

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO. 1745/1989

DATE OF DECISION : 5.3.92

SHRI VIR SHIVAJI SHARMA

...APPLICANT

VS.

UNION OF INDIA & ORS.

...RESPONDENTS

CORAM

SHRI D.K. CHAKRAVORTY, HON'BLE MEMBER (A)

SHRI J.P. SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANT

...SHRI B.S. MAINEE

FOR THE RESPONDENTS

...SHRI B.K. AGGARWAL
FOR RESPONDENT NOS. 1 & 2

SHRI B.L. MADHOK
FOR RESPONDENT NOS. 3-10.

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?

JUDGEMENT

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J))

The applicant has been posted as PWI, Hapur in Northern Railway and has assailed the panel issued by DRM, Northern Railway, Moradabad on 7.8.89 on the basis of a selection for the post of PWI Grade-I for which selection was held on 9.5.89.

2. The applicant has claimed the relief that the impugned order, i.e., list for interview dt. 7.8.89 be quashed and as a consequence, the selection process, be also quashed, done in violation of the Railway Board's order.

De

20

3. The applicant has challenged the seniority list of PWI Grade-I, II and III issued on 4.5.89 contending that many juniors have been shown senior to the applicant in the said list for which he made representation on 10.5.89, but he was not intimated the action taken on his representation.

4. The applicant also took the examination held for the selection of PWI Grade-I on 25.5.89 though the applicant was not informed in due time as minimum period of 3 weeks was required and the notice was given to the applicant only on 7.5.89. The applicant appeared in the examination, but he was not called for interview in the list declared vide memo dt. 7.8.89 (Annexure A1). The contention of the applicant is that by virtue of the circular of the Railway Board dt. 17.4.1984 No. E (NG) I/83/PMI/65 (PNM) (Annexure A5), the questions to be set in the examination for the aforesaid selection should contain 50% of the questions of objective type and the remaining 50% of narrative type. However, in the said examination, for the aforesaid selection, there was one question only of objective type. Further it is stated that in the answer book supplied, there was no allotment of confidential roll no. as has been ordered by the Railway Board vide notification (Annexure A6).

21

It is further stated that one question on public amenities should have been given, but the same was not been given. Further it is also stated that while calling for interview, 16% aggregate is to be calculated after adding the total marks gained in the examination and the marks allotted on the basis of seniority in the cadre.

Thus on the basis of these assertions, the applicant made representation in July and August, 1989 (Annexures A7 and A8 respectively), but to no effect and the viva-voce was held on the basis of the impugned order dt.7.8.89 on 20.1.89.

5. The respondents contested the application. The persons who were also in the list of memo dt.7.8.89 and have been interviewed had also come forward to be impleaded as respondents and they have been so impleaded as respondent Nos.3 to 10. The case taken by both sets of respondents, i.e., official respondents and the private respondents is that since the applicant has taken the selection and appeared in the examination, and has failed, he cannot assail the question papers set in the examination or other alleged irregularities committed therein. It is further stated that the applicant did not make any representation after the examination. Regarding

De

the non setting of adequate number of objective type of questions in the paper, it is stated that the Railway Board's circular dt.17.4.1984 (Annexure A5) is only a guideline and not mandatory. The question papers have been set as per rules and there was also objective type question in the said examination.

6. We have heard the learned counsel for the parties and have gone through the record of the case. The respondents did not file the question papers or any record to show that the procedure which was to be adopted in the conduct of the examination in the same selection of PWI Grade-I has been fully observed. Rather, the reply filed by the respondents is vague and does not meet out the specific allegations made by the applicant in the application. The applicant has clearly alleged that the question paper which was set in the examination had only one objective type question and did not fulfil the requirement of circular of 1984 (Annexure A5) wherein 50% of the questions should be of objective type. In fact, the decision to set objective type questions has been taken by the Railway Board on representation of the union because the examinations are held at a stage when the employees are at an advanced age and it is difficult for them to answer

the questions in negative form within the prescribed three hours duration. So objective type questions were ordered to be set at least to the extent of 50%. This requirement, therefore, is based on a policy/taken by the Railway Board and the respondents have to carry out the same in such a manner that it should not affect any of the candidates in his performance. Obviously, since the official respondents as well as the private respondents did not specifically allege in the reply that 50% questions in the examination paper were of objective type, so the allegation of the applicant stands established and, therefore, that is violative of the Railway Board's circular of 1984 (Annexure A5).

7. The respondents, both official and private have argued that the said circular is a guideline, but it is not so. A similar matter came up before the Chandigarh Bench of the Central Administrative Tribunal. The case of Chunni Lal & 2 Ors. Vs. UOI & Anr. in OA 596/JK/87 was decided on 9.12.88. In the said OA, the Bench considered the issue of not setting up the objective type questions to the extent of 50% and considering the matter with the Railway Board's instructions, which have statutory force/have not been complied with, the written test held had to be

24

considered illegal and void. Similar is the case here. Here also in the examination, the question papers did not contain 50% objective type questions and so the said examination cannot be said to be in line with the circular of the Railway Board of 1984 (Annexure A5).

8. The applicant has also challenged the seniority list circulated on 4.5.89. Firstly, in his application as well as in the representation preferred by the applicant on 10.5.89 to the respondents, he has not specifically stated which of the juniors has been made senior to him in the said seniority list. Thus the pleadings in this case are vague as also the representation made to the respondents. The official respondents, therefore, have rightly pointed out that in the absence of any particular data regarding his position vis-a-vis the alleged junior has not been given. The claim of the applicant in that regard, therefore, has been rightly disallowed by the official respondents.

9. The applicant has also referred to non allotment of confidential roll number as per the instructions given in the Railway Board's circular (Annexure A6), and not setting up of one question at least on public amenities.

De

25
But since the examination has been held illegal, these matters need not be considered as there is no relevant data furnished from either side.

10. On the above consideration, the application is, therefore, allowed to the extent that the said examination held for the post of PWI Grade-I on 7.5.89 and on subsequent date as supplementary examination ^{are} cancelled and the list of the candidates who qualified and were interviewed vide Memo dt. 7.8.89 is also cancelled and the said Memo is quashed. The respondents are, therefore, directed to quash the results of the written test as well as viva-voce test held thereafter for promotion to the grade of PWI Grade-I. In the circumstances, the parties shall bear their own costs.

AKS

J. P. Sharma
(J.P. SHARMA) S. B. S.
MEMBER (J)

D. K. Chakravorty
(D. K. CHAKRAVORTY) S. B. S.
MEMBER (A)