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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.

(13)

Date of Decision: March 31, 1992.

DA 517/91

JAIMAL SINGH & OTHERS ... APPLICANTS.

Versus

UNION OF INDIA & OTHERS ... RESPONDENTS.

CORAM:

THE HON'BLE SHRI I.K. RASGOTRA, MEMBER (A).

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

For the applicants ... Shri V.P. Sharma, Counsel.

For the respondents ... Ms. Sunita Rao, Counsel.

1. Whether Reporters of local papers may be allowed to see the judgement ? *KS*

2. To be referred to Reporters or not ? *ys*

JUDGEMENT

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

The applicants, 19 in number are Goods Driver except Applicant Nos. 2, 12 and 13, who are Passenger Drivers posted in Northern Railway in Bikaner Division at Rewari. The next promotion from the post of Goods Driver scale 1350-2200 is to the post of Passenger Driver scale 1600-2640 and that is a selection post.

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2. In this application, the applicants are aggrieved by the selection to the post of Passenger Drivers in which written examination was held in the month of August and September, 1990 and the result of written examination was declared on 31.12.1990. The applicants have challenged this result on a number of grounds.

3. The applicants have claimed the relief that the result of the said selection be declared as illegal, unjust and the respondents be directed to conduct fresh selection for the post of Passenger Drivers.

4. The case of the applicants is that in the said selection the respondents have failed to follow the procedure of selection according to the Railway Board circular dated April, 1984 (Annexure A-5), enclosed with the rejoinder. Within the circular, the Railway Board has directed that the paper set in the examination should contain^d at least 50% of the questions^{of} objective type where much writing is not required in answering the question. It is stated by the applicants that the paper set in this examination did not contain 50% of the questions of objective type and as such the whole selection including this examination is against the circular of the Railway Board and is unjust and illegal. It is further stated that in the said examination many persons who are not eligible, were allowed to appear and not only that inspite of their little

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knowledge by fraudulent means they have come out successful in the written examination. It is further stated that about 65% marks have been allocated to the interview while there are only 35% marks for written examination. Thus, it is stated that the selection is totally illegal and should be cancelled.

5. The respondents contested the application and filed the reply stating that there are only 15% marks for viva-voce, 35% marks for written examination, 15% marks for seniority and 15% marks for service record, besides 20% marks for academic and other leadership qualities. It is further stated that the person named Sardara, son of Shri Mangtu did not qualify in the examination and stated that it was not necessary to pass P-18 course to be eligible to take the selection for the post of Passenger Drivers. It is further stated that objective type questions were set in the said papers and it is wrong to say that all the questions set in the papers were of such type which required a detailed written answer. Regarding Prabhu Lal and Suraj Bhan, it is stated that they are already working as Goods Driver before the selection w.e.f. April and July, 1990 respectively. Thus, it is stated that the application is devoid of merit and needs dismissal.

6. We have heard the learned counsel of both parties at length and also perused the question paper set in

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in the said selection for the written examination. On 4.3.1992, the said question papers were placed before the Bench and we have gone through the same in presence of the learned counsel for the applicants Shri V.P. Sharma and it was found that 50% of the questions set in the written paper were objective type. However, we direct^{ed} the respondents' counsel to file an affidavit that the question papers produced are the same. However, the learned counsel for the respondents has not filed the affidavit. So, the case has to be decided on the basis of the available material on record.

7. The question papers which were seen on 4.3.1992 pertaining to the examination have not been disputed by the learned counsel for the applicants and it was only to be on the safer side and to give support to the contention raised in the counter that the respondents were directed to file affidavit. In the absence of filing of the affidavit the adverse inference cannot be drawn because it was equally open to the learned counsel for the applicant to challenge the genuineness of the question papers, placed before the Bench on 4.3.1992. The contention of the applicants in the original application that no question of objective type was set up in the written examination is not borne out from any fact on record.

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8. The respondents, in their counter have specifically stated that the question papers set in the said examination were also of objective type to the extent of 50%. The applicants did not file any denial in writing of the fact that the question papers cited during the hearing of the case were not the same question papers which were in the examination for the selection of Passenger Drivers. Moreover, the question papers obviously should have been also with the applicants and there are as many as 20 applicants. So, they could have filed exemplar to show that the question papers placed before the Bench is not the same which was given in the said written examination for the selection of Passenger Drivers. The applicants, therefore, have not been able to establish this fact and it is further to be held that the question papers set in the examination for selection of Passenger Drivers also had required a number of question of objective type.

9. The learned counsel for the applicants also argued regarding percentage of marks² for the interview but that fact too is not correct as the details of various marks allotted to various discipline have been given in para-4.3 of the counter and in the rejoinder the applicants have stated that para-4.3 does not need any reply.

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10. Regarding the fact that certain un-eligible persons were allowed to take the selection, the respondents have clearly stated in the counter that Shri Sardara s/o Shri Mangtu Ram Driver did not qualify the written test and regarding the other persons Prabhu Lal and Suraj Bhan, it is clearly stated that they were eligible because they were already working as Driver Goods before the time of selection. It is further stated in para-4.7 of the counter that it was not necessary to pass P-18 course as a condition for eligibility to take the selection for the post of Passenger Driver. In the rejoinder, the applicants in para-4.7 did not rebut these contentions.

11. The respondents have also clearly stated in para-4.8 that 276 candidates were call^{ed} to appear in the written test and out of which 154 candidates were eligible for viva-voce. 76 adhoc Passenger Drivers were also call^{ed} for viva-voce examination on the basis of their performance while 30 members of staff who were working as adhoc Passenger Drivers could not be declared eligible because of their week performance in the written examination.

12. In view of the above facts we find that the applicants could not show that the examination for the post of Passenger Driver was in any way not according to the circular of the Railway Board of April, 1984

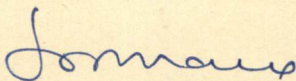
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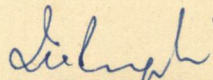
(Annexure A-5), and nor they could show that the necessary procedure prescribed according to the extant rules has not been followed.

13. The learned counsel for the applicants has placed reliance on the judgement of the CAT in OA 596/87 of Chandigarh Bench decided on 9.12.1988 Chunni Lal and 2 Others Vs. UOI, but this judgement does not help the applicants because in that case the question papers set in the written test were not of objective type. The learned counsel for the applicants has also placed reliance on a decision of Bombay High Court in Kumari Jyoti Vs. Maharashtra Board of Secondary and Higher Secondary Certificate Examination, reported in AIR 1988 page 176. The facts of the case are also totally different, where an examiner^e gave lessor marks and the said practical examination was vitiated by bad faith.

14. In view of the above discussion we find that the present application is devoid of merit and, therefore, is dismissed leaving the parties to bear their own costs.


(J.P. SHARMA)
MEMBER (J)

31.3.92


(I.K. RASGOTRA)
MEMBER (A)

31/3/1992