

THE CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH, JAIPUR

ORDER SHEET

Original APPLICATION NO.: 756/2012

With
MA No. 248/2013

Applicant (S)

Respondent (S)

Advocate for Applicant (S)

Advocate for Respondent (S)

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

06/05/2014

O A No. 756/2012 with MA No. 248/2013

Mr. R.K. Sharma, Counsel for applicant.
Mr. Tanveer Ahmed, Counsel for respondents.

Heard learned Counsel for the parties.

Order is reserved.

[Signature]

[Smt. Jasmine Ahmed]
Member (J)

Anil Kumar
[Anil Kumar]
Member (A)

At-08/5/2014

Order pronounced today in the open
Court, by the aforesaid Bench.

[Signature]
08/5/14
(Court Officer)

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 756/2012
WITH
MISC. APPLICATION NO. 248/2013

Order reserved on: 06.05.2014

Order pronounced on: 08.05.2014

CORAM

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER
HON'BLE SMT. JASMINE AHMED, JUDICIAL MEMBER

1. Omprakash Parker S/o Shri Ramdhan Parker, aged about 53 years, R/o C-38B, Loko Colony, Jaipur, presently working as LDC Loco, Jaipur.
2. Mohan Lal K. S/o Shri Kanhiya Lal, aged about 56 years, R/o 59, Railway Phatak Asalpur, Jobner, Jaipur, presently working as LDC Carriage, Jaipur.
3. Shreephool Meena S/o Shri Kirodi Meena, aged about 53 years, R/o T-117C, Loko Colony, Jaipur, presently working as LDC Carriage, Jaipur.
4. Rampal S/o Shri Gyarsilal, aged about 57 years, R/o House No. 195A, Janta Nagar, Rakhdi, Jaipur, presently working as LDC Carriage, Jaipur.
5. Shiv Chand Biloniya S/o Shri Ramnath Biloniya, aged about 61, years, R/o Vill. & Post Doodhli, Teh. Bassi, Distt. Jaipur, presently retired from the post of LDC Loco Jaipur.
6. Jogendra Singh Solanki S/o Shri Gambhir Singh, aged about 40 years, R/o Plot No. 512, Jadon Nagar-A, Durgapura Railway Station, Jaipur, working as LDC in Loco Jaipur, office of the Senior Section Engineer (Loco), Railway Station, Jaipur Junction, Jaipur.

...Applicants

Mr. R.K. Sharma, counsel for applicants.

VERSUS

1. The Union of India through General Manager, North Western Railway, Near Jawahar Circle, Jagatpura, Jaipur.
2. The Divisional Railway Manager, North Western Railway, Power House Road, Jaipur.

...Respondents

Mr. Tanveer Ahmed, counsel for respondents.

Tanveer Ahmed

ORDER**(PER SMT. JASMINE AHMED, JUDICIAL MEMBER)**

The applicants have filed this Original Application praying for the following reliefs: -

- “(i) by an appropriate order or direction, the letter dated 12.09.2012 (Annex. A/1) may kindly be quashed and set aside and the respondents may be directed to award the bonus marks for the questions which are out of syllabus and accordingly the letter dated 26.07.2012 may be modified with all consequential benefits.
- (ii) by an appropriate order or direction the letter dated 12.09.2012 (Annex. A/1) may kindly be quashed and set aside and the respondents may be directed to award the marks proportionately for the questions which are within the syllabus by excluding the questions which are out of syllabus and accordingly the letter dated 26.07.2012 may be modified with all consequential benefits.
- (iii) Any other order which has been passed and to be passed during the pendency of the Original Application may also be taken on record and may kindly also be set aside.
- (iv) That any other beneficial orders or directions which this Hon’ble Tribunal deems just and proper in the facts and circumstances of the case be kindly passed in favour of the applicants.
- (v) Cost be quantified in favour of the applicants.”

2. The brief facts of the case here in this case are that this is second round of litigation wherein earlier by order dated 21st August, 2012 in OA No. 559/2012, this Tribunal gave directions to the respondents for disposing of the representation / notice for demand of justice dated 13.08.2012 by a reasoned and speaking order within a period of three months from the date of passing of the order. In pursuance of the order, the respondents

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herein passed an order dated 12.09.2012 (Annexure A/1) by cancelling the examination which was held on 20th July, 2012. The respondents herein had also declared the result of the said examination on 26.07.2012 (Annexure A/2) declaring eight out of nine candidates unsuitable. The applicants by means of this Original Application are challenging these orders.

3. The applicants herein were working on the post of L.D.C. A notification dated 22.06.2012 was issued by the Divisional Railway Manager, Jaipur for the suitability test for nine posts of Senior Clerk in the Pay Band of Rs. 5200-20200 plus Grade Pay of Rs. 2800/- in MOCG Unit, Jaipur Division. Being eligible, the applicants applied for the said test.

4. It is a contention of the learned counsel for the applicants that the question papers were out of syllabus and few of questions were completely out of syllabus. Being aggrieved after declaration of the result, they sent a notice for demand of justice to the respondents and one of the applicants also filed OA No. 559/2012 before this Bench of the Tribunal. Without going into the merit of the case, at the very first day, the Tribunal directed the respondents to dispose of the notice for demand of justice of the applicants. Ultimately, the respondents have cancelled the entire examination, which resulted into filing of this O.A.

5. It is also contention of the learned counsel for the applicants that the reply given by the respondents in letter dated

Jasvinder Singh

12.09.2012 cancelling the examination is not at all detailed or reasoned. Hence, it is arbitrary in nature. Learned counsel for the applicants also states that though being senior, the applicant no. 5 herein has already retired from service and he has been deprived from getting the chance of being promoted and in that eventuality he has been deprived from getting higher salary and higher pensionary benefits, which is violative of principle of natural justice as enumerated under Article 14, 16 and 21 of the Constitution of India.

6. Learned counsel for the respondents in contra stated that as per the directions of this Tribunal, reply has been given and as there were controversy about the out of syllabus questions, the entire examination has been cancelled on administrative reason. There is no other reason behind cancelling of the examination, nor any ill motive against anybody. Learned counsel for the respondents also opposed and stated that if the applicants herein found the questions were out of syllabus, they should have immediately represented to the department and not waited till the outcome of the result by which they have come to know that they have become unsuccessful. After being unsuccessful, one of the applicants namely Mr. Jogendra Singh Solanki has sent through his counsel a legal notice and preferred O.A. No. 559/2012 before this Tribunal and accordingly the respondents have given reply cancelling the issue of controversy i.e. the examination itself. He also states that there is no violation of statutory provision and merely on the presumption of the

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applicants and to ask proportionate marks for the questions, which were out of syllabus may not make them suitable for the posts and respondents cannot act on the basis of any hypothetical ground. Learned counsel for the respondents also states that again a fresh notification was issued and all of them except the applicant No. 5, who has retired, have appeared to the test. Hence, no cause of action is lying in pursuance of cancellation of the earlier held examination.

7. We have heard the rival contentions of the parties and perused the documents available on record.

8. It is not disputed that there was some discrepancy in the examination, which was held on 20th July 2012 and after this Tribunal's direction and also on the basis of the representation / notice for demand of justice, the respondents found it best to cancel the issue of controversy cancelling the entire examination. The applicant No. 5 has already retired, hence, he could not appear in the examination for the second time. As the other applicants have already appeared in the examination for the second time, hence, for them right of consideration has already exhausted and cannot have any grievance in the changed scenario. Taking into consideration all the facts and circumstances and the legal position, we find no merit in this case. Accordingly, the Original Application is dismissed. No costs.

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9. In view of the order passed in the Original Application, the Misc. Application filed by the applicant praying for interim relief is disposed of.


(SMT. JASMINE AHMED)
JUDICIAL MEMBER


(ANIL KUMAR)
ADMINISTRATIVE MEMBER

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