

CENTRAL ADMINISTRATIVE TRIBUNAL
A LLAHABA D BENCH
ALLAHABAD

Original Application No. 1197/97

Transfer Application No.

Date of decision 5.5.2000

Lal Ji Kanaujia & Ors Applicant(s)

Shri Saumitra Singh Counsel for the
Shri J. Sahai applicant(s)

VERSUS

Union of India & Ors. Respondent(s)

Shri A. K. Gaur Counsel for the
respondent(s)

COURT :-

Hon'ble Mr. Rafiq Uddin, J.M.

Hon'ble Mr. S. Biswas, A.M.

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordship wish to see the fair copy of the judgement?
4. Whether to be circulated to all Benches?

Rafiq Uddin

(SIGNATURE)

(Pandey)

(21)

CENTRAL ADMINISTRATIVE TRIBUNALALLAHABAD BENCH, ALLAHABAD.ORIGINAL APPLICATION NO. 1197 of 1997Allahabad, this the 5th day of May 2000.

CORAM : Hon'ble Mr. Rafiq Uddin, Member (J)

Hon'ble Mr. S. Biswas, Member (A)

1. Lal Jee Kanaujia

S/o Heera Lal,

working as Head Clerk,

Northern Railways,

Allahabad.

2. Rakesh Chandra,

S/o Shri R.S. Verma

working as Head Clerk in Northern Railway,

Allahabad.

.... Applicants.

C/a Shri Saumitra Singh

Shri J. Sahai

Versus

1. The Union of India, through General Manager,
Northern Railway, New Delhi.

2. The Chief Personnel officer

Northern Railway, Baroda House,

New Delhi.

3. The Divisional Railway Manager,
Northern Railway, Allahabad.

.... Respondents.

C/R Shri A.K. Gaur

O R D E R

(By Hon'ble Mr. Rafiq Uddin, Member (J))

Under challenge is the validity of the order
dated 17.02.1998 of Senior Divisional Personal Officer,

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Northern Railway, Allahabad. The applicants have also sought direction to be issued to the respondents to complete the selection process for the post of Office Superintendent Grade II by holding a viva voce test and to restrain the respondents from holding fresh selection for the aforesaid post.

2. Both the applicants at present are working as Head Clerks in the Personal Branch of Northern Railway, Allahabad. Both the applicants are eligible for next promotion for the post of Office Superintendent Grade II in the pay scale of Rs. 1600-2660/- which is a selection post. The selection to this post is made in accordance with the provisions contained in para 215 of the India Railways Establishment Manual Volume I (IREM).

3. The selection for the post of Office Superintendent grade II consist of written test and viva voce. The written test for selection in question was held on 06.06.1997 and on 21.06.1997. In all 63 candidates including both the applicants appeared in the written test. The result of the written test was declared on 09.09.1997 in which both the applicants and one Srimati Vidyawati were declared successful. A true copy of the result of written test has been annexed as Annexure-8.

4. The case of the applicants is that on 09.09.1997 both the applicants made an application to the Senior Divisional Personal Officer Allahabad giving their consent for appearing in the viva voce

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test on any date fixed for the purpose. It was also requested that the date for viva voce be fixed by the railway administration. A copy of the aforesaid application dated 09.09.1997 has been annexed as Annexure No. 9. It is stated that 29.09.1997 was also fixed for viva voce test vide letter dated 19.09.1997 a copy of which is annexed as Annexure No. 10. However, no viva voce test was held on 29.09.1997 and no further date was fixed for this purpose. The applicants have alleged that since some of the office bearers of Railway Mazdoor Union, who were also candidates for the selection in question, could not succeed in the written test hence under their pressure and on their various representations the respondents are not holding viva voce test and this inaction on the part of the respondents is malafide. The applicants apprehend that the respondents will not hold any viva voce test for completing the selection hence, they have filed the present petition.

5. It appears during the pendency of this O.A. the Senior DPO Allahabad vide his letter dated 17.02.1992 has informed that the selection in question has been cancelled by the competent authority. A copy of aforesaid order has been annexed as Annexure No. 1. It is alleged that since the impugned order dated dated 17.02.1998 does not contain any reason for cancellation of the selection, the same is arbitrary malafide and deserved ~~and~~ ~~xxxxxx~~ to be set aside. It is also claimed that the impugned order has been passed without giving any opportunity of being heard to the applicants, hence, the same has been passed

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in breach of the principle of natural justice. It is further pleaded that the selection in question has been cancelled on account of pressure exercised by Northern Railway Employees Union because their office bearers could not succeed in clearing the written test.

6. The respondents have contested the application of the applicants on the ground that after declaration of the result of the written test it was brought to the notice of the Railway administration that the written examination was irregular being held against the guidelines and directions of the Railway Board. It has also contended that the applicants have no right that a particular examination be continued and it is the duty of the administration only to see that the selection process has been done properly.

7. We have heard learned counsel for the parties and also perused the records.

8. It is not in dispute that the selection for the post of Office Superintendent grade II is made in accordance with the provisions contained para 215 of the IREM Volume I which inter alia provides for holding the selection on the basis of written test and viva voce test. The main question for determination in this application is whether the respondents have validly cancelled the selection process by impugned order dated 17.02.1998. The aforesaid order which is annexed as Annexure 16 is reproduced below:-

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NORTHERN RAILWAY

OFFICE OF THE DIV. RLY.
MANAGER, ALLAHABAD

No: 753-E/E.0.5/Selection/95
Dated: /7/ February, 1998

All Supdt. of 'P' Branch/ALD
OWLI/Hd. Qrs./ALD, CPI/Hd. Qrs./ALD
CLA/ALD, E. Confidential and
Principal, N.R. Inter College/Tundla.

Sub: SELECTION OF O.S.-II Personnel Branch,
Grade Rs. 1600-2660/- (RPS)/Rs. 5500-9000/-

It is informed that the selection for the post of O.S-II Grade Rs. 1600-2600/- (RPS)/Rs. 5500-9000/- (RPS) of Personnel Branch initiated vide this office letter of even number dated 15.05.1997, 02.06.1997, 18.06.1997, 09.09.1997 and 29.09.1997 has been cancelled by the competent authority.

Concerned staff may be advised accordingly.

for Sr. Div.
Personnel Officer,
Allahabad.

9. It has been contended by the learned counsel for the applicant the impugned order cannot be sustained as the same is arbitrary and malafide. It is contended that after restructuring of the cadre in the year 1993 no selections were held for the post of Office Superintendent grade II in the office of the personal branch of Divisional Railway Manager, Allahabad till 1997. It is stated that notifications for selections were issued on several occasions for example in the year 1994, 1995 and 1996 but each time they were postponed and finally cancelled without holding any written examination on one ground or other. Whereas Master Circular No. 31 issued by the Railway Board provides that selection to the selection post should be held annually. The respondents have not followed the instructions of the Railway Board in respect of the selection for the post in question. Even the selection in question was taken to the

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list on conducting written examination on 08.06.1997 and 21.06.1997 and even date for viva voce test was fixed on 29.09.1997 but on account of political and employees union interference it has again been cancelled. In support of his contention, the learned counsel for the applicant has mentioned that the Branch Secretary of Uttar Railway Mens Union R.K. Mishra one K.P. Nandi delegates of Northern Railway Mens Union appeared in the written examination but did not qualify in the written examination. Hence, both the unions started exerting political pressure by filing various representations for getting the entire selection cancelled. The learned counsel for the applicants have filed the copies of representations made by politicians namely Bhola Singh as MLA, R.B. Patel ex-MLA and complaints and representations made by the Railway Employees Unions are also available on the record. The learned counsel has already drawn our attention to the Railway Board's Circular dated 5/6.11.1997, a copy of which has been annexed as Annexure 15 in which inter alia it has been provided that selection process should be finalised within a time period of 90 days. The learned counsel for the applicants has also urged that the impugned order has been passed during the pendency of the present O.A. and after this Tribunal granted last opportunity to the respondents to file Counter Affidavit, hence, it is contended that the respondents have acted in arbitrary manner by passing the impugned order. The legality of the order has also been challenged on the ground that applicants have not been given any opportunity of hearing before passing the impugned order.

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10. The learned counsel for the applicants has pressed the point that the impugned order is cryptic, and non-speaking without giving any reasons.

11. The learned counsel for the respondents have on the other hand contended that the selection has been cancelled as an irregularity in the examination was noticed which was against the guidelines and directions of the Railway Board and the same has been cancelled in accordance with the provisions of the extent rules. The applicants have no legal right that a particular examination should be continued.

12. It is evident from the perusal of the impugned order that the respondents have not disclosed any grounds in the impugned order to justify the cancellation of the selection process. The respondents even in their counter reply have also not disclosed or stated any irregularity having been committed in the written examination.

13. The main thrust of the arguments of the learned counsel for the respondents is that the order of cancellation of the selection is not open for judicial review. However, while court cannot interfere with the policy matters of the administration and decision taken on that basis but the court can certainly look into the matter whether the decision, taken is vitiated by arbitrariness, unfairness, illegality or irrationality? In other words when the decision is such as no reasonable person on application of mind could take or procedural impropriety can be looked by the court. It is to be seen whether wrong is of such

a nature as to require intervention and if it is such a case the court would set right the decision making process without substituting its own opinion as expert. Considering the facts and circumstances of the present case we find that the impugned decision taken by the respondents in cancelling the selection in question is patently illegal and has been passed in arbitrary manner without any justifiable reason and consequently cannot be sustained.

14. As stated above the decision to cancel the selection in question has been taken without disclosing any reason. We find that the material on the record clear indicates that the decision has been taken under pressure from politicians and employees unions. The administration should have not succumbed to such pressure and should have acted fairly.

15. We are conscious of the fact that the applicant has no legal right for appointment if his name is included in the list of the successful candidates. But it is also necessary on the part of the respondents to act fairly. We also agree with the views expressed by Allahabad High Court in, "Shri Amar Nath Singh Vs. Union of India and Others" reported in 1998 (volume II Local Bodies and Educational Service Reporter page 22) that a selection process is not sacrosanct. It can be cancelled, scrapped or annulled if there is concrete and reliable evidence of large scale bungling, malpractice, corruption, favouritism and nepotism. But at the same time there should be wealth of material to take the extreme and drastic step of scrapping the whole recruitment process, particularly when it was reached

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the final stage. The cancellation or scrapping of the recruitment has very serious repercussions and impact not only on the candidates who have undergone the rigorous of the test but also on the department itself.

15. In the present case we find that there is no material to conclude that the impugned decision to cancel the selection has been taken malifidely but certainly it has been taken in arbitrary and unreasonable manner and without justifiable reason.

16. We, therefore, find force in this O.A. and allow the same. Consequently the order dated 17.02.1998 is set aside. The respondents are directed to complete the selection process by holding viva voce test and declaring the result of the successful candidates within three months from the date of communication of this order.

There will however, be no order as to costs.

S. Biju
Member (A)

R. A. V. Reddy
Member (J)

/S.P./