

(RESERVED ON 05.12.2018)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

This is the 10th day of **JANUARY, 2019**.

ORIGINAL APPLICATION NO. 330/14/2016

HON'BLE MR RAKESH SAGAR JAIN, MEMBER (J).
HON'BLE MR MOHD. JAMSHED, MEMBER (A).

1. Pankaj Kumar Singh, Son of: Ashok Kumar. Resident of: Pramila Sadan, 1510/A, Sunder Nagar, Ahmad Khan Mandi, Umarpur, District: Jaunpur (222002 (U.P.)).

.....Applicant.

VERSUS

1. Union of India through Principal Secretary, Ministry of Railway, Government of India, Rail Bhawan, New Delhi.
2. Chairman, Railway Board, New Delhi.
3. Railway Recruitment Board, Gorakhpur through its Chairman.
4. Chief Personnel Officer, Research Designs & Standards Organization, Lucknow.

.....Respondents

Advocate for the Applicant : Shri C S Agnihotri

Advocate for the Respondents : Shri Bashisht Tiwari

O R D E R
(Delivered by Hon'ble Mr. Mohd. Jamshed, Member-A)

The present Original Application (OA) has been filed by the applicant seeking primarily the following reliefs:-

- “(i) To issue order or direction in the nature of certiorari quashing the order dated 08.10.2015 passed by respondent no. 3.
- (ii) Issue a writ order or direction in the nature of mandamus commanding the respondents to forthwith given appointment to the applicant on the post similar to Cat. 49, Junior Engineer T.M.S. (Telecom Maintenance Section).
- (iii) Any other order or direction to which this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.”

2. From the facts of the case given in the OA, it is evident that the respondent no. 1 issued centralized employment notice No. 02/2002 on

10.03.2012 inviting applications from eligible Indian Nationals for different categories of posts. In the said notice, in category no. 49, one post of Junior Engineer T.M.S. (Telecom Maintenance Section) for general category was notified for Railway Recruitment Board, Gorakhpur. The applicant being eligible for the post of category 49, Junior Engineer T.M.S. (Telecom Maintenance Section) applied for the same and thereafter, he appeared in the written examination conducted on 09.09.2012. The applicant was declared successful in the written examination vide result dated 07.03.2013. Further, as part of the selection process, the applicant was called for checking/verification of documents on 25.03.2013. The applicant received the call letter for checking/verification of documents and appeared before respondent no. 3 for document checking/verification. The respondent no. 3 issued final result on 15.05.2013, but the result in respect of Cat.49, Junior Engineer T.M.S. was not declared. In the said result, it was mentioned that all the successful candidates for certain categories including Cat. No. 49 are advised to contact the office of respondent no. 4 for further formalities in regard to appointment. However, on 29.10.2013, the applicant sought information through R.T.I. and when no information was given to the applicant in response to his application dated 29.10.2014, the applicant sought information from Appellate Authority through appeal dated 04.02.2015. The Appellate Authority vide letter dated 17.02.2015 informed the applicant that R.D.S.O. Lucknow has shown its inability to adjust the panel given by R.R.B. Gorakhpur for the said post and has also sent a proposal in this regard to Railway Board, New Delhi seeking cancellation of this selection and the matter is pending before the Railway Board. Thereafter, the applicant sent several representations to the concerned authorities and also sought information through RTI vide application dated 21.05.2015 from RDSO, Lucknow and Railway Board, New Delhi. In pursuance of the application dated

21.05.2015 moved by the applicant, the RDSO vide letter dated 16.06.2015 informed the applicant that in the year 2010, an indent for one post of JE/TMS was placed on RRB, Gorakhpur. Against this indent, no panel was made available by RRB, Gorakhpur and in the meantime, due to implementation of the restructuring orders, sanctioned strength of few posts including that of JE/TMS was reduced. Accordingly, the Railway Board was requested to cancel the indents for such posts where sanctioned strength was reduced and indents were found surplus. This list included the post of JE/TMS also. In response, the Railway Board communicated their approval for the cancellation of the indent for the post of JE/TMS, and for the proposal for cancellation of notified vacancies for Cat. No. 49 of CEN No. 02/2012 (Post JE/TMS), it was mentioned that the same is being examined separately and Board's decision would be communicated accordingly.

3. No further information was received from the Railway Board, therefore, the applicant, filed OA No. 330/980/2015 before this Tribunal. The Tribunal after hearing the submission of the parties disposed of the said OA by means of the order dated 04.08.2015 and directed the applicant to prefer a representation to respondent no. 3 and the respondent no. 3 was directed to decide the same within two months from the date of receipt of the certified copy of the order. The respondents vide order dated 08.10.2015 decided the representation and rejected the claim of the applicant stating that Railway Board, has cancelled the indent and thus, question of considering his case against the cancelled indent does not arise.

4. It is stated in the OA that the impugned order passed by the respondents is illegal and unsustainable in the eyes of law as the applicant

was declared successful in the examination for the post of JE/TMS in March 2013, thus, it was not proper for the respondents to cancel the said post by saying that the Railway Board has cancelled the indent.

5. The respondents in their counter reply have stated that applications were invited from 10.03.2012 to 09.04.2012 under Cen No. 01/2012 to fill up various posts of Sr. Section Engineers and Junior Engineers. There were about 30 categories of posts advertised for Junior Engineers and about 24 categories of posts for Sr. Section Engineers. Para 1.10 of the CEN Notice advertised for this selection stated that the number of vacancies indicated in this Centralized Employment Notice is provisional and may increase or decrease or even become nil depending upon the actual needs of the Railway Administration and the administration also reserved the right to cancel the notified vacancies at its discretion and such decision will be final and binding on all.

6. It has been clarified that applicant applied for a single category No. 49 Post-JE/TMS for which the number of vacancies notified was only 01 despite that fact that the CEN notice also allowed candidates to apply for more than one category. The applicant provisionally qualified in the written examination and was accordingly called for Document Verification which was held on 25.03.2013. During Document Verification a doubt arose about his handwriting and the competent authority decided that both forensic examination of his hand writing and Finger Print Examination should be done. Accordingly, his case file was sent to the expert duly nominated by the Ministry of Railways for forensic examination of his handwriting. The forensic examiner cleared the case of the applicant and he came under the preview of eligibility as far as the handwriting aspect of the investigation was concerned. The Finger Print Examination was not yet

processed. Meanwhile, the indenting authority, RDSO, made a reference to Railway Board vide its letter dated 28.11.2014 for the cancellation of the indent for the post of JE/TMS, JE/Mechanical and JE (Design) Electrical in view of restructuring. The Railway Board vide letter dated 31.12.2014 agreed to the cancellation of the indent for JE/Mechanical and JE/(Design) Electrical. However, on the proposal for cancellation of the indent for the post of JE/TMS the Railway Board stated that the same was being examined. Later, the Railway Board vide letter dated 16.09.2015 conveyed its decision that the proposal of RDSO for cancellation of the notified indent for the post of JE/TMS has been agreed to by the Board. Railway Recruitment Board, Gorakhpur has, therefore, stopped the process of further examination of the matter including processing the case of the applicant for Finger Print Examination required to finalize his empanelment. Therefore, the applicant has no case as the vacancy in question has been cancelled by the competent authority as per rule in force. The applicant cannot be considered for any other category as he had not applied for any other category other than JE/TMS. It is also mentioned by the respondents that in a situation of a vacancy existing, the claim of the applicant to the post depends on the need of the administration for the work. In this regard, the respondents have relied upon the case of **Chairman, All India Railway Recruitment Board and another v. K. Shyam Kumar and others, reported in JT 2010 (5) SC 382**, wherein in para 42 of the judgement is stated that “*even if a number of vacancies were notified for appointment and adequate number of candidates were found successful, they would not acquire any indefeasible right to be appointed against the existing vacancies*”. As such mandamus cannot be issued for the panel which is not in existence in present time.

7. In the rejoinder affidavit the applicant has reiterated the contention given in the OA.

8. Learned counsel for the applicant has argued that as the applicant had cleared the written examination and was called for document verification, therefore, he is entitled for selection to the post of JE/TMS. In support of his arguments he has also cited the following judgements:-

- (a) Puroshottam Vs Chairman, MSEB and Anr decided on 11.05.1999 by the Hon'ble Supreme Court.
- (b) Union Territory of Chandigarh Vs Dilbagh Singh and others (1993) 1 SCC 154
- (c) P.P. Sadanandam and Ors, vs the Secretary, Railway Board and another 2006 (1) SLC 1 CAT.
- (d) Kulwinder Pal Singh and Another Vs State of Punjab and Others (2016) 6 SCC 532
- (e) State of Bihar & Ors Vs Mithilesh Kumar 2010 Lawsuit (SC) 569

The above quoted judgments furnished by the learned counsel for the applicant have been perused and it is observed that these are not related with facts of the present case.

9. Learned counsel for the respondents has reiterated that it is a settled law that mere passing of the examination and even being placed in the panel does not give any right to the candidate for appointment. In this case the applicant has already moved an original application before this Tribunal for deciding his representation. In terms of the order passed by this Tribunal, the respondent no. 3 has passed detailed and speaking order clarifying the position and rejecting his claim for appointment. It is also argued that since the applicant had only applied for one post, despite having liberty to apply for other category also, he cannot be considered for any other post. It was also stated that the administration has to take decision about the requirement of certain category of staff and this requirement may be changed at any point of time and the indent given by

the RRB may be cancelled as in this case due to restructuring a number of posts were being reduced, including the one for which the applicant had applied and the same has been duly approved by the Railway Board, Ministry of Railways.

10. Heard the learned counsel for the parties and perused the record.

11. The applicant was well aware of the conditions laid down in the advertisement and the call letter issued to him for verification of his documents. In this call letter for document verification to be held on 25.03.2014, it is clearly mentioned that this call letter may not be considered as a claim or right for appointment and that this is only a step in the selection process in which many more candidates have been called against the vacancies. The applicant had earlier filed an OA before this Tribunal, in which directions were issued to respondent no. 3 to decide the representation of the applicant. In compliance of the order passed by this Tribunal, the representation was decided vide order dated 08.10.2015. In this detailed speaking order, it has been clarified that the indent given by the RDSO to the RRB for recruitment to one post of JE/TMS was cancelled by RDSO and therefore, the applicant cannot be empanelled or selected and posted against the same post. In this case it is obvious that the indent given by RDSO was in 2010 requiring certain category of staff including JE/TMS. However, in view of restructuring in various categories, a number of posts had been reduced in different categories and thereby, the requirement of JE/TMS was also reduced. Accordingly, the RDSO with the approval of the Railway Board cancelled the recruitment against the indent for the post of JE/TMS. In the case of **State of Haryana vs. Subash Chander Marwaha (1974) 3 SCC**, the Hon'ble Supreme Court held as under:-

"The mere fact that a candidate's name appears in the list will not entitle him to a mandamus that he be appointed. Indeed, if the State Government while making the selection for appointment had departed from the ranking given in the list, there would have been a legitimate grievance on the ground that the State Government had departed from the rules in this respect..."

12. In **Shankarsan Dash vs. Union of India [(1991) 3 SCC 47]**, a Constitution Bench of this Court held:

"7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied....."

13. From the above, it is obvious that the applicant's grievance had been earlier addressed by this Tribunal and his representation decided by the respondents. The claim of the applicant in this OA too is devoid of merit and the OA is therefore dismissed.

(MOHD JAMSHED)
MEMBER-A

(RAKESH SAGAR JAIN)
MEMBER-J

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