

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W. P. (S) No. 1070 of 2019

Union of India through its Divisional
Personnel Officer (I/c), South Eastern Railway, Ranchi.... Petitioner

Versus

1. Deo Narayan Diwakar, Ranchi

..... Respondent

2. General Manger, South Eastern Railway,
Dist.- Kolkata, West Bengal

3. The Divisional Railway Manager, South Eastern
Railway, Ranchi

4. The Assistant Personnel Officer-1, South Eastern
Railway, Ranchi

.....Performa Respondents

CORAM : Hon'ble Mr. Justice Aparesh Kumar Singh
Hon'ble Mr. Justice Kailash Prasad Deo

For the Petitioner : M/s. Mahesh Tewari, Abhishek Kr. Dubey,
Ankur Anand, Advocates

For the Respondent no. 1 : Ms. Ruby Pandey, Adv.

06/11.11.2019

Heard learned counsel for the petitioner and applicant/respondent.

Applicant, a candidate for promotion to Technical Grade-III under the Railways while answering the papers in departmental examination held on 26th May, 2018 wrote his name in the supplementary answer-sheet, which was clearly in breach of the instruction which specified "No distinguishing marks or sign put on your answer sheet, otherwise your candidature will be summarily rejected". The applicant's answer-sheet were however evaluated. As per list at Annexure-A/1, his name was at serial no. 28 out of total 90 candidates, who had appeared with their respective mark-sheets. The footnote to the list dated 15th October, 2018 (Annexure-A/1) indicates that applicant's name was rejected. No promotion was granted pursuant to such evaluation as, apparently the candidate had disqualified himself due to this mistake. Despite noticing these conspicuous facts, learned Central Administrative Tribunal, Patna Bench at Ranchi by the impugned order dated 29th November, 2018 (Annexure-4) directed the respondent-Railways to consider the plea of the applicant to declare him as selected in the said exam by examining as to whether the aspect of writing the name of the answer-sheet had any influence on the evaluator and if not, declare him on the strength of 63% marks secured by the applicant, within 30 days from receipt of this order. Citing a decision of the Apex Court in the case of *VSNL vs. Ajit Kumar Kar* reported in (2008) 11 SCC 591, the

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Tribunal held that a bonafide mistake can be corrected, though it does not confer any right on any party.

Learned counsel for the applicant has argued that the observation of the Apex Court relied upon by learned Tribunal goes in his favour as it was a bonafide mistake and could be corrected.

Learned counsel for the writ petitioner submits that such observation can equally be applicable to the Railways who has though mistakenly evaluated the answer-sheet of the applicant but bonafidly corrected it. In any case, such mistake would not confer a right on any applicant since it was in teeth of clear instruction which stipulated mandatory consequences of rejection of the candidature.

We have considered the submission of learned counsel for the parties and perused the materials on record including the impugned order. We are inclined to accept the contention of writ petitioner-Railways. If the applicant had written his name on supplementary answer sheet, it was contrary to the clear written instruction and thereby, he had disqualified himself from his answer-sheet being evaluated. Though the answer-sheet was evaluated, but the list at Annexure-A/1 clearly showed an asterisk mark against his name which as per the footnote meant that such cases were in the rejected category. The Railways have not granted any promotion to the applicant pursuant to such evaluation and rectified their mistake. In those circumstances, applicant cannot claim a right to be promoted if he had violated the mandatory instruction of the exam and his candidature stood rejected as a consequence thereof. We, therefore, are not inclined to be persuaded by sympathetic consideration as Courts are supposed to administer justice within the contours of laws. The impugned order is set aside. Accordingly, the writ petition is allowed. I. A No.7887 of 2019 seeking stay stands closed.

(Aparesh Kumar Singh, J)

(Kailash Prasad Deo, J.)