

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE**

**HON'BLE SHRI JUSTICE SUSHRUT ARVIND
DHARMADHIKARI**

&

HON'BLE SHRI JUSTICE GAJENDRA SINGH

MISC. PETITION No. 4333 of 2021

*(UNION OF INDIA AND OTHERS
Vs
JAMIL AHMED ANSARI AND OTHERS)*

Appearance:

*(PETITIONER BY SHRI PRABUDDHA ARYA, ADVOCATE)
(RESPONDENT BY SHRI L. C. PATNE, ADVOCATE ON CAVEAT)*

WRIT PETITION No. 1499 of 2022

*(DEPAL SINGH PAWAR AND OTHERS
Vs
UNION OF INDIA AND OTHERS)*

Appearance:

*(PETITIONERS BY SHRI RAHUL SETHI, ADVOCATE)
(RESPONDENTS NO.4 TO 8 BY SHRI L. C. PATNE, ADVOCATE)*

MISC. PETITION No. 1922 of 2023

*(OM PRAKASH BAMNIYA
Vs
UNION OF INDIA (DELETED) AND OTHERS)*

Appearance:

(PETITIONER BY SHRI L.C. PATNE, ADVOCATE)

Reserved on : **02nd May, 2024**

Pronounced on : **02nd July, 2024**

O R D E R

Per: S.A. Dharmadhikari, J:

With the consent of parties, heard finally.

This order shall govern disposal of M.P. No.4333 of 2021, W.P. No.1499 of 2022 & M.P. No.1922 of 2023. Regard being had to the similitude of the controversy involved in the aforesaid petitions, they have been heard analogously and decided by this singular order. Facts of M.P. No.4333 of 2023 are being taken for consideration.

02. The present petition under Article 226/227 of the Constitution of India has been filed assailing the legality, validity and propriety of the order dated 24.09.2021 passed by the Central Administrative Tribunal Bench at Jabalpur in O.A. No.201/466/2016, whereby the original application was allowed and the impugned order dated 02.11.2015 was quashed directing the petitioners herein to redetermine the panel based on the written marks obtained by the candidates in examination after constituting a small committee of experts for the same within a period of three months.

03. Brief facts of the case are that all the respondents were appointed as Technician, Grade – II in different year, and thereafter, promoted as Technician, Grade – II and Technician, Grade – I in the year 2011, 2013 & 2014. Respondents No.1 to 5, who were selected are juniors to the non-selected respondents, which is evident from the gradation list and the comparative chart showing the seniority.

04. A notification dated 25.02.2015 was issued inviting applications for promotion to the post of Junior Engineer (C & W) for filling up eight posts (General – 6, SC – 02) under 25% Limited Departmental Competitive Examination (LDCE) quota. Respondents No.1 to 5, being eligible applied for the aforesaid post under unreserved category. Similarly, respondents No.6 to 11 also submitted their candidature under the unreserved category. A written examination was conducted on 01.08.2015, wherein the candidates were provided with the question papers consisting

of 60 & 40 marks in Part – A and Part – B respectively. After the written examination, an answer key was prepared by the petitioners. Respondents No.1 to 5 submitted that the petitioners / Department have awarded full marks to some of the wrong answers given by respondents No.6 to 11 to give undue benefits to them. A merit list was prepared by petitioner No.3 on 07.09.2015, wherein the names of respondents No.1 to 5 appeared at Serial No.17, 13, 18, 11 and 12 respectively as against the names of respondents No.6 to 11 at Serial Nos.10, 5, 2, 3, 6 and 1 respectively.

05. The grievance of respondents No.1 to 5 was that the merit list was assessed on the basis of marks as per the entries made in the ACRs, whereas in the case of respondents No.6 to 11, special report for three years were called and undue benefit was granted to them in those special reports. Respondents No.1 to 5 submitted a representation to the competent authority, however, the same was not decided. Being aggrieved, respondents No.1 to 5 filed O.A. No.201/466/2016 before the Central Administrative Tribunal, Jabalpur. The said OA came to be finally decided vide order dated 24.09.2021, whereby the original application was allowed setting aside the impugned order dated 02.11.2015 and directing the petitioners to redetermine the panel based on the written marks obtained by the candidates in examination after constituting a small committee of experts for the same within a period of three months. Being aggrieved, the petitioner / Union of India has filed the present petition.

06. Learned counsel for the petitioners contended that the learned Tribunal has committed a grave error in allowing the original application inasmuch as redetermining the panel of Junior Engineer based on the marks obtained in the written examination only and directing not to consider the ACRs / PRs. of the respondents is violative of Para – 3 of the letter No.E(P) 246/0 Volume – V dated 28.03.2013 issued by the General Manager, HQ Office (Annexure-P/9). He further submitted that APAR /

ACRs are the vital document for selection since the selection is based on two stages, i.e. profession ability (written test) and record of service. The record of service indicates the grades awarded according to performance of employees in a year. In absence of marks of APAR / ACR if panel is recasted based on the marks obtained in the written examination, then it would not only violate the selection process as done in the Railways, but would also deprive fundamental rights of the loyal and hard worker who have been awarded better grading in APAR / ACR. The selection is to be carried out as per the guidelines laid down in the Circular dated 22.03.2006 in RBE No.35/2006 which the learned Tribunal failed to consider. Even the learned Tribunal erred in considering the judgment passed by the Punjab & Haryana High Court at Chandigarh in CWP No.20612/2012 dated 18.09.2023 (Union of India & Others v/s Raghbir Singh & Others), wherein the Punjab & Haryana High Court had upheld the order passed by the Central Administrative Tribunal in OA by granting liberty to the petitioner therein to seek instructions from the Railway Board for assessment of service record based on criteria which is not discriminatory, fair and wholesome and to reassess the service record of the five selected candidates, whereas in the present case, a rider has been put by the learned Tribunal not to consider the APAR / ACR in respect of respondents herein and recast the merit list according to the marks obtained in the written examination which is violative of the Circular as mentioned hereinabove. In view of the aforesaid, the order passed in the case of *Raghbir Singh (supra)* is distinguishable and could not have been relied by the learned Tribunal while allowing the original application.

07. *Per contra*, learned counsel for the respondents contended that no interference is required in the order passed by the learned Tribunal inasmuch as the OA was allowed based on the judgment delivered in the case of *Raghbir Singh (supra)*, therefore, the petition deserves to be

dismissed.

08. Heard learned counsel for the parties.

09. On perusal of the Circular dated 28.03.2013 (Annexure-P/9) as well as Circular dated 22.03.2006 (Annexure-P/10), the learned Tribunal was wrong in directing to consider only the marks obtained in the written examination for the purpose of recasting the panel. Even the judgment delivered in the case of *Raghubir Singh (supra)* is distinguishable inasmuch as in the aforesaid case, the learned Tribunal as well as the High Court directed the Railways to consider the service record of the candidates therein. In the present case, the learned Tribunal specifically barred consideration of the service record. In such a situation, the facts of the aforesaid case are distinguishable in nature, and therefore, not applicable to the facts and circumstances of the present case. For ready reference, relevant content of the Circular dated 28.03.2012 is reproduced below:-

“3. In terms of para 11.4.2.3 of letter No.E (P) 1025/0Vol.V dt. 18.11.99/11.1.2000, in addition to APAR's the service register has also to be scrutinised. Marks can be added or deleted for awards and punishments respective. In any case the total marks that can be give under this head should not exceed 15. The record of service should also take into consideration performance of the employee in training institute.”

10. Accordingly, this Court comes to the conclusion that the learned Tribunal could not have directed the petitioners to redetermine the panel based on the written marks obtained by the candidates in examination after constituting a small committee of experts for the same, instead the learned Tribunal ought to have directed to redetermine the panel based on the ACR / PR of each candidates along with the marks obtained in the written examination.

11. In view of the aforesaid, the order passed by the learned Tribunal is modified as per following direction:-

11.1. So far as the direction to redetermine the panel based on the written examination is concerned, the same is hereby modified to the extent that the petitioners herein shall now consider redetermining the panel based on the ACR / PR as well as the marks obtained by the candidates in the written examination in view of the Circular dated 28.03.2012. The said exercise be completed within a period of three months from the date of receipt of certified copy of this order.

12. M.P. No.4333 of 2021, W.P. No.1499 of 2022 & M.P. No.1922 of 2023 stand disposed of to the extent indicated above. The order passed by the Tribunal be read in conjunction with the order passed in this petition.

Let a copy of this order be kept in the connected petitions also.

(S. A. DHARMADHIKARI)
J U D G E

(GAJENDRA SINGH)
J U D G E

Ravi