

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 180 of 1998

alongwith

Original Application No. 750 of 1999

Allahabad this the 3rd day of July 2000

Hon'ble Mr. S.K. I. Naqvi, Member (J)
Hon'ble Mr. M.P. Singh, Member (A)

O.A. No. 180 of 1998

Vinod Kumar Mani Tripathi, S/o Shri Harihar Nath Tripathi, R/o 3/8, Circular Road, Allahabad, State of U.P.

Shri V.K. Shukla,
Shri J.N. Sharma,
Shri J.J. Munir, Advocate

Applicant

Versus

1. Union of India through its Railway Recruitment Board, Allahabad through its Chairman.
2. Shri S.P. Saroj, Ex-Chairman, Railway Recruitment Board, Allahabad at present residing at Bhangawa, Chingi, Pratapgarh.
3. Shri Nripendra Singh, National Academy of Computer Learning, R/o Judges Colony, Staneley Road, Allahabad.
4. Ravi Shanker Gupta S/o Sri Triveni Prasad Gupta, R/o 84/16 G, Pura Dalel, Tilak Nagar, Allahabad.
5. Gufran Siddiqui S/o Sri Kutubuddin Siddiqui, R/o 7-A, Mirzapur Road, Naini, Allahabad.

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6. Subhash Chandra Dwivedi, S/o Sri Kshitishwar Dubey, R/o Village Mawaiya Kala, Post Naribari, District Allahabad.
7. Jitendra Nath Tiwari, S/o Sri Gorakh Nath Tiwari, R/o Village Bahuara, Post Bighai, District Ballia.

Respondents

By Advocate Shri A.K. Gaur (Official respondents)
Shri Sudhir Agrawal (private respondents)
Shri H.S. Srivastava (for respondent no. 3)

O.A. No. 750/99

1. Subhash Chandra Dwivedi, A/o 30 years, S/o Sri Kshitishwar Dubey, R/o Mawaiya Kala, P.O. Naribari, Allahabad.
2. Ravi Shanker Gupta A/a 28 years, S/o Sri Triveni Prasad Gupta, R/o 84/16-G, Puraglane, Tilaknagar, Allahpur, Allahabad.
3. Jitendra Nath Tiwari A/a 29 years, S/o Sri Gorakh Nath Tiwari, R/o Village Bahuara, P.O. Bighai, Distt. Ballia.
4. Gufran Siddiqui, Son of Sri Qutubuddin Siddiqui, R/o 7-A, Mirzapur Road, Naini, Allahabad.

Applicants

By Advocate Shri Sudhir Agrawal

Versus

1. Union of India through the Secretary, Ministry of Railways, Rail Bhawan, New Delhi.
2. The Railway Board, Rail Bhawan, New Delhi through its Chairman.
3. The Railway Recruitment Board, New Annexi Building, D.R.M. Compound, Allahabad through its Chairman.

Respondents

By Advocate Shri A.K. Gaur

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O R D E R

By Hon'ble Mr.S.K.I. Naqvi, Member (J)

Shri V.K.M. Tripathi-applicant in O.A.No. 180/98 and Shri Subhash Chandra Dwivedi and other applicants in O.A.No. 750/99, have come up impugning the orders passed by Railway Recruitment Board in respect of examination held to fill in 7 posts of Section Engineer Grade I, Category 4 advertised vide Employment Notice No.3/96-97 dated 01-7th March, 1997, Employment News. Since both these matters are inter-connected, hence it is found expedient to decide both the O.A.s through this common judgment.

2. Shri V.K.M. Tripathi approached the Tribunal when he did not find his name amongst those candidates who were called for interview to be held on 27.2.1998 inspite of fact that those who were lower in the merit list and secured lesser marks than him in the written examination, were called. Shri Tripathi assailed the result by mentioning that his name has been deliberately deleted from the select list because of bungling done by the respondent no.2 and 3 for their personal gains.

3. S/ Shri Subhash Chandra Dwivedi, Ravi Shanker Gupta, Nitendra Nath Tiwari and Gufran Siddiqui got themselves impleaded in O.A.No.180 of 1998 and filed their separate counter-reply in which they, by and large, adopted the pleadings as come up in the counter-affidavit of

Gurunam Singh Rekhi. They also brought separate O.A.No.750/99 seeking direction to the respondents to publish final result for the post of Section Engineer Grade I and to appoint the applicants incase they have been finally empanelled.

4. The respondents contested both the cases and in O.A.No.180/98 filed the counter-affidavit of Shri Gurunam Singh Rekhi in which the allegation of manipulation and mal practice have been specifically denied and it has been asserted that it was fairly conducted examination. He admitted that Shri V.K.M. Tripathi secured 106 marks out of 120 and got fourth position in the written examination but he was not called for the interview because of deficiencies in his application form for not having mention the Employment Notice number, post and category thereof for which his candidature was cancelled. He has also taken exception to the fact that this applicant could have confidential information regarding his marks and position in the written examination.

5. Shri S.P. Saroj and Shri Nripendra Singh respondents no.2 and 3 respectively, have also filed their separate counter-affidavits and denied the allegations made against them.

6. In O.A.No.750/99, Shri P.K. Gupta Chairman, Railway Recruitment Board has filed his affidavit to contest the case.

7. The Misc. Applications No. 1784/99 and 2699/99 brought a major development in the proceedings. Through these applications, the railway administration has sought for permission to cancel the written examination held earlier and to conduct re-examination to ensure fair selection for the post of Section Engineer against Employment Notice No. 3/96-97 on the ground that some irregularities and mal practices were adopted in the examination which is in question in the present O.A. In support of this contention, Shri P.K. Gupta, Chairman, Railway Recruitment Board, Allahabad, has filed his affidavit in which he has mentioned that irregularities and mal practices have cropped in the examination by wilful negligence or otherwise of the firms engaged in evaluation of answer sheets besides lack of precaution and due care on the part of Railway Recruitment Board, Allahabad. Sri P.K. Gupta, Chairman, Railway Recruitment Board, Allahabad, has also mentioned that the confidentiality of marks obtained in the written examination were leaked out much before the Interview and this leakage of marks obtained by a particular candidate is very serious in nature and the Interview Committee can get influenced, by the candidate vitiating the whole selection process. It has also been mentioned that on the basis of recommendation of the then Chairman, the Railway Board has cancelled the examination of 12 categories vide letter dated 11.09.1998 but the examination under reference was not cancelled because of pendency of the cases in the Court. In respect of thispg.6/-

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examination, letters dated 24.03.99 and 22.04.99 have been annexed with this affidavit. In the counter-reply filed by the respondents in O.A. No. 750/99, it has been averred that the Railway Board vide their letter dated 22.04.99 advised the Chairman, Railway Recruitment Board to take leave of the Hon'ble Tribunal to cancel the written examination for the post of Section Engineer in the light of irregularity and mal practice committed in the selection. In para-18 of this counter-reply, it has been elaborated that apart from factual ~~inaccuracy~~ manipulations and leakage of confidential information to the unauthorised persons, the Chairman, Railway Recruitment Board, conduct a ~~sample~~ investigation of top 4 candidates of merit list and found astounding revelations to the effect that all the 4 answer sheets were found apparently having forged signatures of Invigilator when compared to batch of corresponding answer sheets. Signatures appeared to be 'unsure' and on hesitant lines which are not in flowing manner. The answer sheets are thicker, yellowish and different from the batch. The booklet series stamped manually on the backside of the answer sheets have different colour of ink, font and style of the stamp as compared to its batch. Further question No.120, a descriptive type, requiring the candidate to write four or five lines, was not attempted to all though were 'top' students as per the merit list, presumably to camouflage their handwriting. Since the selection proceedings could

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not be further processed in the face of such glaring acts of irregularities and mal practices the Railway Board desired to seek leave of this Tribunal for cancellation of the examination.

8. The above referred applications by the respondents seeking permission to cancel the examination, have been contested by the applicant mainly on the ground that the reasons mentioned on behalf of the respondents are not acceptable. The facts mentioned in the counter-reply of O.A. No. 750/99 have been controverted in the rejoinder affidavit with the mention that the respondents are proceeding on conjectures and surmises without any proper and detailed inquiry made by any competent authority and thus, the action being taken by the respondents for cancelling the entire selection is wholly arbitrary and discriminatory. It has also been mentioned that infact, as the respondents have not found any illegality or mal practice in the present selection but in the garb of seeking leave of the Tribunal, they are trying to have judicial sanction against their illegal action, which is wholly contrary to law and thus, it is mischievous on the part of the respondents and the such action of the respondents is liable to be condemned and quashed by the Tribunal.

9. Heard, the learned counsel for the rival contesting parties of both the cases and perused the record.

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10. We also had occasion to go through the letter dated 20.9.99 by the present Chairman of Railway Recruitment Board to Railway Board regarding 'sample investigation' in respect of alleged irregularity in the examination and we also perused the selection proceedings, which were presented before the Tribunal in compliance of direction in this regard.

11. First of all we take up the case of Shri V.K.M. Tripathi whose candidature has been cancelled on the ground that this form was not complete for not having mentioned the Employment Notice number, post and category thereof. No doubt, as per conditions mentioned in the application form, it could be rejected for having not been completely filled in in respect of necessary informations. We agree that technically R.R.B. is within its rights to cancel his candidature but we cannot close our eyes from the fact that the information as given in the form was sufficient to fix-up the candidate and ascertain his candidature by issuing Admit Card and preparing the mark sheet and the result of written test. There is pleadings from the side of the respondents that there are two stages for scrutinising the application form and eligibility of the candidates and the defects in the form of this candidate could be detected during the second scrutiny. We are of the view that no human being can claim to be absolute and no mistake or error can come from him, there

from him, there are the cases of human error and a person shall not be penalised for the same. Therefore, the proper course of action for R.R.B. should have been in such cases, to call and ask the candidate to fill up in the omission and it should not have rejected the application form on such technicalities.

12. Now we take up the application of the respondents for permission to cancel the examination in question which will affect both the matters under consideration. These applicants were moved during the pendency of the matter but order thereon was deferred and were to be taken up during the final hearing of the case because an order on these applications, finally decides the whole matter.

13. As mentioned above, Shri P.K. Gupta, the present Chairman of the Railway Recruitment Board has filed his affidavit mentioning therein the situation under which the Railway Board took a decision to move the Court for permission to cancel the examination in question. The respondent no. 4, 5, 6 and 7 in O.A.No.180/98 and the applicants in O.A.No.750/99 as well as the applicant in O.A.No.180/98 have strongly opposed this move by the official respondents mainly on the ground that the reasons mentioned on behalf of the respondents are not legally acceptable being passed on conjectures and surmises without any

proper and detailed inquiry made by competent authority and thus, the proposed action by the respondents for cancellation of entire selection is wholly arbitrary and discriminatory. It has also been mentioned that infact the railway authorities did not find any illegality or mal practice in the present selection, but in the garb of seeking leave of the Tribunal, they are trying to have judicial sanction against their illegal action which is wholly contrary to law and thus, it is mischievous on the part of the respondents, which is liable to be condemned and quashed by the Tribunals.

14. During the course of arguments, learned counsel for the respondents took us through the cases decided by the Allahabad Bench of Hon'ble High Court of Judicature Amar Nath Singh and Others Vs. Union of India published in 1998(3) U.P.L.B.E.C. page 1185. In that case, the learned Bench of the Hon'ble High Court was concerned with the controversy of almost similar nature and has dealt it in detail after taking into consideration the case law on the point and has settled that the factor of bonafide, fairness and reasonableness is to be assessed before passing any order in the matters in which the examination has been cancelled or permission is sought to cancel the same. In

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para-20 of the judgment, the Hon'ble Court has observed as under;

"Therefore, to arrive at a decision on reasonableness, the Court has to find out if the administrator has left out relevant factors or taken into account irrelevant factors. The decision of the administrator must have been within the four ~~comers~~ ^{corners} of the law, and not one which no sensible person could have reasonably arrived at, having regard to the above principles and must have been a bona fide one. The decision could be one of many choices open to the authority but it was for that authority ~~to~~ ^c to decide ~~upon~~ ^c the choices and not for the Court to substitute its view."

15. In the present matter, we find that the railway department has moved for permission to cancel the examination and the examination held has been depriated on the ground of irregularities and mal practices for which the present Chairman Claims to have conducted a sample investigation and found some glaring irregularities and incidence of mal practice. We do not find there is anything like sample investigation. If some matter is to be probed, it shall be probed in all respects before coming to a definite conclusion. In this sample investigation, it is said that the Investigating authority found some apparent forgery in the signatures of Invigilators, difference in the colour and picture of the answer sheets, and difference in color in the ink through which the booklet series were stamped manually. It is settled legal position that where 'primary and direct evidence' is available, no conclusion shall be drawn on the basis of 'indirect and secondary evidence.' If any doubt ~~was~~ ^c was found, regarding the signature of Invigilator on the answer-sheets, the proper course of action

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would have been to examine the Invigilator and the fact verified, who could also explain regarding change in colour and texture of the answer-sheets likewise the stamp position could also have been verified from the person who was responsible to put stamps on the answer sheets. In the absence of this better available evidence, the finding based on only opinion and personal observation, cannot be upheld to be bonafide, fair and reasonable. The conclusion drawn that a particular ~~case~~ ^{question} was not attempted by a section of candidates, who could find their position in the merit list, can also not be a ground to kill their legitimate expectations. We can also not ignore the averment of Shri Gurunam Singh Rekhi, the then Chairman, Railway Recruitment Board, Allahabad in his affidavit, sworn on 10.3.1998 and has been summed up as under;

"The interview has since been conducted on 27.2.98 by a panel of 7 members and the selection process has been finalised with due fairness and there is no ground which may warrant interference of this Hon'ble Tribunal for further withholding the result of 7 successful candidates who await their employment opportunity."

16. For the above, we do not find good ground to accord permission sought for through misc. applications no. 1784/99 and 2699/99 and the same is refused.

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17. With the above discussion, we find that the relief sought in O.A.No.180/98 deserves to be allowed only to the extent that the applicant V.K.M. Tripathi shall be allowed to appear before the Interview Board in respect of examination in question for which the order cancelling his candidature, is quashed *in the light of the observation in para 11 above.*

18. We also find merit in the O.A.No.750 of 1999, which deserves to be allowed.

19. With the above position in view, we direct the respondents that Shri V.K.M.Tripathi applicant in O.A.No.180/98 be called for interview within 2 weeks of communication of this order, and within 1 week thereafter final result for the post of Section Engineer Grade I recruitment whereof commenced vide Advertisement No.3/96-97, published in the Employment News dated 01-7th March, 1997 (Category-IV) be declared and candidates who are finally empanelled be appointed, as such.

m.R.P.
Member (A)

S.G.M.
Member (J)

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