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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI.

OA No.1411/92

Date of decision:- 23.7.92

Sh.R.K.Mudgal

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Applicant

versus

Union of India & anr.

...

Respondents

CORAM: THE HON'BLE MR.T.S.OBEROI, MEMBER(J)
THE HON'BLE MR.I.K.RASGOTRA, MEMBER(A)

For the Applicant

...

Sh.K.N.R.Pillay, counsel

For the Respondents

...

Sh.H.K.Gangwani, Counsel

1. Whether the reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*

JUDGEMENT

(DELIVERED BY HON'BLE MR.T.S.OBEROI, MEMBER)

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant is aggrieved of the question paper for the examination for selection of Office Superintendent Grade II, as well as for the supplementary examination, held on 22.3.92 and 29.3.92, respectively, not being in accordance with the provisions contained in Para 219(c) of the Indian Railway Establishment Manual, to be 50% of the nature of objective type questions. In other words, his grievance is that the question paper set for the aforesaid examination, included examination involving literary ability and ability to write essay type answers, which is not the intention of the provisions contained in Para 219(c) *ibid*. After the filing of the OA and on considering the prayer for interim relief, the respondents were directed not to announce the results of the selection till 9.6.92, which was later extended, and is still in operation. The applicant has prayed

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for cancellation of the written tests held on the aforesaid two dates.

2. In the counter filed on behalf of the respondents, the applicant's prayer was opposed. By way of preliminary objection, it was contended that the applicant had not waited for the prescribed period of six months before filing the present OA, in accordance with Sections 20 & 21 of the Administrative Tribunals Act, 1985. It was also averred that the applicant had availed of the chance, by taking up the test on 29.3.92, in the supplementary examination, and having not done well, has come by way of the present OA, as a device to continue to avail of the benefit of his ad hoc appointment as Office Superintendent Grade-II. The OA was also objected to on the ground that the applicant is serving in the Jhansi Division, and without appropriate orders under Section 25 of the Administrative Tribunals Act, 1985, this OA should not have been filed in the Principal Bench, rather it should have been filed with the Allahabad Bench of the Tribunal.

3. Rejoinder has also been filed on behalf of the applicant, in which the contentions put forth in the OA are broadly reiterated.

4. The respondents have filed a Misc. Petition seeking vacation of the interim order passed in the case on 28.5.92, directing the respondents not to announce the results of the selection, submitting

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that this is causing hardship to some of the other candidates, who had taken up the said test, as their results have been withheld. Another Misc. Petition has been moved on behalf of the respondents, seeking dismissal of the OA on the ground of having not availed of the departmental remedies, in accordance with the provisions contained in Sections 20 & 21 of the Administrative Tribunals Act, 1985. Though no reply to these Misc. Petitions have been filed on behalf of the applicant, as the pleadings in the case were complete, it was agreed to, by both the sides that the OA may be disposed of, at the stage of admission itself. Arguments were accordingly heard on behalf of both the sides. The question papers set for the tests held on 22.3.92 and 29.3.92 were also placed on record.

5. We have heard the learned counsel for the parties and have perused the material on record, including the question papers. It was pleaded by the learned counsel for the respondents that question No. 1, 2, 4 and 7 for the test held on 29.3.92 taken up by the applicant were objective type. It was further pleaded on behalf of the respondents that no hard and fast criterion can be laid down to show as to which particular question strictly falls within the definition of objective type questions, or otherwise. The learned counsel for the applicant, on the other hand, pleaded that the very perusal of the question papers would

show that they involve descriptive type of answers, the term is and hence not objective type as/normally understood.

6. We have given careful consideration to the rival contentions, as discussed above. We do not feel impressed by the arguments advanced by the learned counsel for the applicant. There can be no precise definition of objective type of question as such. Moreover, the applicant himself having chosen to take up the examination, now it does not behove him to challenge the said decision, on the grounds he has done, the questions being not objective type. The reasons seem to lie elsewhere, as urged by the learned counsel for the respondents that having not done well in the test, he has sought to retain the benefit of his ad hoc appointment as Office Superintendent Grade-II. There is also no prior approval of the Hon'ble Chairman to file the present OA in the Principal Bench, rather than in the Bench in which the territorial jurisdiction of the case normally falls.

7. In result, we do not find any merit in the present OA, which, accordingly is dismissed with no order as to costs. The interim order granted on 28.5.92 is also vacated.

(Signature)
(I.K.RASGOPI) 23.7.92
MEMBER(A)

(Signature) 23.7.92
(T.S.OBEROI)
MEMBER(J)