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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.1628/2001

Friday, this the 3rd day of January, 2003

Hon'ble Mrs. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Mr. Govindan S. Tampi, Member (A)

1. Northern Railway Men's Union
through its Secretary, MW Branch
Headquarters Division, namely
Shri K.K.Pandey
s/o Late Shri S.R.Pandey
Aged about 49 years
r/o 8/9 Sewa Nagar
New Delhi and working as Technician
Grade I under Respondent No.2
2. Shri Ram Kumar Sharma
s/o Shri H.L.Sharma
aged about 42 years
r/o 415/9-G, Railway Colony
Punjab Lane, Ghaziabad
and working as Technician Grade II
under respondent No.2 but presently on
Deputation to IRCOT, Shivaji Bridge
New Delhi

...Respondents

(By Advocate: Shri S.S.Tiwari)

Versus

1. Union of India through
General Manager
Northern Railway
Baroda House, New Delhi
2. Dy. CSTE, Microwave Maintenance
Northern railway
2nd Flor, DRM Exchange Building
New Delhi Railway Station
New Delhi
3. Chief Personnel Officer (Admn)
Northern Railway
Baroda House,
New Delhi

...Respondents

(By Advocate: Shri V.S.R.Krishna)

O R D E R (ORAL)

Hon'ble Mrs. Lakshmi Swaminathan:-

This application has been filed by the Northern Railway Men's Union (NRMU) through its Secretary and one other applicant impugning the action and letter issued by the respondents dated 30.3.2001. The impugned letter

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states that the respondents have dealt with the representation of the applicants and have submitted that the examination in question for selection of seven posts against 20% intermediate apprentice quota has been properly done by them. This has been assailed by the applicants.

2. We have heard Shri S.S.Tiwari, learned counsel for applicants and Shri V.S.R.Krishna, learned counsel for respondents and have perused the relevant documents on record. In this case because of the peculiarity of the circumstances of the case where a number of factual points have been raised by the applicants which have been countered by the respondents, it is relevant to note that in the pleadings after a rejoinder, a sur-rejoinder has been filed to which a reply has been filed followed by another reply affidavit filed by the applicants which ~~all~~ are ^{all} on record.

3. For the aforesaid examination, the written test was admittedly held for the selection which was scheduled on 31.3.2001. According to the learned counsel for applicants, the candidates, who were engaged in FOIS Project, could not be relieved for appearing in the written test due to administrative exigencies. This has also been referred to in the Chief Project Administrator's letter dated 26.3.2001 requesting the Chief Communication Engineer, Northern Railway to postpone the test in order to enable the aforesaid candidates engaged in the FOIS Project for appearing in the test. Results of the written test were declared on

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6.7.2001. As per the circular issued by the respondents dated 2.3.2001, no supplementary written test is to be held in respect of the aforesaid test. The two main reliefs prayed for by the learned counsel for applicants^{are}, namely, to quash and set aside the impugned letter dated 30.3.2001 as well as the written test held on 31.3.2001 with a further direction to the respondents to hold the fresh written test for JE-II for 20% quota after giving the syllabus to the candidates and^{to} also ensure that the eligible candidates^{are} allowed to appear in the test in accordance with law.

4. Two main grounds have been taken by Shri S.S.Tiwari, learned counsel to support the reliefs prayed for in this OA, namely, (i) that the written test has not been conducted in accordance with the relevant rules and instructions on the subject, namely, that the syllabus had not been circulated to the applicants thereby invalidating the test; and (ii) that the respondents had illegally deprived the eligible staff^{from} of appearing in the written test because some of them had not been spared on account of their involvement in the FOIS Project which is, therefore, in the administrative interest. He has very vehemently submitted that several representations were made by the members of the applicant No.1/NRMU individually and collectively before the scheduled date of the examination which was held on 31.3.2001. He has emphasized that these representations were given earlier on 26.3.2001 so as to avoid any wrong action on their part in assailing the examination after they had appeared^{and} found themselves to be unsuccessful, which would be

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contrary to the settled law. He has submitted that in spite of these various representations, whereby the applicants had brought to the notice of the respondents that ~~due to~~^{had occurred} the aforesaid two infirmities, in holding the test, they had not cared to reply to them and had in fact held the written test on 31.3.2001 and also declared the results.

5. The Tribunal, by order dated 23.7.2001 after hearing the learned counsel for the respondents, directed that the results of the viva voce held on 24.7.2001 shall not be announced and the final selection shall be subject to the decision in this OA after considering all aspects. The results of the selection for the post of JE-II against the 20% intermediate apprentice quota has, therefore, not been declared in view of the interim order.

6. Learned counsel for applicant has vehemently submitted that the respondents had deviated from their long standing practice followed from 1983 to circulate the syllabus before holding the test for the examination. He has further submitted that in para 4 of the impugned letter dated 30.3.2001, though the respondents have referred to the fact that the syllabus for the examination had been circulated to all concerned, including both the Unions vide Office letter dated 7.6.2000 and the same was also circulated earlier by Office letter dated 26.3.1997, this does not show that those candidates, who became eligible subsequently, were also duly informed by the respondents. He has,

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therefore, argued that holding of the test in these circumstances was vitiated and should, therefore, be quashed and set aside. On the second point, learned counsel for applicants has submitted that a number of persons whose names are given in the rejoinder filed on 20.11.2001 have not been spared in the public interest although they were eligible to appear in the examination. He has referred to certain affidavits filed by these persons, e.g., he has laid much emphasis on the letter issued by the Deputy Chief Signal & Telecom Engineer, Lucknow dated 17.4.2001 in respect of one Shri A.K.Gaur, JE-II (Ad hoc). He has submitted that the respondents have nowhere denied this letter and the latter affidavit given by this person, Shri A.K.Gaur, denying that he is aggrieved by the action of the respondents or that he has not been spared and so on, were all done under threat by the respondents on a later date. Similarly, he has submitted that in the case of one Shri N.N.Das that person has submitted that he was prevented from appearing in the JE-II examination on 31.3.2001 and any other document to the contrary relied upon by the respondents is of no use. He has further submitted that the cut-off date for refusal to appear in the written examination was 19.3.2001 as per the Notification, whereas the respondents have filed several letters said to have been given by the concerned officers, e.g., S/Shri A.K.Gaur and N.N.Das much later, i.e., on 30.3.2001 and 10.11.2001, respectively. Learned counsel has, therefore, vehemently submitted that the subsequent letters have been got by ^{threat by 12} the concerned officers of the Department and cannot be relied upon. He has submitted

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that the only conclusion that can be arrived at in the circumstances of the case is that all the eligible persons, who are eligible to take written test for JE-II examination have not been allowed to appear for the test in public interest, ~~and~~ Therefore, the whole examination is vitiated and has to be quashed and set aside with a further direction to the respondents to hold another examination where they can also appear.

7. The above averments of the learned counsel for applicants have been equally vehemently controverted by Shri V.S.R.Krishna, learned counsel for respondents. He has referred to the statement made in paragraph 4 of the impugned letter dated 30.3.2001 wherein it has been clearly stated that the syllabus for the above examination was circulated to all concerned, including both the Unions, i.e., the NRMU Union and the Uttri Railway Mazdoor Union (the latter is not a party before this Tribunal) and also in a joint meeting held on 19.1.2000 in the chamber of CCE vide letter dated 19.1.2000 in addition to the same syllabus which had also been earlier circulated. In the counter affidavit filed by the respondents dated 23.7.2001, they have annexed the letter dated 7.6.2000 which is addressed to several persons, including the applicant No.1, i.e., NRMU. This letter is on the subject of syllabus for selection for the post of JE-II against 20% intermediate apprentice quota. He has submitted that from this letter, it is clear that the syllabus have been intimated ^{to} and circulated to the applicants/NRMU well in time and it was not required in law on the part of the respondents to have

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the syllabus served individually on the members of the Unions. He has also emphasized that the applicant No.1 in this case is the Union and it cannot, therefore, be held that the members of the Union were not aware of the syllabus for the examination. There is, therefore, no fault on the part of the respondents nor can it be stated that the applicants had not been duly informed of the syllabus.

8. Regarding the other main ground taken by the learned counsel for applicant regarding the fact that a number of eligible officers of applicant No.1/NRMU have not been spared for appearing in the examination in question in public interest, Shri V.S.R.Krishna, learned counsel has controverted these averments. He has drawn our attention to a number of annexures to the sur-rejoinder regarding some persons, who, according to them, had not been spared. He has pointed out that, e.g., in respect of S/Shri A.K.Gaur and N.N.Das those persons have themselves stated that they do not wish to appear in the examination and it is also not denied that they are members of the NRMU. Therefore, he has submitted that the Union cannot take a stand to represent a common grievance of all the members, as apparently they have different causes of action. Besides, he has stated that when some of the members themselves have stated that they were not in a position to attend the examination, a conclusion cannot be drawn that they have been prevented from taking a test which was held on 31.3.2001 by the respondents. He has also vehemently refuted the allegations made by the learned counsel for applicants

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during the hearing that these officers have been browbeaten and forced to give these letters stating, inter alia, they had not attended the examination on their own choice and not that they were prevented from appearing so.

9. During the hearing, Shri S.S.Tiwari, learned counsel has submitted that the manner in which the examination in question has been conducted is a subject matter of an inquiry being held by the Railway Board Vigilance Department. This has been denied by Shri V.S.R.Krishna, learned counsel, who has submitted that the internal inquiry held by the respondents has since been completed on 21.6.2001. In pursuance of this Tribunal's order dated 21.11.2002, learned counsel for respondents has submitted the official records containing the recommendations of the Committee which had looked into the matter of holding the selection/examination for JE-II against 20% intermediate apprentice quota which is in question here. In the circumstances of the case, learned counsel has submitted that as there is no illegality in the action taken by the respondents in holding the aforesaid examination and the allegations of the applicants are, according to him, frivolous, he has prayed that the OA may be dismissed.

10. We have carefully considered the pleadings made by the learned counsel for the parties and have perused the relevant documents on record.

11. On the first ground taken by the learned counsel for applicant regarding the fact that the syllabus for

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the examination in question was not circulated to the concerned Unions/members, who are applicants in the present application, we find no merit in the same allegation. In paragraphs 4 and 5 of the impugned letter dated 30.3.2001, the respondents have stated as follows:-

"4. The syllabus for the above exam was also circulated to all concerned including both the Unions vide this office letter dated 7/6/2000. The same syllabus was also circulated vide this office letter No.570-Sig/ MWM/TCI-III/ Selection (Loose) dated 26.3.1997.

5. It is further mentioned that the above issued were discussed in details in the PNM of NRMU and URMU and also in a joint meeting held on 19.1.2000 in the chamber of CCE, (minutes circulated vide GM(P) letter No.961-E/Jt. Mtg/Pt.I/ 2000/E Union dated 19.1.2000) wherein after considering all the above aspect a final decision was taken to conduct the above selection after calculating the up to date vacancies and also to include all candidates who have already applied."

12. The above portion of the letter dated 30.3.2001 read with their earlier letter annexed to the reply dated 7.6.2000 shows that the syllabus for selection for the post of JE-II against 20% intermediate apprentice quota has been circulated to a number of officers and Unions, including applicant No.1/NRMU. Learned counsel for applicants has not been able to show who among the members of applicant No.1, who had become eligible subsequently, to appear in the examination subsequent to the circulation of the syllabus, was affected. In any case, if that person was a member of applicant No.1, as the syllabus has been circulated to the Union, we cannot fault the action taken by the respondents on this ground.

In other words, we hold that the syllabus for the

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aforesaid examination has been duly circulated by the respondents to the concerned officers/Unions for their information. The submissions made by the learned counsel for applicant to the contrary ~~are~~ accordingly rejected.

13. Regarding the second issue raised by the learned counsel for applicants and his contentions that some of the officers whose names have been given in the rejoinder dated 20.11.2001 ^{were} ~~and~~ browbeaten by the officers of the respondents to give the subsequent letters, which are relied upon by the respondents ^{it is} cannot be accepted. He has also laid much emphasis on the cut-off date for refusal to appear in the examination. However, if some of the officers had, in fact, given the letters that they had refused to appear in the examination subsequently, which are in the record of the respondents and have been relied upon by the respondents to controvert the allegations made by the learned counsel for applicants, it cannot be stated that merely on this ground ~~that~~ ^{the} the applicants have made out a case that they have been coerced and browbeaten. It will be relevant to note that the applicants before us are adult members of the Union who apparently have had a number of years ^{service} ~~with~~ the respondents. ^{is} If they have been unfairly treated by any officer, as alleged by the learned counsel for applicants, there ~~was~~ no reason why they would not have complained of the matter to the higher officers, which apparently they have not done. Therefore, the submission made by the learned counsel for applicant that even those officers, who had not appeared in the examination, who had made representations, had later resiled from their

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stand stating that they could not appear in the examination appears to be an afterthought. It is also relevant to mention that these are the officers, who have apparently not appeared in the examination for one reason or the other, who are alleging in the OA that they were prevented from appearing in the examination in public interest. From a perusal of the relevant affidavits filed by both the parties and in the facts and circumstances of the case, we have no reason to come to a conclusion that the respondents have deliberately refused to issue the spare memoranda to the concerned eligible officers so as to enable them to appear in the examination. Therefore, in the facts and circumstances of the case, the contentions of the learned counsel for applicants that the entire examination held by the respondents for the post of JE-II against the 20% intermediate apprentice quota on 31.3.2001 has been vitiated, is rejected. In the circumstances of the case, we also see no good grounds to interfere in the application as it cannot be held that the said examination has not been held by the respondents in accordance with relevant law, rules and instructions.

14. Learned counsel for applicants has pointed out that in the case of one Shri Prem Pal Singh, the respondents have themselves admitted in their sur-rejoinder dated 10.12.2001 that he had not been spared in public interest. If that is so, the respondents shall deal with this person in accordance with law after checking their records.

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15. In the result, for the reasons given above, we find no merits in this application. OA fails and is accordingly dismissed, excepting the observation made in para 14 above. No order as to costs.

16. Accordingly, the interim order stands vacated.

(Govindan S. Tampi)
Member (A)

Lakshmi Swaminathan
(Mrs. Lakshmi Swaminathan)
Vice Chairman (J)