

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA 1748/2014
MA 1505/2014
MA 3341/2016

Reserved on: 27.03.2017
Pronounced on: 30.03.2017

Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)

Som Pal Singh
Aged about 43 years
S/o Shri Babu Ram
Technician Gr. II in Group `C`
(Machine No. CSM 912)
Under Dy. Chief Engineer (TMC/Line)
Near DRM's Office, State Entry Road,
New Delhi-110055

... Applicant

(Through Shri H.P. Chakravorti, Advocate)

Versus

1. Union of India thro'
The Chairman, Railway Board,
Ex-Officio Principal Secretary
to Govt. of India, Ministry of Railways
Rail Bhawan, New Delhi-110001
2. The General Manager,
Northern Railway, HQ Office
Baroda House, New Delhi-01
3. The Dy. Chief Engineer/ TMC
Northern Railway, Near DRM's Office
State Entry Road, New Delhi-55

... Respondents

(Through Shri R.N. Singh, Advocate)

ORDER

Mr. P.K. Basu, Member (A)

The applicant is currently posted as Technician 'B' in the pay grade Rs.5200-20200 Grade Pay Rs.2400/-. Respondent no.1 issued order dated 6.12.2012 for selection to the post of Junior Engineer in Pay Band Rs.9300-34800 Grade Pay Rs.4200/- against 25% talented quota. The cut off date of eligibility was considered as 6.12.2012.

2. The written examination for the selection was held on 15.06.2013 and the results declared on 10.07.2013. 26 candidates were declared passed including the applicant.

3. After declaration of the result on 10.07.2013, one of the recognized unions raised an issue vide their letter dated 2.08.2013 alleging therein that one of the objective type questions had all the answer options wrong. The matter was, therefore, referred to the Railway Board for their decision.

4. Thereafter, the Railway Board undertook a cadre restructuring vide order dated 8.10.2013 wherein para 4.2 provided as follows:

"Such selections which have not been finalized by 1.11.2013 should be cancelled/abandoned."

It is thereafter that vide letter dated 3.09.2014, the respondents cancelled the selection process. Being aggrieved by this order,

the applicant has filed the present OA (amended) seeking the following reliefs:

- 8.1 To allow the OA and quash the impugned order dated 13.09.2014 and consequently;
- 8.2 to direct the respondents to implement the order dated 10.07.2013 in letter and spirit by sending him to the requisite training and releasing the promotion of the applicant with all service benefits.

5. The arguments of the learned counsel for the applicant in favour of his prayer are:

- (i) That the order dated 8.10.2013 was issued after issuing the written test result dated 10.07.2013 and, therefore, it should not affect implementation of the results declared vide order dated 10.07.2013;
- (ii) Another group of employees who had appeared in an examination dated July 13 and 27, 2013 were kept on the provisional panel and sent for training for the period 28.10.2013 to 21.12.2013; and
- (iii) The matter was referred to Railway Board not on the complaint of any candidate but on the complaint of a recognized union. It is alleged that some of the candidates who happened to be favourites of officers/trade union but could not secure adequate marks in the written test and could not find place in the result dated 10.07.2013, managed to find fault in the selection process itself.

6. The learned counsel for the respondents advanced the following arguments before us:

- (i) The selection was done by the Field Office which had to follow policy directions laid down by the Railway Board. Therefore, they had to follow instructions as contained in Railway Board order dated 8.10.2013. It is stated that neither has the Railway Board been made a party nor the order dated 8.10.2013 challenged by the applicant, in which clause 4.2 stipulates that selections which have not been finalized by 1.11.2013 should be cancelled/abandoned. It is thus argued that this OA is not maintainable as the policy decision under which the field organization took action has not been challenged;
- (ii) It is argued that according to the law settled by the Hon'ble Supreme Court in **Shankarsan Dash Vs. Union of India**, AIR 1991 SC 1612, mere participation in an examination does not grant indefeasible right to appointment. We quote below the relevant ratio laid down :

"Inclusion of candidate's name in merit list –
Does not confer any right to be selected –
Some vacancies remaining unfilled after
process of selection is finally closed –
Candidate not appointed – No discrimination."

- (iii) The applicant has alleged malafide on the part of the respondents without impleading anyone against whom malafide is alleged. Therefore, this OA suffers from the defect of non-joinder of parties as well.

7. We have heard the learned counsel for the parties, gone through the pleadings available on record and perused the judgments cited.

8. The applicant had appeared in the written test and qualified. However, there were complaints that the answers options in one of the questions were wrong. The matter was referred to the Railway Board. In the meantime, restructuring of the cadre had taken place and the Railway Board issued order dated 8.10.2013, para 4.2 whereof has been quoted above.

9. It is a fact that the applicant has not challenged order dated 8.10.2013 and also not impleaded Railway Board as a party. Moreover, having alleged malafide on the part of the respondents, the applicant has not impleaded anyone against whom such malafide is alleged.

10. Lastly, as pointed out by the respondents, the settled law is that mere participation in a selection process does not grant an indefeasible right to the candidate for appointment. In view of this factual and legal position, we find no merit in this OA and it

is, therefore, dismissed. No costs.

(Dr. Brahm Avtar Agrawal)
Member (J)

(P.K. Basu)
Member (A)

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