for the parties.

Order is reserved.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

Anil Kumar
(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Kumawat

Date - 10.7.2014

Order pronounced today in the open
Court by the Hon'ble Bench.


COURT OFFICER

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORIGINAL APPLICATION NO. 204/2011

Order reserved on: 07.07.2014

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CORAM

**HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER
HON'BLE MR. RAJ VIR SHARMA, JUDICIAL MEMBER**

Mahendra Kumar S/o Shri Kanhiya Lal, aged about 46 years, R/o Plot No. 49, Sector-III, J.P. Colony, Naka Madar, Ajmer and presently working as Material Collector, Grade-II, Ticket No. 61013/17, Office of Chief Works Manager (Loco), North Western Railway, Ajmer.

...Applicant

Mr. C.B. Sharma, counsel for applicant.

VERSUS

1. Union of India through General Manager, North Western Zone, North Western Railway, Near Jawahar Circle, Jagatpura, Jaipur.
2. Chief Works Manager (Loco), North Western Railway, Ajmer Division, Ajmer.
3. Shri Narendra Singh Indra, under training Junior Engineer, Grade-II C/o Chief Works Manager (Loco), North Western Railway, Ajmer Division, Ajmer.
4. Shri Subhash Chand Doi, under training Junior Engineer, Grade-II C/o Chief Works Manager (Loco), North Western Railway, Ajmer Division, Ajmer.
5. Shri Mukesh Kumar, under training Junior Engineer, Grade-II, C/o Chief Works Manager (Loco), North Western Railway, Ajmer Division, Ajmer.

...Respondents

Mr. Anupam Agarwal, counsel for respondent nos. 1 & 2.
None present for respondent nos. 3 to 5.

ORDER
(PER MR. ANIL KUMAR, ADMINISTRATIVE MEMBER)

The applicant has filed the present Original Application seeking for the following reliefs: -

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"(i). That the entire record relating to the case be called for and after perusing the same, respondents may be directed to award correct marks i.e. 75 marks and thereafter recast panel dated 11/01/2011 (Annexure A/1) and placed the applicant on panel by quashing panel dated 11/01/2011 with all consequential benefits.

(ii). That respondent No. 2 be further directed to act upon letter dated 28/04/2011 (Annexure A/2) and award marks relating to 2.(2) and place the applicant on panel by deleting name of respondent No. 5 who is junior to the applicant with all consequential benefits.

(iii). Any other order, direction or relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts and circumstances of the case.

(iv) That the costs of this application may be awarded."

2. The brief facts of the case are that the respondent No. 2 issued notification dated 21.09.2010 (Annexure A/6) for filling up the posts under 25% intermediate Apprentice Mechanic (Junior Engineer-II) pay Rs. 9300-34800 plus grade pay Rs. 4200/- in Loco and Wagon Workshop from artisan staff in which three posts for general category were notified and further issued notification dated 21.09.2010 (Annexure A/7) for filling up two posts of Yard or Mil Right. The examination for the said posts was held on 27.12.2010 in which the applicant also appeared. He was declared successful vide letter dated 04.01.2011 (Annexure A/13) in which name of the applicant finds place at SI. No. 8. Thereafter, respondent No. 2 declared panel dated 11.01.2011 (Annexure A/1) by placing the name of the private respondent Nos. 3, 4 & 5 in the panel ignoring the claim of the applicant. The applicant was awarded 69 marks whereas Shri Mukesh Kumar (private respondent no. 5) has secured 70 marks. Shri Mukesh Kumar is junior to the applicant.

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3. Learned counsel for the applicant submitted that the applicant obtained copy of the answer sheet with the answer key and after perusing the same the applicant is entitled for at least 75 marks. The applicant has drawn a chart in para 4.(viii), which is reproduced below: -

<u>Q. No.</u>	<u>Details / Questions</u>	<u>As per answer sheet</u>	<u>As per applicant</u>
2.(2)	Answer in Yes or No – BOXN में UIC बोगी प्रयुक्त होती है	Yes	No
4.(4)	Write in English – सुरक्षा	Security	Safety
4.(6)	तकनीकी	Technical	Technically
5.(3)	निम्नलिखित को हिन्दी में लिखे – Communication	संचार	बातचीत
5.(8)	Safety	संरक्षा	सुरक्षा
5.(9)	Protection	बचाव	संरक्षा

4. Learned counsel for the applicant further submitted that after going through the answer sheet and answer key, applicant represented before the respondent No. 2 with the supporting documents on 21.03.2011 (Annexure A/18) stating therein that he is entitle for marks as 75 instead of 69. He also submitted that co-worker of the applicant one Shri Bhera Ram also represented before the respondent No. 2 and respondent No. 2 vide letter dated 08.04.2011 (Annexure A/19) informed him that in answer key error have been found relating to question No. 2.(2), 3.(5) & 5.(6) and answer key has been corrected, which shows that applicant is entitled for one marks of question No. 2.(2) and his marks become 70 equal to respondent No. 5 and

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applicant is senior to respondent No. 5, so he is entitled for placement in the panel.

5. He also submitted that the respondent no. 2 informed that applicant vide letter dated 28.04.2011 (Annexure A/2) that error in answer key relating to question No. 2.(2), 3.(5) and 5.(6) has been corrected and no change has been found in the panel. In fact, the applicant became entitled for one more mark relating to question No. 2.(2) and, thus, his marks become 70 which are equal to private respondent no. 5 and the applicant being senior to respondent no. 5 becomes entitled for placement in the panel.

6. Learned counsel for the applicant further submitted that the answer key was not correct and the same has been admitted by the respondent in Annexure A/2 letter dated 28.04.2011. Thus, action of the respondent no. 2 is against the rules and such action is liable to be quashed and set aside. The applicant is entitled for 75 marks but awarded only 69 marks whereas the name of the respondent no. 5 placed on the panel on the basis he being awarded 70 marks and, therefore, the applicant is entitled to be placed on the panel over and above private respondent no. 5. Therefore, the O.A. be allowed and the respondents be directed to recast the panel dated 11.01.2011 (Annexure A/1) and place the name of the applicant on the panel with all consequential benefits.

7. The official respondent nos. 1 & 2 have filed their reply. In their reply, they have stated that the notification for three posts

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of intermediate Apprentice Mechanic (Junior Engineer-II) have been notified separately and for two posts of Yard and Mil Right have been notified separately. In the written examination conducted on 27.12.2010, eight employees were declared successful. The applicant's name find place at Sl. No. 8. Since there were three posts, therefore, three persons were empanelled as per merit. The applicant since not found to be meritorious enough, his name did not find place in the panel as per merit. Shri Mukesh Kumar (respondent no. 5) was more meritorious than the applicant. So far as the junior or senior are concerned, it is not relevant as the panel was prepared on the basis of merit in the written examination.

8. The learned counsel for the official respondents further submitted that the answer-sheets are evaluated by the officer of senior scale. The applicant secured 69 marks. So far as the submission based upon the table as given by the applicant in para 4.(viii) of the O.A. is concerned, the applicant cannot derive any conclusion thereof. The respondents are unable to understand as to how applicant alleged to be 75 marks on such basis. The applicant has not challenged the answer key, therefore, also any averment to the effect that the applicant should have been awarded 75 marks is without any substance.

9. The official respondents have informed the applicant that there is no change in the panel even after correction of the mistake. All the three candidates who have been selected are more meritorious than the applicant. Therefore, their names find

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place in the panel and, there is no illegality in the panel dated 11.01.2011 (Annexure A/1). The answer key was corrected. Yet the applicant's name did not find place in the panel. His allegation regarding entitlement of 75 marks is based upon hypothesis. Thus, the O.A. has no merit and it should be dismissed with costs.

10. The applicant has filed a rejoinder to the reply and the official respondents have filed a reply to the rejoinder.

11. The applicant in the rejoinder has stated that the applicant is entitled for 75 marks with correct answer key. It has not been explained as to how the private respondent no. 5 i.e. Shri Mukesh Kumar who initially got 70 marks were given further two marks to enhance his total to 72 marks. The applicant has not been awarded correct marks according to his performance which comes to 75 marks. In support of his averments, learned counsel for the applicant also referred to the judgment of the Hon'ble Supreme Court in the case of **Rajesh Kumar and Others vs. State of Bihar and Others** reported in (2013) 2 SCC (L&S) 359 : (2013) 4 SCC 690.

12. In reply to the rejoinder, the official respondents have stated that irregularities were found in the answer key. On being found so, the answer key was corrected and the marks of the applicant and those on the panel were revised as under: -

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Name	Marks obtained	Question No. 2 (ii)	3 (5)	(5) 6	Total marks obtained
Shri Mahendra Kumar	69	+1	-1	-	69
Narendra Singh Inda	76	+1	+1	-	78
Subash Chand	71	+1	+1	-	73
Mukesh Kumar	70	+1	-	+1	72

Thus, the official respondents have stated that even after the correction, there was no change in the panel position. Therefore, the O.A. has no merit and it should be dismissed.

13. Heard learned counsel for the parties, perused the documents available on record and the case law referred to by the learned counsel for the applicant.

14. The main contention of the learned counsel for the applicant is that the answer key to certain questions is not correct and, therefore, it should be referred to a body of experts who should prepare a fresh answer key and on the basis of that answer key, there should be a re-evaluation of the copies of the candidates and then a fresh panel be drawn. Further contention of the applicant is that on the basis of the correct answer key, he is entitled to 75 marks and, therefore, his name should be included in the panel and selected candidates for the post of Junior Engineer-II. On the other hand, the official respondents in their reply have categorically stated that the applicant secured 69 marks whereas all the three candidates who have been put in the panel vide letter dated 11.01.2011 (Annexure A/1) has secured more marks than the applicant. Therefore, the name of the applicant cannot be put in the panel of selected candidates.

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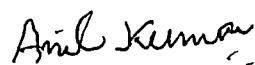
They have also admitted that there has been some mistake in the answer key for the question No. 2(ii), 3(5) and (5)6. On being found so, the answer key was corrected and the marks of the applicant and others were revised and even after the revision of marks, the applicant secured 69 marks whereas Shri Narendra Singh Indra secured 78 marks, Subhash Chand secured 73 marks and Mukesh Kumar (private respondent no. 5) secured 72 marks. In view of the above, it is clear that there is no change in the panel position even after the corrections in the answer key was made.

15. We are inclined to agree with the averments made by the learned counsel for the respondents that since the applicant has secured less marks than the candidates who have been put on the panel, therefore, the applicant is not entitled for any relief in the present O.A. The applicant cannot be a judge in his own case. To be fair to the respondents when it was pointed out to them that there were mistakes in the answer key, they admitted the mistake and re-evaluated the answer-sheet of the applicant and those selected on the panel. Even after the corrections made in the answer key, the marks of the applicant did not change. He secured 69 marks whereas selected candidates namely Shri Narendra Singh Indra, Subhash Chand and Mukesh Kumar secured 78, 73 and 72 marks respectively. Thus, it is clear that more meritorious persons were selected. Since the official respondents have admitted that there were some mistakes in the answer key and that they have corrected the mistakes in the answer key and on the basis of the corrected

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answer key, the answer sheets of the candidates have been re-evaluated, we do not find it necessary to direct the official respondents to constitute an expert body for preparing answer key afresh. In the case of **Rajesh Kumar and Others vs. State of Bihar and Others** (supra) as referred to by the learned counsel for the applicant, there were 41 model answers wrong out of 100 answers, whereas in the present O.A. there are only 03 errors in the answer key, which have been admitted by the official respondents, therefore, also in view of the very limited number of mistakes in the answer key, we do not find any merit in the arguments of the learned counsel for the applicant that there is a need to constitute an expert body to draw new answer key.

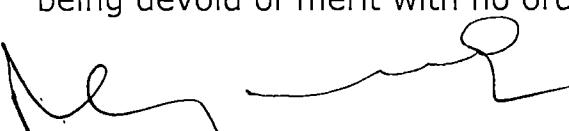
16. It is not disputed that had the applicant and Shri Mukesh Kumar (private respondent no. 5) secured equal marks then the case of the applicant could have been considered if he was senior to Shri Mukesh Kumar but in the present case Shri Mukesh Kumar has secured 72 marks and the applicant (Shri Mahendra Kumar) has secured 69 marks, therefore, we do not find any illegality in the action of the official respondents to place the name of Shri Mukesh Kumar (private respondent no. 5) on the panel vide letter dated 11.01.2011 (Annexure A/1). We do not find any illegality or irregularity in the panel dated 11.01.2011 (Annexure A/1) with regard to other two candidates also.



17. We have carefully perused the judgment of the Hon'ble Supreme Court in the case of **Rajesh Kumar and Others vs. State of Bihar and Others** (supra). In this case, the Hon'ble Supreme Court directed the official respondents to re-evaluate the answer script on the basis of the correct answer key and then prepare a fresh panel on the basis of the merit secured by the candidates on such re-evaluation whereas in the present case the official respondents have already corrected the answer key and re-evaluated the answer-sheets of the candidates and even after carrying out such an exercise, there is no change in the panel dated 11.01.2011 (Annexure A/1).

18. We are of the opinion that the applicant has failed to make out any claim for interference by this Tribunal in the present O.A.

19. Consequently, the present Original Application is dismissed being devoid of merit with no order as to costs.



(RAJ VIR SHARMA)
JUDICIAL MEMBER



Anil Kumar
(ANIL KUMAR)
ADMINISTRATIVE MEMBER