

**CENTRAL ADMINISTRATIVE TRIBUNAL
AMHEDABAD BENCH**

O.A. No. 55 of 2018

Ahmedabad, this the 27th day of November, 2018

CORAM :

Hon'ble Ms. Archana Nigam, Member (A)

Hon'ble Sh. M.C. Verma, Member (J)

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- 1-Shri Surabhai S/o Shri Masabhai Kuwadia Aged 34 years, working as Jamadar in the office of respondents.
- 2-Shri Anurag Prasad S/o Shri Dilipkumar, Aged 38 years, working as Peon in the office of the respondents.
- 3-Shri Rajendrabhai S/o Shri Laljibhai Kaludia, aged 46 years, working as Peon in the office of the respondents.
- 4-Shri Pravinbhai S/o Shri Dalsukhbhai Mandaliya, aged 49 years, working as Peon in the office of the respondents.
- 5-Shri Atulbhai S/o Shri Kanubhai Parpar, Aged 38 years, working as Safaiwala in the office of the respondents.
- 6-Shri Sanjay S/o Shri Harjibhai Valodera, agted 33 years, working as Safaiwala in the office of the respondents.
- 7-Shri Minesh S/o Shri Narubhai Bhuriya, Aged 22 years, working as Safaiwala in the office of the respondents.
- 8-Shri Kamalkumar S/o Shri Jentilal Tairaiya, Aged 40 years, working as Peon in the office of the respondents.
- 9-Shri Nanjibhai S/o Shri Chhaganbhai Panda Aged 34 years, working as Safaiwala in the office of the respondents.
- 10-Shri Hareshbhai S/o Shri Bhikhabhai Valodara aged 34 years, working as Safaiwala in the office of the respondents.

All C/o Plot No. 14, Mahalaxmi Society, Chiru Bhavnagar – 3 **..Applicants**
(By Advocate :None)

VERSUS

- 1- Union of India through the Secretary, Ministry of Railways, Rail Bhavan, Railway Board, New Delhi – 110 001.
- 2- The General Manager, Western Railway, Churchgate, Mumbai-20
- 3- The Divisional Railway Manager, O/o DRM, Western Railway, Divisional Office, Bhavnagar Para, Bhavnagar – 364003.

...Respondents

(By Advocate Ms. R.R.Patel)

O R D E R

Per M.C.Verma, Member (Judicial)

In instant O.A. applicants have prayed to quash Memorandum dated 27.11.2017 the Notification of selection for promotion to the post of CK Scale Rs. 5200-20200+1900GP (Level II) from Non Matriculate Group D to C against 33 1/3% (Ranker quota), alleging that the same is contrary to Railway Board's instructions and provisions of Para 189 of the Indian Railway Establishment Manual [IREM].

2. The matter is listed today for final hearing. Learned counsel Ms. R.R.Patel, who appeared for respondents, submits that this O.A. has become infructuous and deserves dismissal. She explained that the order impugned in the O.A. has already been cancelled and to fortify her said submission, she invited our attention to order dated 15.6.2018 passed by this Tribunal. For sake of brevity order dated 15.6.2018 is reproduced hereinbelow :

“15.06.2018 On behalf of the applicant, learned counsel Shri M.S.Trivedi is present.

In the instant case, the learned counsel for the applicant submits that initially the applicants have challenged the decision dated 27.11.2017 by which memorandum was issued by the respondent No.3 with respect to hold Selection Board for promotion to the post of Clerk in the scale of Rs.5200-20,200 + 1900/- G.P. (Level-II) from Non-Matriculation Group 'D' to Group 'C' against the 33 1/3% Ranker quota-BVP Division of the respondents. Learned counsel for the applicant further submits that against the said memorandum dated 27.11.2017, the applicant had submitted their objections/representation (Annexure A-3 refers). As the said representation was not considered, the applicant have moved the present OA on 22.01.2018 and this Tribunal vide order dated 24.1.2018 had issued notice to the respondents and the same was returnable by 14.2.2018.

Respondents have filed their counter reply and relied upon Annexure R-1 i.e Notification dated 16.4.2018 whereby the earlier Notification dated 27.11.2017 was treated as cancelled and fresh Notification has been issued for Selection Board for promotion to

the post of Clerk in the scale of Rs.5200-20200+ 1900 G.P.. Therefore, it is contended that the OA has become infructuous.

Learned counsel for the applicants have filed MA No. 245/2018 on 11.6.2018 whereby they have prayed for grant of interim relief to the effect that the respondents be restrained from taking any further steps in pursuant to the notification dated 16.4.2018.

Learned counsel for the applicants have filed MA No.263/2018 on 14.6.2018 with a prayer to allow the applicants to amend the grounds and prayer clause in the OA which pertains to legality and validity of the new notification dated 16.4.2018 produced by the respondents along with their reply.

Learned counsel for the applicant submits that as such, no notice was issued on MA.

It is noticed that the case is adjourned from time to time. The issue involved in this matter pertains to the Division Bench. However, counsel for the applicants insists to take up the matter for grant of interim relief as prayed for in MA No.245/2018 in OA No.55/2018. It is further submitted that as such, the applicants have already filed an MA for amendment by which the applicants have challenged the legality and validity of the notification dated 16.4.2018. The said MA is also pending. It is the grievance of the applicants that the eligibility criteria fixed by the respondents more particularly at para-2 i.e. reads as under :

"Erstwhile, all Group 'D' staff of all other Department - BVP Division and who have lien on this Division", is erroneous.

In this regard, learned counsel for the applicants submits that the respondents have erroneously made other groups to be eligible to apply for the post of Clerk. Earlier the said eligibility criteria was stated in notification dated 27.11.2017 against which objections were raised and subsequently now the applicants came to know that vide Notification dated 16.4.2018, the said notification dated 27.11.2017 was cancelled, however, again in the fresh notification, the employees who are erstwhile in all Group 'D' staffs and have lien on this division i.e. BVP are made eligible to apply in the selection process. Learned counsel for the applicants, vehemently, submitted that the eligibility criteria fixed by the respondents is contrary to RBE instruction No.13/2013 (Annexure A-2 of MA No.245/2018). According to the said instruction, other group of employees belonging to other division cannot be allowed to appear in the selection process and thereby right of applicants are jeopardize and insist for grant of interim relief.

It is noticed that the subject matter pertains to the Division Bench as per the main relief prayed in the OA No.55/2018. In fact, the prayer made in OA No.55/2018 became infructuous due to cancellation of impugned Notification dated 27.11.2017. However, subsequent to it, the applicants have filed application for interim relief i.e. MA

No.245/2018 in OA No.55/2018 on 11.6.2018 without amending the OA or obtaining any orders to that effect. It is also noticed that the interim relief sought for against the notification dated 16.4.2018 cannot be said to be part of the OA No.55/2018. Only by way of amendment, the applicants had sought permission to challenge the Notification dated 16.4.2018. However, before filing of the MA, the OA has become infructuous.

In view of this, factual premises, I am not inclined to entertain any applications of the applicants. Accordingly, no order in MA No.245/2018 nor in MA 263/2018 of OA No.55/2018 is passed.”

3. We remained deprive to hear the counsel for applicant as he/she has not appeared after 15/06/2018. After cancellation of the Notification dated 27.11.2017 applicants preferred M.A. No. 245 of 2018 for interim relief but without amending the O.A. and dealing with said M.A. this Tribunal in its order dated 15.6.2018 observed that “.....*However, subsequent to it, the applicants have filed application for interim relief i.e. MA No.245/2018 in OA No.55/2018 on 11.6.2018 without amending the OA or obtaining any orders to that effect. It is also noticed that the interim relief sought for against the notification dated 16.4.2018 cannot be said to be part of the OA No.55/2018. Only by way of amendment, the applicants had sought permission to challenge the Notification dated 16.4.2018. However, before filing of the MA, the OA has become infructuous.*” Non appearance of counsel for applicant after 15.6.2018 is indicative of the fact that the applicant might have lost all interest in the O.A.

4. In the result, we found that the O.A. deserve dismissal on two counts, namely, on the ground of being infructuous as well on the ground of non-prosecution. The O.A. thus is dismissed. M.A. or M.As, if is/are pending will also deemed to be disposed off. No costs.

(M.C.Verma)
Member (J)

(Archana Nigam)
Member (A)