

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABA D BENCH

ALLAHABAD BENCH

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DATED THE 12 TH DAY OF MARCH 1998

CORAM : HON'BLE MR. S.DAYAL, A.M.

HON'BLE MR. D.V.R.S.G.DATTATREYULU, J.M.

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ORIGINAL APPLICATION NO.62 OF 1998

1. E.H.Khan son of A.K.Khan  
working as Senior Section Officer  
(Accounts) DLW, Varanasi.
2. J.P.Pandey son of B.P.Pandey  
working as Senior Section Officer,  
(Establishment) DLW, Varanasi.
3. S.N.Misra son of G.P.Misra  
working as Senior Section Officer  
(Purchase suspens) DLW, Varanasi.
4. S.K.Srivastava son of Shyam Krishna Srivastava  
working as Senior Section Officer,  
(Inspection) DLW, Varanasi.

.... Applicants

C/A Shri S.K.Om, Advocate

Versus

1. Union of India through General  
Manager, DLW, Varanasi.
2. Financial Advisor and Chief Accounts  
Officer, DLW, Varanasi.
3. Sri Guman Kumar son of not known  
working as Financial Advisor, Chief  
Accounts Officer, DLW, Varanasi.
4. Deputy Chief Accounts Officer (G)  
DLW, Varanasi.
5. N.B.Shaha son of not known  
working as Senior Section Officer  
(Stores Bill), DLW, Varanasi.

CONT

6. S.P. Sinha son of not known  
working as Senior Section Officer  
(store purchase) DLW, Varanasi.
7. V.K. Bajpai son of K.L. Bajpai  
working as Senior Section Officer  
(store Finance) DLW, Varanasi.
8. A.K. Saxena son of not known  
working as Senior Section Officer  
(pension) DLW, Varanasi.

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Respondents

C/R Shri Amit Sthalekar, Advocate.  
Shri Sudhir Agrawal, Counsel for Respondent Nos. 5, 6, 7 & 8.

ORDER

By Hon'ble Mr. D.V.R.S.G. Dattatreya, A.M.-

This petition is filed under section 19 of the Central Administrative Tribunals Act to recall for the records and issue a writ in the nature of certiorari quashing the result of the examination dated 10.1.1998 and also the letter dated 12.1.1998, ~~to hold~~ in pursuance of the said notification dated 19.11.97 and also to direct the respondents to hold afresh examination and any other reliefs in this matter.

2. The petitioners alleged in the petition that the petitioner no.1 was initially appointed on 19.10.1973 as Clerk Group II and subsequently he was promoted as Clerk Grade-I and subsequently as Senior Section Officer on 12.2.88. The petitioner no.2 was also promoted as Senior Section Officer on 21.7.88. Likewise petitioners nos.3 and 4 also were promoted as Senior Section Officers in the year 1989. The work <sup>and</sup> ~~conducted~~ of these petitioners is stated to be satisfactory. Further allegation is to the effect that on 19.11.1997 respondent no.2, issued the notification for the selection of Group 'B' category for the post of Assistant Accounts Officer in the scale of Rs.2375-3750-7500-12000. The notice is stated to be for four vacancies under 70% quota. In the said notification the petitioners were found



as suitable candidates in serial no.1,3,4 and 6 to appear to the examination. The examination was fixed on 10.1.98. It is stated that there is no specific syllabus provided with regard to the scheme of the examination to be conducted on 10.1.98. But the programme for the selection of coaching for the examination was given for the purposes of this examination. It is stated further that the respondent<sup>w</sup> no.3 is interested in the selection of his own persons including respondent no.8. It is also alleged that three persons appeared only from Stores section who are respondent nos. 5,6 and 7. The written test was held on 10.1.98 but the question paper was very irregular. It is stated that the Railway Board has made some changes with regard to Traffic accounts. There is no question at all with regard to general expenditure budget and establishment. The further allegation is to the effect that 10% marks shall be allowed to the official Rajya Bhasha language. In the question papers 17 ~~persons~~<sup>persons</sup> were ~~alleged~~<sup>alleged</sup> and the examination was not conducted properly. It is also stated in paragraph 20 that the respondents 6,7 and 8 were asked to be examined medically which shows that the respondent is interested in selecting them. Therefore, the entire selection is to be quashed.

3. In the counter filed on behalf of the respondent nos. 5 to 8, the allegations made in the petition are ~~given~~<sup>denied</sup> parawise. It is stated that there is no person by name S.P.Srivastava working as Senior Section Officer. It is stated that the petition~~er~~ is not maintainable either on the facts or on the law. It is stated that section officers, Senior Section Officers can be posted in the vacancies of accounts (Administration) etc. According to this counter affidavit it is stated that the respondents are in serial nos.7,2,5 and 8 respectively while the applicants are at



1,3,6 and 4. It is stated that as there is no practical syllabus prescribed for the written test, the reference has to be made para 204(2) of the Indian Railways Establishment Manual, Vol.I Revised Edition 1989, it is stated that it reads as follows:-

204.2 "The question papers for the written test should be practical bias i.e. it should be designed to test the ability of the candidates to tackle the practical problems they are likely to face rather than their theoretical knowledge. It is in view of this that no syllabus has been prescribed for the written test except the written examination for the post of Assistant Personnel Officer of the Railway depending on the local conditions/practices should set papers."

The coaching arrangements are only intended to give some <sup>guide</sup> lines but not for the purpose of syllabus. It is stated that the question papers are accurate and the marks are correct. There is no connection between the officials, <sup>and</sup> these respondents and therefore the question of any sort of <sup>interest</sup> ~~entrusted~~ by the officials in these respondents will not arise. The results were announced on the basis of the performance. The application is liable to be dismissed as there are no merits. In the counter reply filed on behalf of respondent nos.1 to 4 it is stated that there are no merits in the petition and the petition is liable to be dismissed on facts as well as on law. It is stated that 70% of the vacancies are filled in on the basis of selection as laid down in Chapter II Section A Rules governing promotion of subordinate staff contained in rule 201 to 209 of IREM Vol.I read with Railway Board's letter No.E(GP)88/2/111 dated 20.8.91 and No.E(GP)92/2/23 dated 16.11.92. It is stated in paragraph no.4 that the scheme of examination is to test besides ~~theoretical~~ <sup>practical</sup> other practical aspects of accounts and finance working. The 10% of the total marks of the written test is to be



set on official language policy and official language rules but the questions on official language policy under rules are to be made compulsory. It is not mandatory on the part of the employee to attempt the questions pertaining to official languages and rules. The questions were set as per the directions laid down in Rule 204.2 of IREM Vol.1. In the coaching classes, subjects on the aspects were mentioned, to the candidates. It is specifically stated as follows:

"However, in the last period of coaching classes, it was also made clear to the candidates that there may be one question each from Traffic Account & Official language. It was also made clear that the choice will be limited."

There is no bias or any interest in any of the respondents or against the petitioners by the Railways. After declaring the four candidates who were successful in the written test held on 10.1.98, they are directed for medical examination according to the rules mentioned as Annexure-3 to the application. They were called for interview on 21.1.98. There is no irregularity in conducting the examinations. The examination was conducted according to rules. The result could not be declared because of the <sup>in the oral exam</sup> ~~another mark aspect~~ by this Court. The petition is liable to be dismissed. It is further stated in the reply counter that the contents of each paragraph are not correct by denying them specifically. There is no need to traverse of these ~~officials~~ specifically in view of the above facts narrated in the counter already. It is prayed that the petition <sup>of the</sup> applicant is liable to be dismissed. ~~The following annexures were filed:~~

- (1) 4. ~~The arguments were heard.~~ As it was found that the name of one of the respondents is not correct, it is sought that the amendment may be allowed with regard to the name of respondent no.6.



Pm(5): The points that arise for consideration are:

-6-

1. Whether the applicants can question the examination conducted, on their allegation that the examination is not according to ~~Board~~<sup>W</sup> Syllabus?
2. Whether there is any bias against the applicants and whether there is any interestedness in the respondents 5 to 8 by the Railway Administration as alleged by the applicants?

Point No.1:

(b) As regards the question that question paper is not according to the syllabus, the applicants are not able to produce before the Tribunal <sup>W</sup> in specific set off syllabus prescribed for the test that was conducted on 10.1.98. The plea of the applicants that certain methodology was worked in imparting the subject regarding the examination to be conducted on 10.1.1998 is to be construed as only a supporting hand given by the Railway Administration to enlighten the candidates appearing for the examination. To put <sup>W</sup> in other words it is only the "brushing of the subjects" to ~~(any other to put into brains in)~~ the candidates regarding certain subjects on which the question <sup>may</sup> ~~may~~ occur but it cannot be said that this case put the premium with regard to the ranged the questions that may find place in the question papers and that refreshing course cannot be said to be the the "Be all <sup>and</sup> End all" of all the questions on all the subjects that may find place in the examination. The coaching at best can be a set to be an areal survey of the subjects but not the tight jacket of the subjects. ~~covered~~ There, there is no force in the contention of the applicants that the question paper is <sup>W</sup> bearing any specifications ~~of~~<sup>W</sup> of their allegation.

(c) Regarding the questions, on the Rajya Bhasha language, the counter reply by the Government had clearly stated that there is no compulsion to attempt those questions



so the plea that there is some kind of disadvantage to the applicant and advantage to some other respondents is only figment of imagination and a discard of real test of merit. Therefore, there is no merit in this contention also.

(8.) It is further to be noticed that the applicants had not taken resort to approach ~~the immediate forum from the~~ questioning, the nature of the question paper <sup>or</sup> by not participating in ~~the~~ answering as a protest stating ~~that~~ the question paper is not according to the rules. They have attempted the questions. They participated in the examination and they have focused themselves with all the intellection at their comment, ~~and~~ trying to meet the questions by answering them. Therefore, the applicants are stopped by doctrine of participation and doctrine of acquiescence in answering the question papers. This also <sup>amounts to</sup> ~~brushed~~ doctrine of estoppel against them.

(9.) With regards to the aspect that the Railway Administration is interested in the respondents 5 to 8 and it is biased against the applicant is also devoid of any force for the reason, that even according to the applicants they stated in their application in paragraph 10 page 6 as follows:-

"That the petitioners had some inkling about the intentions of respondent no.3 that he is interested in the selection of respondent nos.5,6,7 and 8, but since had no definite proof therefore, they had not expressed any thing."

Therefore, they admit that they have no definite proof regarding any bias against the applicant or any interestness by the Railways in favour of the respondent nos.5 to 8.

Therefore, the applicants have miserably failed to prove the ulterior motive or special interest by the Railways either against the applicants or in favour of respondents 5 to 8. <sup>(19)</sup> The learned advocate appearing on behalf of the respondents 5 to 8 and also the counsel for the other respondents relied on the following decisions:-

1. O.A.No.878/1991 Prabhu Dass & others v. Union of India, & others.
2. O.A.No.8/1995 Virendra Kumar Srivastava and another v. Union of India & others.
3. 1992(4) SCC 683 R.M.Gosain v. U.O.I.
4. 1995(1) ATC 291 Ranjeev Onkar v. U.O.I.
5. 1975 SC 192 State of Bihar
6. 1990 (1) (SCC 305 Dalpat Abasaheb Solunke and others
7. 1993 SC 1236 Rajendra Roy
8. 1994 (4) SCC 98 N.K.Sinnh
9. 1993 SC 763 M.Sankaranarayanan

<sup>have</sup> ~~(19)~~ We ~~are~~ not referred to the <sup>decisions</sup> ~~decisions~~ in detail for the reason that on the facts mentioned in this application there is nothing to show that there is any kind of bias by the Railway Administration. The contention that the examination was conducted on 10.1.1998 and the results were immediately announced on 12.1.98 is not the ground to come to the conclusion that there is any kind of bias on the part of the Railways. On the other hand, that shows that the time is not given by the Railways for the purposes <sup>in which</sup> avoiding any kind of ~~thing~~ by any of the candidates that appeared for the examination. ~~that~~ much with regard to this point of bias.

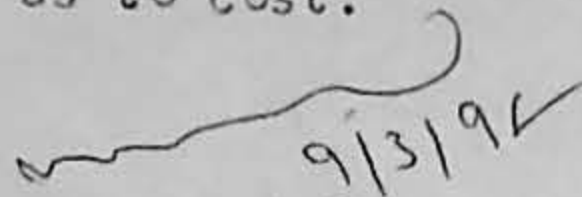
<sup>2</sup> (19) Therefore on the consideration the entire material placed before the Tribunal, the facts would not warrant to come to the conclusion that the examination was conducted beyond any particular syllabus or there is any




kind of bias.

11. Therefore, there are no merits in the application and the application is dismissed. In view of the dismissal petition, all other petitions pending in this application are also dismissed.

No order as to cost.

  
MEMBER (J)

  
MEMBER (A)

Gc