

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.290/00466/2014

Reserved on : 05.08.2019

Jodhpur, this the 23rd August, 2019

CORAM

Hon'ble Smt Hina P. Shah, Judicial Member

Hon'ble Ms Archana Nigam, Administrative Member

1. Mandeep Singh S/o Shri Amar Singh, Age 43 years, R/o House No. B/120, Near BSNL Tower, Bikaner (Raj.).
2. Subhsh Chandra S/o Shri Chhote Lal, Age 50 years, R/o Q.No. 136B, New Railway Colony, Bikaner (Raj).
3. Surendra Kumar Acharya S/o Shri Hari Babu, Age 42 years, R/o Bhatado Ka Chowk, Near Jugal Bhawan, Bikaner (Raj).
4. Dharmendra Singh S/o Shambhu Singh, Age 45 years, R/o Jaipuria Gali No. 5, Bikaner (Raj).
5. Anil Kumar Yadav S/o Shri Ramchandra Yadav, Age 47 years, R/o 7/168, Mukta Prasad Nagar, Bikaner (Raj).
6. Amar Singh S/o Shri Mod Singh, Age 46 years, R/o Dago Ka Chowk, Bhaiya Kuwan, Bikaner.
7. Vishvanath Sewag S/o Shri Vasudeo, Age 47 years, R/o Sewago Ka Chowk, Bikaner.
8. Heman Kumar S/o Shri Fateh Chand, Age 43 years, R/o 6/283, Mukta Prasad Nagar, Bikaner (Raj.).
9. Mukhtyar Ahmad S/o Shri Abdul Karim, Age 40 years, R/o Ambedkar Chowk, Pabu Bari, Bikaner.
10. Mahesh Singh Bhati S/o Shri Devi Singh, Age 46 years, R/o 11/420, Mukta Prasad Nagar, Bikaner (Raj).

.....Applicants

By Advocate : Mr Shreedhar Purohit.

Versus

1. Union of India through the General Manager, North Western Railway, Headquarter Office, Jaipur.

2. The Divisional Railway Manager, North Western Railway, D.R. M. Office, Bikaner.
3. The Chief Workshop Manager, Workshop North Western Railway, Bikaner.

.....Respondents

By Advocate : Mr Darshan Jain proxy counsel for Mr Vinay Jain.

ORDER

Per Smt. Hina P. Shah

The present Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking following relief(s) :

- (i) That since all the above named applicants are similarly situated and all of them appeared in the same written examination held on 06.09.2014 and were declared successful and since all the applicants are equally aggrieved by the impugned order dated 10.12.2014 (Annex. A/1) they may kindly be permitted to raise their grievance by filing this joint original application;
- (ii) In view of the facts and grounds, mentioned above, the impugned order dated 10.12.2014 (Annex. A/1) may kindly be quashed and set aside and the respondents may kindly be directed to issue orders for empanelment for training of the applicants for the purpose of their subsequent posting as Junior Engineer (Mechanical).

2. Necessary facts, in brief, for adjudication of the present OA are that ten similarly situated persons have filed the present joint application challenging order dated 10.12.2014 (Annex. A/1) wherein result of Limited Departmental Competitive Examination (LDCE) for the post of Junior Engineer (Mechanical) under 25% intermediate quota had been cancelled on the ground of adoption

of improper procedure for selection by the respondents. Applicants herein appeared in the said examination in pursuance of notification dated 01.03.2014 (Annex. A/2) for 11 posts of Junior Engineer (Mechanical) against 25% intermediate quota in the grade Rs 9300-34800 + Rs 4200 (G.P.). Out of these 11 posts, 07 posts belonged to General Category, 02 belonged to Scheduled Caste and 02 belonged to Scheduled Tribe candidates. It has been averred that applicants were fully eligible for the said examination amongst 25 eligible candidates as per order dated 10/11.04.2014 (Annex. A/3). As per order dated 18.07.2014, the written examination was to be held on 23.08.2014 but as per order dated 16.08.2014, the same was held on 06.09.2014 (Annex. A/5). The applicants herein were declared successful as per order dated 01.10.2014 (Annex. A/6). However, the result of the said examination has been cancelled vide order dated 10.12.2014 (Annex. A/1) in which all the applicants herein were declared successful. The grievance of the applicants is that the respondents did not specify any reason for cancellation of written examination and also did not communicate the same to the applicants but abruptly cancelled the result of written examination held on 06.09.2014 vide impugned order dated 10.12.2014 by way of a non-speaking order. Hence, aggrieved of the same, applicants have filed the present OA seeking relief as mentioned in preceding paragraph.

3. In reply dated 14.01.2015, respondents averred that respondent-department had issued circular dated 10.04.2012 (Annex. R/1) wherein it is clarified how selections will be made as per uniform policy in respect of selection to the post of Junior Engineer of Technical Department. Prior to this circular, Railway Board had also issued a circular dated 07.11.2007 (Annex. R/2) mentioning the procedure for conducting selections as well as qualifying marks for the written tests. The said letter dated 10.04.2012 was circulated to all the departments including respondent but inadvertently the procedure had not been followed. As per letter dated 10.04.2012, there should have been two papers as part of written examination for selection held through intermediate apprentice for which candidates have to secure 60% in each paper. But, the department had taken test in only one paper and results were declared. Therefore, respondent-department had cancelled the written examination after taking approval from the higher authority as soon as it came to their knowledge that procedure for selection has not been done as per spirit of letter dated 10.04.2012. The concerned staff who committed the said mistake in holding the examination have also been charge-sheeted. It has been further averred that while passing the order dated 10.04.2012 (Annex. A/1), it has clearly been mentioned that there is procedural flaw/mistake in the selection, therefore, the same has been cancelled after taking

approval of the competent authority, which is self explanatory and cannot be termed as non-speaking order. As the procedure was inadvertently not properly adopted by the department for the post concerned, therefore, the result of written examination has rightly been cancelled. Ofcourse applicants had appeared for the written examination and the result was declared but the same do not create or confer any right in their favour. It has also been averred that only provisional result of written examination was declared and applicants were not empanelled. It is clear that simply declaring the result of examination do not create or confer any right to the applicant who had been declared passed in the written examination. Thus, respondents have prayed that applicants are not entitled for any relief from this Tribunal and OA filed by them may be dismissed with costs.

4. Applicants filed rejoinder dated 19.02.2015, inter-alia stating that circular dated 07.11.2007 (Annex. R/2) purported to have been issued by Railway Board nowhere states that there should be two separate papers for written examination. It simply specifies that where the written examination consists of two separate written papers, then 60% marks are required to be obtained separately in each paper whereas if the written examination consist of only one paper, which may be divided into two parts, then it is not necessary that the candidates should secure 60% marks in each part but the total percentage of Part-A

and Part-B combined should be 60%. All the applicants who have been declared successful had secured 60% marks as a result of combined evaluation of Part-A and Part-B of written paper in which they were required to appear. Therefore, there is no illegality or procedural error in the examination and evaluation as regards select list of applicants herein is concerned. The circular dated 10.04.2012 (Annex. R/1) was neither communicated to the candidates who were required to appear in the said test as per their qualification and age nor was it communicated to the Examining Body. This is so because, had it been communicated to the Examining Body, the Examining Body could not have conducted examination by prescribing one written paper in two parts and had it been communicated to the candidates who appeared for the said examination, they could have also raised the grievance.

5. The respondents filed their additional submissions on 26.07.2016 and averred that circular dated 07.11.2007 (Annex. R/2) clearly states that the candidate has to secure 60% marks in the written test and 60% marks in aggregate and these marks have not been obtained by the applicants because presently the number of only written test was given, further action was not taken in this selection as letter dated 10.04.2012 (Annex. R/1) was issued in which the instructions were issued that how the selections will be made and as the policy was not adopted in the

examination, therefore, the selection under question was made to be cancelled being procedural flaw. As per RBE No. 44/2007 (Annex. R/2), it is crystal clear that there should be two part of a question paper while conducting any selection to bring uniformity and this element was not present in selection in question for the post of Junior Engineer (Mech.) against 25% intermediate quota. As there is no uniform policy in N.W. Railways/Production Units etc., therefore, to avoid the different policy on the issue of selection, the GM/P/JP issued a uniform policy (Annex. R/1), the same policy which was being adopted in the another wing. Since the selection conducted was not as per spirit of letter dated 10.04.2012 (Annex. R/1), therefore, respondent-department cancelled the selection vide letter dated 10.12.2014 (Annex. A/1).

6. Prayer of the applicants to file joint application as per Rule 4(5) of CAT (Procedure) Rules, 1987 having satisfied with regard to the cause and the nature of relief prayed for as the applicants herein have a common interest in the matter.

7. Heard learned counsels for the parties.

8. It has been stated on behalf of the applicants that the procedure adopted by the respondents in cancelling the examination vide order dated 10.12.2014 (Annex. A/1) is arbitrary and in clear violation of principles of natural justice and therefore,

deserves to be quashed and set aside. The respondents at one place conduct the examination and on the other place like Muradabad have allowed the applicants to go for training, therefore, no different view can be taken by the respondents discriminating the selected applicants who could have been appointed for the said post. The submission of the applicant is also that the impugned order dated 10.12.2014 is not a speaking order as the applicants had duly participated in the written examination and were already declared successful as per order dated 01.10.2014 (Annex. A/6). It is the plea of the applicants that they were legitimately accepting that since they have been declared successful in the examination they would be promoted to the next higher post since they were fully eligible for the said post. Due reliance has been placed by the applicants on the letter of North-Western Railway 10.05.2011 (Annex. A/7) wherein the result of the selection for the post of JE (25% Intermediate Quota) PB Rs 9300-34800+GP Rs 4200/- in Mech. Deptt. Workshop, Bikaner was declared. Thus, it is the contention of the applicants that the impugned order dated 10.12.2014 is completely illegal and in clear violation of Article 14 and 16 of the Constitution of India, therefore, the same deserves to be quashed and set aside. The applicants also relied upon the plea that all steps necessary in notifying the eligibility criteria, scrutiny of the eligibility of the candidates, declaration of the date of examination and conducting

the written examination in Part-A and Part-B were legally and consciously taken by the respondents, therefore, they estopped from recalling and cancelling the selection process. In support of the arguments, following judgments have also been relied upon:

- (1) M.P. Oil Extraction & Anr Vs State of M.P. & Ors, (1992) 7 SCC 592.
- (2) Basudeo Tiwary Vs Sido Kanhu University & Ors, (1998) 8 SCC 194.
- (3) G.Sreenivasan & Ors Vs Principal, Regional Engineer College, Rourkela & Ors, AIR 2000 Orissa 56.
- (4) Hemani Malhotra Vs High Court of Delhi, (2008) 7 SCC 11.

9. On the other hand, it has been contended on behalf of the respondents that letter dated 10.04.2012 (Annex. R/1) clarifies as to how the selections will be made so as to make a uniform policy in respect of selection for the post of J.E. of technical department. The said letter also clarifies that the past selections finalised or at final stage need not be reopened or disturbed where written examination are yet to be held, is to be taken as per policy circulated now. Also as per Circular dated 07.11.2007 (Annex. R/2), it is clear that the Railway Board has issued this letter dated 07.11.2007 mentioning the procedure for taking selections and it clarified about the qualifying marks to be provided for written tests and the procedure to be adopted. It has been clarified by the respondents that as per letter dated 10.04.2012 there should have been two papers as part of written examination for selection through intermediate apprentice quota for which the candidate

has to secure 60% marks in each paper. But as the department has taken only one paper, the result has been declared cancelled accordingly. Therefore, the respondents have cancelled the written examination after taking approval of the higher authority. As soon as the department came to know that the procedure for selection has not been done as per the spirit of letter dated 10.04.2012, the said selection procedure was cancelled immediately. Also the concerned staff who committed mistake in holding the examination has been chargesheeted and as there was procedural flaw/mistake in the examination, the same was cancelled. Therefore, the impugned order is self explanatory and cannot be stated to be a non-speaking order. Merely participating in the written test and being declared successful in the said examination cannot give right for selection. Thus, the respondents prayed for dismissal of the OA. Counsel for the respondents relied upon the judgment of Hon'ble Supreme Court in Union of India & Ors Vs Tarun K. Singh & Ors, reported in (2003)11SCC768.

10. We have considered arguments advanced by the parties and perused the record.

11. It is an undisputed fact that the applicants had participated in the written examination held on 06.09.2014 and were declared

successful but subsequently, the respondents came to know about procedural flaw/mistake in the said selection and the entire selection was cancelled after taking approval of the competent authority vide its order dated 10.12.2014 (Annex. A/1). Since the procedure was required to be followed as per letter dated 10.04.2012 (Annex. R/1), it was very clear that two papers were part of the written examination for selection held for intermediate apprentice and for selection against ranker quota by promotion whereas only one paper is part of written examination. Railway Board vide RBE No. 144/2007 (Annex. R/2) clarified that in case two papers are part of written examination then candidate is to secure 60% marks in each paper, in case if there are many parts in single paper then 60% is not required in each part but 60% marks are required in that paper. It has already been decided as per the said procedure that in case of selection for intermediate apprentice for electrical department that there will be two papers. In order to bring uniformity in pattern of selection in technical categories viz. Electric Signal, Tele-communication and Mechanical, it has been decided by the Competent Authority, i.e. CPO that in all selection or intermediate apprentice cadre JE Grade Pay 4200 will be :

- (1) There will be two paper as part of written examination for selection held through intermediate apprentice for which candidate is to secure 60% in each paper.

(2) In case of selection for Ranker quota, i.e. Promotion as usual there will be one paper as part of written examination and 60% marks are required in that paper.

In the present case, respondent No. 3 vide order dated 18.07.2014 declared that the written examination for the post of J.E. (Mech) would be held on 23.08.2014 but subsequently the said examination was scheduled on 06.09.2014. After taking the examination on 06.09.2014, the result of the successful candidates was declared vide order dated 01.10.2014 in which all the applicants were declared successful. It is also clear that immediately when the procedural flaw/mistake came to be detected by the respondents, the respondent No. 3 vide order dated 10.12.2014 cancelled the examination for the post of J.E. (Mech). It is clear that the respondents were required to follow the procedure in conducting the examination for the post of J.E. in the manner as required by the RBE No. 144/2007 (Annex. R/2). The said procedure was required to be followed by the respondents but because of the flaw in the manner of conducting examination, the said examination stood cancelled vide order dated 10.12.2014. In the present case, the examination was conducted on 06.09.2014 and it is clearly mentioned in the letter dated 10.04.2012 that the past selection which are finalized or at final stage need not be reopened or disturbed. However, it is further clarified that where written examination is yet to be held,

is required to be conducted as per policy, therefore, the respondents were justified in cancelling the examination due to the procedural flaw in conducting the examination. Therefore, though applicants were declared successful in the said examination but the same does not give any right to the applicants for selection. Pertaining to the claim of the applicants that the respondents cannot reopen their past selection, it cannot be accepted as the examination was conducted by the respondents on 06.09.2014 and therefore, stating that the past selection cannot be reopened is out of purview as Annex. R/1 was issued on 10.04.2012.

12. The judgments cited by learned counsel for the applicant are not applicable in the facts and circumstances of the present case and therefore, do not help the applicants. However, judgment cited by counsel for the respondents in case of Tarun K. Singh & Ors (supra) is applicable to the present case wherein it has been held that respondents will be justified in rejecting the candidature at any stage of the selection process if a mistake made by them is discovered subsequently or even after appointment.

13. In view of discussions hereinabove made, there arises no ground for interference by this Tribunal in the impugned order

dated 10.12.2014 (Annex. A/1) which is proper and legal.

Accordingly, OA is dismissed with no order as to costs.

[Archana Nigam]
Administrative Member

[Hina P. Shah]
Judicial Member

Ss/-