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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 818 of 2002 (OA 818/2002)

New Delhi, this the 3rd day of July, 2002

HON'BLE MR. KULDIP SINGH, MEMBER (JUD.)
HON'BLE MR. S.A.T. RIIZVI, MEMBER (A)

Sundeep Kumar
S/o Shri Kalyan Singh
Sr. SO/Accounts,
DRM's Office,
Northern Railway,
Moradabad.

Residential Address

Quarter No.132-D,
North Railway Colony,
Near Fire Brigade,
Moradabad.

...Applicant

By Advocate: Shri G.D. Bhandari.

Versus

Union of India through

1. The Secretary,
Railway Board,
Rail Bhawan,
New Delhi.
2. Union of India through
The General Manager,
Northern Railway,
Baroda House,
New Delhi.
3. The FA & CAO,
Northern Railway,
Baroda House,
New Delhi.
4. The Sr. OPG,
Northern Railway,
DRM's Office,
Moradabad. Respondents

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

O R D E R

By Hon'ble Mr. Kuldip Singh, Member (Jud.)

The applicant has impugned order Annexure A-1
vide which the disciplinary authority after finding the
applicant guilty of committing serious misconduct



inasmuch as that he had adopted unfair means for qualifying the IREM Examination, 1998 and is alleged to have violated Rules 3(i) and (iii) of the Railway Services Conduct Rules, 1966, was awarded a penalty of reduction to the lower grade of Rs.4000-6000 (RS) of Junior Accounts Officer for 4 years with immediate effect and was placed in the equivalent pay in the revised scale which he was drawing at the time of his promotion to Accounts Assistant with the directions that the scale of Rs.5000-8000 (RPS) may be restored and he may be placed in after 4 years. He was allowed time to file appeal against the said order.

2. The applicant preferred an appeal to the FA&CAO but the said appeal was also rejected.

3. The facts, as alleged by the applicant are that he was working as CG-I in the grade of Rs.1200-2040. The applicant appeared in an examination held in the year 1988 in which the Accounts Assistants/CGI employees appeared. The applicant was working at the relevant time at Moradabad Division so his centre of examination was allotted at Moradabad and the applicant is alleged to have qualified in the said examination with Roll No. 1657 and the result of the examination was declared vide Annexure A-6. After qualifying the examination the applicant was also promoted as Section Officer in the grade of Rs.5500-9000.



4. Subsequent to that the applicant was called by the Vigilance Inspector of the Railway Board on various occasions and was questioned with regard to the alleged copying of the answer sheets in respect of different subjects. As on scrutiny of answer sheets it was revealed that the answers were tallying word by word with the answers of S/Shri Jagan Lal Koli, Roll No.1705 and Shri V.K. Sharma, Roll No. 1531. The applicant denied the allegations with regard to mass copying or substitution of answer sheets. The applicant also alleges that the other two candidates with whom his answer sheets are being compared, had appeared from New Delhi centre whereas he had appeared from Moradabad Centre and after the examination was over, the answer sheets were put in the sealed cover and was sent to the higher authorities, but still the applicant was issued charge-sheet for major penalty as under:-

"That the applicant appeared in Appendix-III A (IREM) Examination 1988 and adopted unfair means to get his name placed in the list of successful candidates for his further promotion to the rank of Section Officer (Accounts).

Thus, by the above acts of omission and commission, the applicant contravened Rule 3(i), (ii) and (iii) of the Railway Services (Conduct), Rules, 1966".

5. The applicant has denied the above allegations. However, the Inquiry Officer after holding enquiry submitted the report holding the applicant guilty on the ground that the charged officer had secured undue advantage by adopting clearly unfair means so as to get his name placed in the list of successful candidates and to secure promotion to the post of Section Officer. On



the basis of this report, the disciplinary authority had passed the impugned order and the appeal against the said order had been rejected by the appellate authority.

6. The applicant while assailing the same had submitted that the findings recorded by the Inquiry officer are totally perverse and are based on surmises and conjectures. There is no direct evidence proving the allegations against the applicant for mass copying or for tampering with the answer sheets or for substitution of answer sheets at any stage by the applicant.

7. The applicant has also alleged that he was not supplied with certain documents which he had demanded during the enquiry so on that account also submitted that the applicant has been denied fair opportunity to defend his case.

8. On the contrary the department who are contesting the OA submitted that all the allegations levelled against the applicant had been dealt with properly by the Inquiry Officer while finalising his report and disciplinary authority has issued penalty order only after considering the charges imposed by the Inquiry Officer, which he deems fit. The respondents in their para 4.45 of the counter-affidavit insists that the applicant was found guilty of charges that he used unfair means in 1988 of IREM (Appendix IIIA) examination as such his candidature in the said examination was cancelled.



9. It is further submitted that the applicant has failed to establish his case, as such no relief can be granted.

10. We have heard Shri G.D. Bhandari, learned counsel for the applicant and Shri V.S.R. Krishna, learned counsel for the respondents.

11. As regards non-supply of documents is concerned, the applicant has referred to Annexure A-13 and submitted that he had asked for various documents as enlisted in Annexure A-13 and it was observed by the Inquiry Officer that all the relevant documents had been supplied but documents enlisted at S.No. 1, 2, 5 and 6 could not be made available and certificate to that effect was issued.

12. As regards non-supply of documents is concerned, we have gone through the list and we find that the non-supply of documents, as demanded by the applicant do not cause any prejudice to the applicant because document at S.No.1 is simply asking for centres of examination fixed and held for candidates at particular centre with Roll Nos. 1657, 1531 and 1705. It is an admitted case that the applicant had appeared from Moradabad and the other two candidates had appeared from New Delhi and does not cause any prejudice to the applicant. Similarly the documents asked for at S.No.2 is also asking about the list of candidates who had appeared with centre at Moradabad which also does not appear to be of any significance because the same cannot



cause any prejudice to the applicant. Same is in the case of documents at S.No. 5 and 6 so we find that this ground of the applicant has again no merits.

13. As regards the ground taken up by the applicant that the Inquiry Officer had not applied her mind properly and only on the basis of surmises and conjectures had held the applicant guilty. In this regard we may mention that the allegations, as levelled against the applicant are that the applicant had adopted unfair means to get his name enlisted in the grade of Section Officer. The imputations levelled against the applicant also show that on the basis of the scrutiny of answer sheets, the department found that most of his answers in the answer books were tallying word by word with the answers of Shri V.K. Sharma, Roll No. 1531 and Shri Jagan Lal Koli, Roll No. 1705 which establishes that either they had copied with each other or from some source at some place other than the examination hall and thereby adopted unfair means to pass the said examination. In her analysis of evidence, the Inquiry Officer mentions about the evidence of PW-2 Shri Manjeet Singh Chaudhary which is to the effect that he took up investigations under the orders of his superior, the DOV/Int. into certain alleged malpractices in the examination of Appendix-IIIA 1988 conducted by the Railway Board. Upon scrutiny of the answer sheets of the candidates, it was found that the answer sheets of all the three candidates tallied almost verbatim, the same. Even a wrong answer given by one also tallies with the two others but the Inquiry Officer observed that this clearly shows that the candidates had copied while



rewriting from a common source or from the answer book of one or the other candidates. Thus the Inquiry Officer is not sure whether all the three candidates had copied while re-writing from a common source or the two candidates had copied from the answer sheet of the third candidate nor there is clear findings to the effect that the applicant had at any stage adopted any unfair means or had any opportunity to re-write his answer sheet after he had handed over his answer sheet at the end of the examination at the examination centre. Thus this conclusion arrived at by the Inquiry Officer is merely based on surmises and conjectures. The Inquiry Officer further observed that the careful perusal of the record as regards tampering/substitution in the answer sheets of the Charged Officer shows a planned scheme to substitute answer sheets and gain undeserved mileage in favour of the charged officer.

14. Assuming for the sake of arguments that it is a substitution of answer sheets so then where the substitution took place and whether it was done by the applicant himself and if so at what place substitution had taken place whether at Moradabad or Delhi and it is beyond doubt that the other two candidates had joined hands with the applicant and it is he who had substituted their answer sheets. There is no evidence to this effect. The Inquiry Officer has also observed about the doubt regarding the timing and place of tampering of the answer sheets but conveniently overlooked it by observing that it is not within the purview of the Inquiry Officer to ascertain the same and rather it is observed that the same it to be considered in detail by the appropriate



authorities to evolve a full proof system for the security of such examination papers. Thus in a way before the Inquiry Officer there is no evidence about the time and place of tampering or of the substitution of the answer sheets.

15. The Inquiry Officer has based her findings only on the basis that the answer sheets of all the three candidates tallied with each other verbatim, so Inquiry Officer has drawn presumption that the applicant must have adopted unfair means to secure higher marks to qualify the examination. In our view merely on the basis of the fact that the answer sheets of three candidates appearing from different centres tallied with each other cannot be the sound basis to hold that the applicant has indulged in unfair means or had adopted unfair means at the examination centre because if tampering of answer sheets had been done at the examination centre then the examination centre of two other candidates being at Delhi and applicant being at Moradabad, the possibility of tampering in the examination centre will be ruled out.

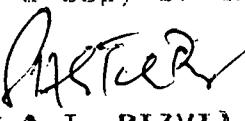
16. If at all any tampering or substitution of answer sheets had been done that had been done after the examination was over and that can be said to be done only at Delhi because the candidates with whom the answers of the applicant are tallying had appeared from Delhi, and there is no evidence that applicant had gone to Delhi to substitute his answer books simultaneously along with the other two candidates for which purpose there is no evidence. The Inquiry Officer itself on his findings had found fault with the management with regard to the scheme

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under which this tampering/substitution could take place because the Inquiry Officer had observed that actually with the connivance or gross negligence on the part of the same officials who are incharge of the answer sheets at the relevant time, had facilitated this substitution of answer sheets. But there was no evidence to that effect nor anyone, who was uncharge of the answer sheets seems to have been proceeded with the departmental enquiry, so in any case the applicant cannot be held guilty for adopting unfair means to get this name placed in the list of successful candidates.

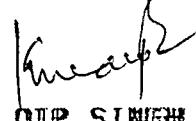
17. The learned counsel appearing for the applicant has also pointed out that even the charged officer with regard to the same answer sheets to the same question is not proved because the enquiry report itself suggest that there is lot of variation to the marks awarded to each of these three candidates. For instance in paper No.6 the applicant has been awarded 76 while Shri Jagan Lal Koli and V.K. Sharma were awarded 96 and 78 marks respectively and if the answers were verbatim the same, then probably the marks awarded to each of the candidate would be equal to each other and same is the position with regard to paper Nos. 3,4 and 5. Thus it is a clear case of perverse findings recorded by the Inquiry Officer on the basis of surmises and conjectures without any reliable evidence to hold the applicant guilty for adopting unfair means to find his name mentioned in the list of successful candidates.

18. So, the order passed by the disciplinary authority on the basis of the findings recorded by the Inquiry Officer are perverse and the same is liable to be quashed. Accordingly, we quash the order passed by the disciplinary authority and findings arrived at by the Inquiry Officer. We also quash the order passed by the appellate authority. OA is allowed with all consequential benefits. The directions may be complied with within a period of 2 months from the date of receipt of a copy of this order. No costs.



(S.A.T. RIZVI)
MEMBER (A)

Rakesh



(KULDIP SINGH)
MEMBER (JUDICIAL)