

Gurbax Singh
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**IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH**

**CWP No.15014 of 2016
Date of decision: 22.08.2016**

Pardeep Singh and another

.....Petitioners

Vs.

Union of India and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

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

Ajay Kumar Mittal,J.

1. The petitioners through the present petition under Articles 226/227 of the Constitution of India pray for quashing the order dated 7.4.2012, Annexure P.1 whereby provisional panel of candidates for the posts of Junior Engineers has been de-notified and order dated 4.4.2016, Annexure P.2 whereby the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (CAT) dismissed the application filed by the petitioners notwithstanding the direction given by this Court in CWP No.5434 of 2015 vide order dated 24.3.2015 that they shall not be penalized and that too when they had successfully completed the training by securing 80% marks. Further direction has been sought to the respondents to promote the petitioners to the substantive posts of Junior Engineers with all

consequential benefits.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The process of filling up 3 (UR) posts of J.E.H in MW/Mech. against IMA quota was initiated on 23.12.2009. The written test was conducted on 20.4.2010. Due to change in the eligibility conditions, the written test conducted on 20.4.2010 was cancelled and fresh applications were called from the eligible staff vide notice dated 5.8.2010. The assessment of vacancies pertained to the year 2009-10. The eligibility conditions for selection were that the candidates securing less than 60% marks in professional ability and 60% marks in aggregate will not be considered eligible for inclusion in the panel. Further, the service records of only those candidates whose secured a minimum of 60% marks in professional ability shall be assessed. In pursuance of the notice, 31 candidates were found eligible vide letter dated 5.10.2010. Written test to carry out selection process was postponed on few dates and ultimately the same was held on 14.2.2011. The result was declared and three candidates out of 31 namely Gurcharan Singh, Birender Singh and Satpal obtained 60% marks in the written test and qualified for second part of selection i.e. assessment of the record of service. Thereafter, the result was cancelled without assigning any reason by order dated 7.5.2011. It transpired that questions of one candidates namely Kamal Kishore were not evaluated and after re-evaluation, his marks were increased from 54 to 60 which were the bench mark for qualifying the written test. Instead of finalizing the selection, the respondents again conducted written test on 27.5.2011. The result was declared and provisional panel was notified vide notification dated 6.7.2011 in which names of total three candidates figured including the petitioners. Consequently, the petitioners were deputed for

training vide letter dated 7.7.2011. Vide order dated 13.10.2011, the respondents decided to de-notify the panel resulting in discontinuation of training and reverting the petitioners to their original status. The third candidate namely Shri Chander Kishore Thakur undergoing training alongwith the petitioners was so scared and humiliated that he committed suicide fearing his reversion. Feeling aggrieved, the petitioners filed an application in the CAT. The Tribunal by interim order permitted the petitioners to continue the training. However, ultimately, the application was dismissed vide order dated 12.3.2012. The petitioners assailed the order dated 12.3.2012 by filing CWP No.6906 of 2012 before this Court. This Court passed interim order permitting the petitioners to continue the training and application for vacation of stay by the respondents was dismissed. The writ petition was admitted and the petitioners completed the training with distinction thereby securing about 80% marks in the aggregate. Thereafter, the petitioners served a legal notice dated 18.3.2013 on respondent No.2. The respondents refused to promote the petitioners as according to them, the writ petition was admitted and pending before this court. Vide order dated 16.7.2013, the writ petition was dismissed as withdrawn. The respondents did not promote the petitioners. Aggrieved thereby, the petitioners filed application before the Tribunal which was disposed of by the Tribunal vide order dated 21.3.2014 directing the respondents to consider the request of the petitioners. The respondents rejected the claim of the petitioners vide order dated 13.6.2014. The petitioners again approached the Tribunal by filing an application but the same was also dismissed vide order dated 5.2.2015. Against the said order, the petitioners filed CWP No.5434 of 2015 which was dismissed vide order dated 24.3.2015 with liberty to the petitioners to challenge the order dated 7.4.2012 and directing the

respondents not to penalize the petitioners for the lapses demonstrated by the respondents since the petitioners had successfully completed the training securing 80% marks. Consequently, the petitioners filed application before the Tribunal challenging the order dated 7.4.2012, Annexure P.1 but the same was dismissed vide order dated 4.4.2016, Annexure P.2. Hence the present writ petition.

3. We have heard learned counsel for the petitioners.

4. A perusal of the record shows that provisional panel was notified vide notification dated 4/6.7.2011 empanelling three officials including the petitioners. The promotion as Junior Engineer was dependent upon successful completion of training which commenced on 7.7.2011. In the meantime, an error in the totalling of marks of the written test of the candidates was detected. It came to the notice of the competent authority that petitioner No.1 Pardeep Singh secured 56.5% and Sh. Sarabjeet Singh-petitioner No.2 had obtained 54% marks only. They did not obtain minimum qualifying marks in the written test and as such they were not eligible to be considered for second part of the general selection. Accordingly, a show cause notice was issued to the petitioners on 13.10.2011 to show cause as to why provisional empanelment should not be denotified. The petitioners did not file any reply inspite of repeated opportunities. The petitioners did not obtain minimum stipulated qualifying marks in the written test and consequently their names were ordered to be deleted from the provisional panel. The petitioners challenged the said order before the Tribunal. The Tribunal after considering the matter in detail categorically held that on rechecking the answer sheets it was noticed that the petitioners had failed to obtain minimum passing marks and were not entitled for bringing them to second stage of the selection process. Thus, the selection and empanelment

of the petitioners was based on an administrative error which stood corrected subsequently. It was also observed by the Tribunal on the basis of settled law that a mistake committed by the Administration could not furnish a valid or legitimate ground for the court or the Tribunal to direct it to go on repeating that mistake. Consequently, the action taken by the respondents was rightly upheld by the Tribunal vide order dated 4.4.2016. Further, the interim order passed in the earlier writ petition had not resulted in any substantive legal right in favour of the petitioners as they had ultimately withdrawn that writ petition without getting any adjudication by this Court on merits of the controversy involved therein. The marks obtained at first stage i.e. 56.5% and 54% respectively by petitioner No.1 and petitioner No.2 went to the root of the eligibility of the petitioners and therefore, no equity would follow on the basis of completion of their training successfully. The relevant findings recorded by the Tribunal read thus:-

“7. The facts are not in dispute at all inasmuch as the selection and empanelment of the applicants had taken place. However, subsequently it came to the notice that the paper checking/evaluation of answer sheets was not done in a proper manner and as such it was rechecked and found that the applicants had failed to obtain minimum passing marks and were not entitled for bringing them to second stage of the selection process. Yet their training was continued and they have completed the same also successfully with 80% marks.

8. It is more than clear that the selection and empanelment of the applicants was based upon an administrative error which stands corrected and the question arises as to whether on the basis of wrong empanelment and completion of training under court orders, the applicants can be given appointment or not.

9. It is well settled proposition of law that none can claim any

benefit on the basis of an administrative error. In this connection, reference may be made to a decision of the Supreme court in the case of ***Chandigarh Administration and others vs. Naurang Singh and others*** reported in (1997) 4 SCC 177. In paragraph 6 of the judgment, it was held that a mistake committed by the Administration cannot furnish a valid or legitimate ground for the court or the Tribunal to direct the Administration to go on repeating that mistake. The administration no doubt could rectify that mistake. A similar view has also been expressed by a Full Bench of the Punjab and Haryana a High Court in the case of ***Sunder Lal and others vs. State of Punjab and others***, reported in AIR 1970 Punjab and Haryana 241. Therefore, the administration had the authority to rectify any mistake committed by it. In this case the applicants were given a show cause notice also and only after considering their side of the case their claim was rejected vide order/letter dated 13.6.2014 which was upheld in OA No.060/00534/2014. In any case, thereafter we have the benefit of judgment of Hon'ble High Court and as such the claim of the applicants is being considered in terms of the challenge to the order vide which the names of the applicants were removed from the panel.

10. In so far as benefit on the basis of training having been completed by the applicants is concerned, it is well settled law that a litigant cannot derive any benefit on account of pendency of a case in a court of law on the basis of an interim order as it always merges in the final order to be passed in the case and if the writ petition is ultimately dismissed, the interim order stands nullified automatically. A party cannot be allowed to take any benefit of his own wrongs by getting interim order and thereafter blame the Court..."

5. Learned counsel for the petitioners has not been able to produce any material on record to show that the order passed by the respondent authorities and findings recorded by the Tribunal are illegal or

perverse. Consequently, finding no merit in the petition, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

August 22, 2016
‘gs’

(Ramendra Jain)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes