

Reserved
(On 20.08.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the **30th** day of **August** 2018

Original Application No. 330/00423 of 2017

Hon'ble Mr. Gokul Chandra Pati, Member – A
Hon'ble Mr. Rakesh Sagar Jain, Member – J

Ram Kripal Vishwakarma, S/o Ram Niwas Vishwakarma, R/o Village – Kataman Singh, Post – Balhsa, District – Sant Kabir Nagar. Presently posted on the post of Technician, First, (Carriage Fitter) Mechanical Workshop, Gorakhpur.

... Applicant

By Adv: Shri Ravindra Prakash Srivastava

V E R S U S

1. Union of U.P. through its Secretary through its Secretary, Railway Department, Government of India, New Delhi.
2. Chief Workshop Manager/Mechanical Trade Workshop, Gorakhpur.
3. Chief Mechanical Engineer, North East Railway, Gorakhpur.
4. General Manager, (Caution), North East Railway, Gorakhpur.
5. Umesh Yadav, S/o Shiv Nandan Yadav, R/o Narayanpuram Colony, Padrabazar, Gorakhpur. Presently posted as Technician – I in Mechanical Workshop, N.E. Rly, Gorakhpur. Ticket No. 8139.
6. Rishikesh Tripathi, S/o Late Satyadev Prasad Tripathi, R/o 349 W, Rajnagar Colony, Basharatpur, Gorakhpur. Presently posted as Technician – I in Mechanical Workshop, N.E. Rly, Gorakhpur. Ticket No. 10047.
7. Prashant Aman Srivastava, S/o Late Arun Kumar Srivastava, R/o EWS/47, Paptinagar Phase-I, Gorakhpur. Presently posted as Technician – I in Mechanical Workshop, N.E. Rly, Gorakhpur. Ticket No. 10785.
8. Santosh Kumar Singh, S/o Late Bharat Prasad Singh, R/o 174/A, Rly. Dairy Colony, Gorakhpur. Presently posted as Technician – III in Mechanical Workshop, N.E. Rly, Gorakhpur. Ticket No. 1209.
9. Vicky Kumar, S/o Shri Dinanath Sharma, R/o L/9/H, Jatepur Rly. Colony, Gorakhpur. Presently posted as Technician – I in Mechanical Workshop, N.E. Rly, Gorakhpur. Ticket No. 9959.

10. Randhir Kumar, S/o Shri Dileep Kumar Pushp, R/o 901 Krishnagar Private Colony, Gorakhpur. Presently posted as Technician – I in Mechanical Workshop, N.E. Rly, Gorakhpur. Ticket No. 11045.
11. Sanjay Kuarm Maurya, S/o Shri Ramnath Maurya, R/o 271/C, Rly. Dairy Colony, Gorakhpur. Presently posted as Technician – I in Mechanical Workshop, N.E. Rly, Gorakhpur. Ticket No. 11104.
12. Sandeep Kumar Yadav, S/o Shri Virendra Kumar Yadav, R/o 43/G, Jail Road, Gorakhpur. Presently posted as Technician – I in Mechanical Workshop, N.E. Rly, Gorakhpur. Ticket No. 11545.
13. Anil Kumar Sharma, S/o Shri Om Prakash Sharma, R/o 131/A, Rly. Jatepur Colony, Gorakhpur. Presently posted as Technician – I in Mechanical Workshop, N.E. Rly, Gorakhpur. Ticket No. 8274.
14. Vijay Kumar, S/o Late Shyamdev Prasad, R/o 592/L, Rly. Baulia Colony, Gorakhpur. Presently posted as Technician – I in Mechanical Workshop, N.E. Rly, Gorakhpur. Ticket No. 9127.
15. Naveen Kumar, S/o Shri Umesh Sharma, R/o 119/A, Rly. Jatepur Colony, Gorakhpur. Presently posted as Technician – II in Mechanical Workshop, N.E. Rly, Gorakhpur. Ticket No. 8088.
16. Raju Kumar Maurya, S/o Shri Mudrika Pandit, R/o 585/G, Rly, Baulia Colony, Gorakhpur. Presently posted as Technician – II in Mechanical Workshop, N.E. Rly, Gorakhpur. Ticket No. 8642.
17. Ramnath Rai, S/o Shri Aniruddh Rai, R/o E/93CD, Rly. Baulia Colony, Gorkhpur. Presently posted as Technician – II in Mechanical Workshop, N.E. Rly, Gorakhpur. Ticket No. 10733.
18. Subodh Kumar Pandit, S.o Shri Bhola Pandit, R/o 677/G, Rly. Dairy Colony Gorakhpur. Presently posted as Technician – II in Mechanical Workshop, N.E. Rly, Gorakhpur. Ticket No. 10301.
19. Manish Agrahari, S/o Shri Ram Salone Agrahari, R/o In front of EWS/E-39 Sankat Mochan Nagar, Surajkund, Gorakhpur. Presently posted as Technician – I in Mechanical Workshop, N.E. Rly, Gorakhpur. Ticket No. 8215.
20. Vikas Kumar Giri, S/o Late Vijay Kumar Giri, R/o 769/C Sri Ramnagar, Basharatpur, Gorakhpur. Presently posted as Technician – II in Mechanical Workshop, N.E. Rly, Gorakhpur. Ticket No. 8289.
21. Arvind Kumar Chaudhary, S/o Late Laxmi Narayan Chaudhary, R/o 690/D Krishna Nagar Rly. Colony, Gorakhpur. Presently posted as Technician – I in Mechanical Workshop, N.E. Rly, Gorakhpur. Ticket No. 10777.

22. Nagendra Yadav, S/o Ramker Yadav, R/o 196/C, Rly. Jatepur Colony, Gorakhpur. Presently posted as Technician – I in Mechanical Workshop, N.E. Rly, Gorakhpur. Ticket No. 8093.
23. Sandeep Kumar Rai, S/o Late Rajeshwar Rai, R/o 17/D, Ramgatal Rly., Colony, Gorakhpur. Presently posted as Technician – II in Mechanical Workshop, N.E. Rly, Gorakhpur. Ticket No. 8283.
24. Ram Vinay Pandit, S/o Shri Nand Kishore Pandit, R/o 585/G, Rly. Bulia Colony, Gorakhpur. Presently posted as Technician – II in Mechanical Workshop, N.E. Rly, Gorakhpur. Ticket No. 8745.
25. Sanjeev Kumar Pandey, S/o Shri K.C. Pandey, R/o 349, Shashtrinagar Colony, Gorakhnath, Gorakhpur. Presently posted as Technician – II in Mechanical Workshop, N.E. Rly, Gorakhpur. Ticket No. 12655.

... Respondents

By Adv: Shri M.K. Singh and Shri S.K. Singh

O R D E R

By Hon'ble Mr. Gokul Chandra Pati, Member – A

By way of this Original Application (in short OA) filed under section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following reliefs:-

- A. *To cancel the examination for the post of Inter Apprentice Junior Engineer Mechanical grade pay 4200.00 against 25 percent quota held by respondent No. 2 and 10.3.2017.***
- B. *To direct the respondent No. 2 to hold the examination for the post of Inter Apprentice Junior Engineer Mechanical grade pay 4200.00 against 25 percent quota properly.***
- C. *To direct the respondents not to declare the result of the examination for the post of Inter Apprentice Junior Engineer Mechanical grade pay 4200.00 against 25 percent quota held by respondent No. 2 on 10.3.2017.***
- D. *To issue any other suitable direction and order which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.”***

2. Although this OA was heard alongwith the OA No. 228/2017, the orders are passed separately for both the OAs, as in both the OAs the issues and the reliefs prayed for are different. The facts in brief for the OA No. 423/2017 are that the applicant alongwith others had appeared in the written examination held on 10.3.2017 in pursuance to the notification or advertisement dated 13.5.2016 to fill up 29 posts of Junior Engineer

Mechanical under 25% quota for the inter-apprentices, who are the employees under the respondents. The notification mentioned the selection criteria based on 85 marks of the written examination and 15 marks on the confidential report. The applicant is aggrieved because of the manner in which the written examination was held and prays for cancellation of the written examination held on 10.3.2017 on the following grounds:-

- (i) The questions no. 1-15 in part-A and Part-C in the question paper for the written test on 10.3.2017 were common to the questions in the written test held on 9.3.2017, which was held for promotion quota for different set of employees.
- (ii) In the list dated 25.2.2017 (Annexure A-2) which was prepared by the respondents did not have two eligible employees who were permitted to appear in the written test.
- (iii) No admit card was issued for the examination, as a result of which many outsiders were present in the examination centre in place of employees.
- (iv) Several employees appeared in the said examination who were not eligible to appear in the examination.

3. At the time of hearing the OA for admission on 25.4.2017, it was noted that the question nos. 1 to 15 of the question paper for the test on 9.3.2017 and 10.3.2017 were the same and many ineligible candidates were allowed to appear. It was ordered by the Tribunal that the respondents shall not take any further step on the result for the written examination held on 9.3.2017 and 10.3.2017. Prior to that, the respondents had declared the result of the written examination and further steps were stayed. Being aggrieved, some of the candidates who were successful in the said written examination held on 10.3.2017 were impleaded as respondent nos. 5 to 25 as private respondents. Vide order dated 10.2.2018, after hearing the parties, the Tribunal modified the order dated 25.4.2017 applying the stay only for the examination held on 10.3.2017, since the applicant's relief was only in respect of that examination, not the examination held on 9.3.2017. Accordingly, the

respondents were free to proceed on the selection based on the written test held on 9.3.2017 and the interim order was made applicable for the written test held on 10.3.2017 for inter-apprentices.

4. The official respondents have filed their counter reply (in short CR), denying the contentions in the OA. While the facts were not disputed, it was mentioned that before examination, the maximum age of 50 mentioned for OBC candidates, was modified to 47 in view of the Railway Board circular dated 11.12.2008 (Annexure no. 3 to CR) and a corrigendum to the advertisement was issued reducing the age of OBC candidates to maximum 47. It was further mentioned that the candidature of the ineligible candidates will be cancelled. It is further stated that for both the examinations on 9.3.2017 and 10.3.2017, different set of candidates were appearing the test. Regarding issue of admit card, it was stated that the employee-candidates had their id card which were certified during examination, hence, no outsider participated as alleged in the OA.

5. The private respondents also filed their counter reply, broadly refuting the allegations in the OA about the validity of the examination held on 10.3.2017.

6. The matter was finally heard on 20.8.2018 and the respondents' counsel did not submit any written argument, but the same was not filed by 27.8.2018. Hence, we proceeded to dispose of the case based on the oral submissions and the pleadings on record.

7. At the time of hearing, the applicant's counsel reiterated the stand in the OA and submitted that the examination held on 10.3.2017 has been vitiated. Hence, although the applicant has also qualified in the written test, he has filed the OA for cancellation of the examination due to irregularities which have made the examination vitiated.

8. Shri M.K. Singh, learned counsel for the respondents was heard. He submitted that the question no 1-15 were same in the examinations held on 9.3.2017 and 10.3.2017 and he argued that since in the examinations two different set of employees had appeared, it will have no impact. He

further submitted due to mistake, some ineligible employees had appeared and qualified in the examination, but he assured that their candidature will be cancelled and the ineligible candidates will not be placed in the final selection panel.

9. We have carefully gone through the pleadings and the documents on record and also considered the submissions by learned counsels. In this OA, except the applicant no other candidate has moved for cancellation of the examination held on 10.3.2017. The submission of the learned counsel for the respondents that some ineligible employees were allowed to appear the written test, will not be included in the final list due to their ineligibility. After taking this submission into account, the only reason for which the examination is claimed to be vitiated, was that some questions were the same in the question paper for examination on 9.3.2017 and 10.3.2017. At the time of hearing it was mentioned that only 15 objective type questions no. 1-15 of Part-A were common to question papers for both days. This was also contended on 25.4.2017 at the time of passing the interim order. In the copy of the representation of another candidate for examination on 10.3.2017 (Annexure A-5), it was also mentioned that the first page of the question paper on both the examinations was same. From these contentions and perusal of the copy of the question paper at Annexure A-4 to the OA, it is clear that the objective questions from 1 to 15 were common in both the tests on 9.3.2017 and 10.3.2017, with total marks of 15 out of total marks of 25 in Part-A of the paper. Although the applicant in para 4(viii) states that some questions of Part-C were also common, but there is no corroborating evidence furnished by the applicant in support of the contention that part -C question was also same.

10. The fact that the questions from 1 to 15 in Part-A of the question paper on 10.3.2017 were same as the questions on 9.3.2017 examination, could have put some employees, who were aware about the questions on 9.3.2017, in an advantageous position vis-a-vis the employees who were not aware. The argument of the respondents' counsel that in the examinations, questions can be repeated and in both the examinations two set of employees were appearing, will not change the likely advantage to one group of employees as mentioned above. It would be fair for everyone, if the marks in these questions are not considered for final

selection. Hence, we are of the view that if the marks secured in there repeated questions are included, then the written examination will be vitiated.

11. In view of above and in the interest of justice, the respondents will have the option not to take into account the marks secured by the candidates in question no 1-15 of the Part-A of the question paper, while preparing the final selection panel and in that case, they can proceed further with the selection process with the list of candidates who are declared to have passed the written examination vide the notification dated 18.4.2017 (Annexure no. 7 to CR). In that case, the written marks of 87 candidates, who passed the written test vide notification dated 18.4.2017, be recalculated after deducting the marks secured by the candidates on account of the questions no. 1 to 15, after which, the remaining questions in Part-A will have total 10 marks instead of 25 marks. The respondents can inflate the marks secured by the candidates in Part-A by multiplying with a factor of 2.5 so that the total marks will be commensurate with the full marks of it in Part – A. Then based on the revised marks in the written examination, final list be prepared as per the stipulation in the advertisement dated 13.5.2016 (Annexure no. 1 to CR). If this is not feasible, then the respondents will have the option to cancel the written examination held on 10.3.2017 and have the examination again with the same candidates and with new question paper.

12. The OA is disposed of in terms of directions in the para 11 above. No costs.

(Rakesh Sagar Jain)

Member – J

/pc/

(Gokul Chandra Pati)

Member – A