

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

O.A.NO. 060/00825/2014 Date of order: ---- 18.9.2014.

Coram: **Hon'ble Mr. Sanjeev Kaushik, Member (J)**
Hon'ble Mr. Uday Kumar Varma, Member (A).

1. Anil Kumar son of Shri Jodh Ram, T.No.727, Technician I, Wireman, Train Lighting/AC Shop Jagadhri Workshop, Northern Railway, resident of 21, Prithvi Nagar-A, Ward No.18, Jagadhri Workshop, District Yamuna nagar, Haryana-135 002.
2. Kanhya Lal son of Sh. Gian Chand, T.No.764, Techn. Wireman Gr-III, Jagadhri Workshop, Northern Railways, District Yamunanagar, Haryana-135002.
3. Rakesh Kumar son of Sh. Bal Kishan, Tech. AC Fitter Gr.II, Jagadhri Workshop, Northern Railways, District Yamunanagar, Haryana-135002.
4. Narinder Kumar son of Sh. Jagir Singh, Tech. AC Fitter Gr.II, Jagadhri Workshop, Northern Railways, District Yamunanagar, Haryana-135002.
5. Parveen Kumar son of Prithayi Singh, Tech. AC Fitter Gr.III, Jagadhri Workshop, Northern Railways, District Yamunanagar, Haryana-135002.

.....Applicants.

(By Advocate: - Mr.Anil Bhardwaj)

Versus

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. Chief Works Manager, Northern Railway, Jagadhri Workshop.

3. Sh. Hari Chand, Ticket No.403 TL, Electric Fitter-Motor Section, Jagadhri Workshop.
4. Sh. Harish Bakshi, Ticket No.314 TL, Electric Fitter-Motor Section, Jagadhri Workshop.
5. Sh. Dharam Pal, Ticket No.238 TL, Electric Fitter-Motor Section, Jagadhri Workshop.

...Respondents

ORDER

Hon'ble Mr. Uday Kumar Varma, Member (A):

Five applicants have jointly filed the present Original Application, praying for the following reliefs:-

"i) Quash the order/letter dated 9.9.2013 (Annexure A-1) vide which the respondents have placed the private respondents, belonging to a particular section, on provisional panel for appointment to the post of Junior Engineer (TL) in the pay scale of Rs.9300-34800 + grade pay of Rs.4200/- against 25% intermediate Apprentice Mechanic quota, ignoring the fact that there has been huge bungling in the selection process as individuals of a particular section have secured huge marks whereas the candidates of other sections have secured quite less or reasonable marks which itself creates a doubt in the mind of a prudent man and as such the same is not fair and is most un-reasonable and without application of mind;

ii) Issue direction to the respondents to carry out proper checking of the answer sheets of the applicants and other individuals or alternative cancel the paper and carry out a fresh selection under supervision of a impartial authority and if applicants are found to be selected, offer them appointment to the post of J.E. from due date with all the consequential benefits, like seniority and arrears of pay and allowances with interest on arrears @ 18% per annum

from the date the amount became due to the actual date of payment."

2. Facts of case are that all the applicants joined the service of the respondent Railways on different dates as mentioned in the OA. The respondents issued a notice dated 16.11.2012 for filling up four posts of Junior Engineer-II/Elect. Out of these four posts, two posts were for general category and one for SC and one for ST category. All the five applicants who were fully eligible for the post of Junior Engineers, applied along with other candidates within specified time. The applicants along with other candidates appeared in the written examination on 9.9.2013. When the result of the said written examination was declared, the applicants were surprised to see that all the selected candidates are from a particular shop i.e. Electric Fitter-Motion Section. In this regard, they made representation followed by reminders by alleging therein that it appears that either the paper has been leaked or there has been some tampering with the answer sheets. The applicant has relied upon the following judgments:-

"i) Vismaya Mohanty & Ors. vs. Board of Secondary Education, Orrisa (1996 I OLR Page 134) (Orissa High Court);

ii) S.Sudarshan Kumar vs. University of Madras represented by its Registrar & Another (2001(1) MLJ Page 180) (Madras High Court).

3. The applicants have tried to make out a case of illegality in the above process of selection on three counts. Firstly that the question paper was not set as per syllabus, secondly that the outcome of the selection based on this written examination suggests bungling and malpractice as all the selected candidates belong to one particular shop namely Electric Fitter-Motor Section, and thirdly that the evaluation of the answer sheets have been done with the intention to favour particular candidates from one particular trade. In the light of these irregularities, the applicants are seeking reevaluation of answer sheets while claiming that the question paper was deliberately set to favour a certain set of candidates, in contravention of the syllabus prescribed for this purpose. The applicants have also stated that the representations pointing out these illegalities and seeking remedial action were not heeded to by the respondents.

4. The question arises for our consideration in the instant O.A is whether a) the applicants can challenge or raise doubts about the selection process (in this case the written test held on 13.08.2013) after participating in it and having been declared unsuccessful in the same and b) whether the proper checking/re-evaluation of the answer sheets is permissible in the absence of rules/instructions in this regard?

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5. We have gone through the record and we find that the first representation made by the applicants is to Central Vigilance Commissioner, Northern Railways, Baroda House, New Delhi, on 17.9.2013 i.e. after the declaration of the result on 9.9.2013. We also note that there have been subsequent representations/reminders in this whole procedure of selection. The applicant no.1 also sought information under R.T.I. Act subsequent to the declaration of the result.

6. The law in this regard is clear and unambiguous. Having participated in the written test after knowing well that the question papers were not strictly as per syllabus prescribed for the same, but not protesting either at the time of the examination or immediately thereafter, establish that they willingly participated in the process and implicitly accepted its validity and legality by not expressing any reservation about the alleged inappropriateness of the process. They waited till the results were declared and then came up with the allegations of bungling and malpractices. Possibly, if they had been selected, these reservations may not have surfaced at all. The fact that the objections and protests began after the result was announced which went against them, in our view, does not give them the right to challenge the process having participated in it without demurring against it. This conclusion finds support and credence from a number

of rulings including as held in the cases of **Om Parkash Shukla** versus **Akhilesh Kumar Shukla & Ors.** (1986 A.I.R. S.C. Page 1043), **Madan Lal & Ors.** versus **State of J & K & Ors.** (1995(3) S.C.C. Page 486) and **Union of India** versus **N.Chandrasekharan** (1998(1) S.C.T. Page 631). The relevant para of the judgment passed in the case of Om Parkash Shukla (supra) reads as follows:-

"23. Moreover, this is a case where the petitioner in the writ petition should not have been granted any relief. He had appeared for the examination without protest. He filed the petition only after he had perhaps realized that he would not succeed in the examination. The High Court itself has observed that the setting aside of the results of examinations held in the other districts would cause hardship to the candidates who had appeared there. The same yardstick should have been applied to the candidates in the district of Kanpur also. They were not responsible for the conduct of the examination".

7. The issue of checking/re-evaluation of answer book is no more res-integra. This issue was considered at length by Hon'ble Supreme Court in the case of **Maharashtra State Board of Secondary and Higher Secondary Education & Another Vs. Paritosh Bhupesh Kurmarsheth etc.** (AIR 1984 SC 1543), wherein Hon'ble Court has rejected the contention that in absence of provision for re-evaluation, a direction to this effect can be issued by the Court. The Apex Court has further held that even the policy decision incorporated in the Rules/Regulations not providing for rechecking/verification/re-evaluation cannot be challenged unless

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there are grounds to show that the policy itself is in violation of some statutory provision. The Hon'ble Apex Court has held as under:

".....It is exclusively within the province of the legislature and its delegate to determine, as a matter of policy, how the provisions of the Statute can best be implemented and what measures, substantive as well as procedural would have to be incorporated in the rules or regulations for the efficacious achievement of the objects and purposes of the Act...The Court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulation-making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down

on the ground that in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act....."

8. The above view has again been reiterated by the Hon'ble Apex Court in the case of **Sahiti & Ors. Vs. Chancellor, Dr. N.T.R. University of Health Sciences & Ors.** (2009(1) SCC 599). Thus, the law on the subject emerges to the effect that in absence of any provision under the Statute or Statutory Rules/Regulations, the Court should not generally direct proper checking/revaluation of the answer sheets. This view has recently been considered by the Apex Court in the case of **Himachal Pradesh Public Service Commission Vs. Mukesh Thakur & Another** (2010 (6) SCC Page 759) wherein Hon'ble Apex Court has reiterated the earlier view and allowed the appeal filed against the order of Hon'ble High Court of Himachal

Pradesh at Shimla where the Court itself had re-examined the answer sheets. The Hon'ble Supreme Court has deprecated this procedure also in following terms:-

"19. In view of the above, it was not permissible for the High Court to examine the question paper and answer sheets itself, particularly, when the Commission had assessed the inter-se merit of the candidates. If there was a discrepancy in framing the question or evaluation of the answer, it could be for all the candidates appearing for the examination and not for respondent No. 1 only. It is a matter of chance that the High Court was examining the answer sheets relating to law. Had it been other subjects like physics, chemistry and mathematics, we are unable to understand as to whether such a course could have been adopted by the High Court.

20. Therefore, we are of the considered opinion that such a course was not permissible to the High Court."

On the basis of the above authoritative law, similar view has also been taken by a Coordinate Bench of this Tribunal in the case of **Gursharanjit Singh Dhannu versus Union of India & Ors.** decided on 26.7.2013 in O.A.No.1401/PB/2012 and rejected the plea of re-evaluation of the answer sheets. The learned counsel for the applicants fails to point out any provision under the relevant rule for re-checking/re-evaluation for the answer sheets.

9. In view of the settled proposition of law, as stated above, the Court of law cannot interfere in the selection and issue directions



to the respondents to for rechecking/re-evaluation of answer sheets in the absence of specific provision of law and rule.

10. In view of the above position, therefore, the Original Application is dismissed in limine.

(UDAY KUMAR VARMA)
MEMBER (A).

(SANJEEV KAUSHIK)
MEMBER (J)

Dated:-18.9.2014.

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