

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No. 5434 of 2015 (O&M)
Date of decision: 24.03.2015**

Pardeep Singh and another

....Petitioners

Versus

Union of India and others

.... Respondents

**CORAM: Hon'ble Mr. Justice Surya Kant
Hon'ble Mr. Justice P.B. Bajanthri**

Present: Mr. Shingara Singh, Advocate
for the petitioners.

P.B. Bajanthri, J.

The petitioners' claim for promotion to the post of J.E.-II in MW/Mech was rejected by respondent No.2 on 13.06.2014. Aggrieved by the same, they preferred an Original Application before the Central Administrative Tribunal (for short 'CAT'), Chandigarh and the said O.A. No. 060/00534/2014 has also been dismissed on 05.02.2015. Thus, the aggrieved petitioners are before this Court.

2. Respondent No.2 invited applications for 3 posts of J.E.II in MW/Mech. Among others, petitioners were candidates for the recruitment to the aforesaid post.

3. Respondent No.2 notified the date of written test as 20.04.2010.

Due to changed criteria in the process of recruitment, the written test date fixed was cancelled and further notification was issued on 05.08.2010. Thereafter, date of test was fixed as 16.11.2010 and it was cancelled and postponed to some other date. Ultimately, the test was conducted on 14.02.2011. On 18.03.2011 the results were declared. Three candidates were qualified namely, Gurcharan Singh, Birender Singh and Satpal who have secured more than 60% of marks and they were qualified for next process of the selection, namely assessment of the record of service. On 07.05.2011, respondent No.2 noticed that there were certain discrepancies in evaluation of the answering sheets and the results were cancelled. Once again, on 27.05.2011 test was conducted in which petitioners and one Sh. Chander Kishore Thakur passed out while declaring them as eligible on 29.06.2011 and they were sent for training for a period of one and a half years on 07.07.2011. Thereafter, on 13.10.2011, a show cause notice was issued (through CWI/TTC) by which there was a proposal to de-notify the provisionally empaneled notification by assigning the reasons that an error in the totalling of marks of the written test of the candidates have been detected vide Annexure A-1 and as that juncture one Sh. Chander Kishore Thakur was also undergoing training along with the petitioners, committed suicide.

4. The petitioners were aggrieved by the show cause notice dated 13.10.2011 i.e. proposal to de-notify the empaneled select list dated 27.05.2011 and cancellation of the award of marks secured in the test, was challenged before the CAT, Chandigarh in O.A. No. 1280/PB/2011.

5. The CAT, Chandigarh granted an interim order to the extent

that the petitioners shall continue to undergo training on 07.12.2011. On 12.03.2012 the Original Application filed by the petitioners was dismissed. It was also made clear that interim order stands vacated.

6. The petitioners aggrieved by the order of the CAT, Chandigarh dated 12.03.2012 preferred Civil Writ Petition No.6906 of 2012 on 03.04.2012. An interim order was passed in favour of petitioners for continuation of their training on 18.04.2012. The CWP No. 6906 of 2012 was admitted on 07.04.2012. Respondent No. 2 proceeded to cancel the selection of the petitioners on the score that petitioners have scored less than the cut off percentage of 60% viz, 56.5% and 54%. The petitioners completed their training by securing 80% marks. Respondents though filed written statement but the cancellation of selection of petitioners to the post of JE-II, training was not brought to the notice of this court. Further, they did not seek vacation of interim order also. After their success in the training, petitioners got issued a notice to respondent No.2 to consider their names for promotion to the post of JE-II. Respondent No.2, vide communication dated 16.07.2013, refused to consider the grievance of petitioners to promote them to the post of JE-II by assigning the reasons that CWP No.6906 of 2012 is pending for consideration. On the same day, i.e. on 16.07.2013, the petitioners withdrew the CWP No.6906 of 2012. Consequently, the grievance of petitioners was not considered for promotion. Therefore, they again approached CAT, Chandigarh by filing O.A. No.1108-PB of 2013 and the same was disposed of directing the respondents to consider the claim of the petitioners conscientiously and sympathetically on 21.03.2014. Even at this stage, counsel for respondents

not brought to the notice of the court, the fact that on 07.04.2012 selection was cancelled.

7. In view of the order of the CAT, Chandigarh in O.A. No.1108-PB of 2013, claim of the petitioners was rejected on 13.06.2014. Feeling aggrieved by the decision of respondent No.2 dated 13.06.2014, the petitioners once again approached the CAT, Chandigarh in O.A. No. 060/00534/2014 and the said O.A. was dismissed on 07.02.2015. Thus, the petitioners aggrieved by the order of the CAT dated 07.02.2015 filed the above petition.

8. That the petitioners are ineligible for promotion as JE-II already stands concluded by notice dated 13.10.2011 challenged before the CAT, Chandigarh in O.A. No.1280/PB/2011 which was dismissed on 12.03.2012, while upholding the proposal to cancel the marks secured by the petitioners. However, by virtue of an interim order the petitioners were continued to undergo training. Even before this Court in CWP No.6906 of 2012, the petitioners were benefited by interim order and at that stage, the petitioners completed their training by securing 80% of marks. Thereafter, the petitioners withdrew the writ petition on 16.07.2013 and requested respondent No.2 to promote them to the post of JE-II as they have successfully completed training. For not considering their grievances, once again they have approached CAT, Chandigarh in the year 2013 and got an order to consider their grievances on 21.03.2014. Respondent No. 2 rejected the claim of the petitioners on 13.06.2014 which was the subject matter before CAT, Chandigarh and it was also dismissed on the principles of res judicata in O.A. No.060/00534/2014 on 01.07.2014.

9. Respondent No.2 after withdrawing CWP No. 6906 of 2012 should have proceeded in pursuance of the show cause notice dated 13.10.2011 read with order dated 07.04.2012 by which the selection of the petitioners was cancelled. In the meanwhile, the petitioners have successfully completed training by securing 80% marks by virtue of interim order of the CAT, Chandigarh and this Court. In view of the dismissal of the O.A. No.1280-PB/2011 dated 12.03.2012 and withdrawal of CWP No.6906 of 2012 dated 16.07.2013 resulted in merger of interim order with the final order. Consequently, the show cause notice dated 13.10.2011 and order dated 07.04.2012 cancelling selection of petitioners to the post of JE-II training stood restored, and are intact. The petitioners should have sought for revival of the CWP No. 6906 of 2012 instead of approaching CAT, Chandigarh in O.A., No. 1108/PB/2013 with a prayer to consider their grievances for promotion. At this stage, it is to be noted that as long as show cause notice dated 13.10.2011 and order dated 07.04.2012 for cancelling selection is in vogue, question of filing O.A. No.1108-PB of 2013 was unnecessary and so also consequential proceedings like rejection of the petitioners' claim dated 13.06.2014 and challenging the same in O.A. No. 060/00534/2014. The petitioners could have opened their eyes and seek revival of CWP No.6906 of 2012 as and when respondent No. 2 declined to consider their grievances after withdrawal of CWP No. 6906 of 2012 dated 16.07.2013 and thereafter, rejection of their claim by respondent No. 2 dated 13.06.2014. At the same time, there is a serious lapse on the part of respondents in not highlighting the order dated 07.04.2012 by which selection of petitioners was cancelled, during the intervening period of the

date of dismissal of O.A. No.1280/PB/2011 dated 12.03.2012 and date of interim order passed on 18.04.2012 by this Court in CWP No. 6906 of 2012 before this Court or CAT.

10. The petitioners initially questioned show cause notice dated 13.10.2011. During pendency of the CWP No.6906 of 2012, the respondents issued final order on 07.04.2012 de-notifying the provisionally empaneled notification by which the petitioners were selected to the post of JE-II (for training). This new development i.e. de-notifying provisionally empaneled notification was not brought to the notice of this Court by either of the parties. Therefore, petitioners are at liberty to question the order dated 07.04.2012 before the CAT, Chandigarh. Challenging the said order, delay is one of the hurdles and if the petitioners file an application for condonation of delay, the Tribunal shall consider the same sympathetically and condone the delay. It is to be noted that due to default or lapses on the part of respondent No.2 in conducting test and announcing of result for 3 posts of JE-II, the petitioners shall not be penalized and that too, when they have successfully completed the training by securing 80% of marks. No effective relief thus, can be granted to petitioners in this case except the liberty given hereinabove. The writ petition is dismissed accordingly.

No order as to costs.

(SURYA KANT)
JUDGE

(P.B. BAJANTHRI)
JUDGE

24.03.2015
pooja saini