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Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD**

(THIS THE 9th DAY of February, 2012)

Hon'ble Mr. Justice S.C. Sharma Member-J
Hon'ble Mr. Shashi Prakash Member-A

Original Application No.1570 of 2001
(U/S 19, Administrative Tribunal Act, 1985)

1. Janardan Singh S/o Badri Prasad R/o Village and Post Office Amauli (Chaubepur) District Varanasi, U.P.
2. Shafiuddin S/o Salim Uddin, R/o 74/64, Katra, P.O. Kachehari, Allahabad.

..... Applicants

By Advocate: Shri S. Narain

Versus

1. Union of India through General Manager, Northern Railway Recruitment Board through its Chairman, D.R.M. Office Complex, Allahabad.
2. The Railway Recruitment Board through its Chairman, D.R.M. Office Complex, Allahabad.
3. The Railway Board, Rail Bhawan, New Delhi through its Chairman.

..... Respondents

By Advocates: Shri Prashant Mathur

ORDER

(Delivered by Hon. Mr. Shashi Prakash, Member-A)

The applicant in this case has prayed for the following relief/s:-

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(a)

- (i) *To set aside the cancellation notice as published in the daily news paper dated 24.4.2000 (Annexure A-1 to Comp.I) published in daily news paper Dainik Jagran for the post of Shroff, category no.6 of Employment notice no.1/96-97.*
- (ii) *To set aside the order/letter dated 23.3.2001 (Annexure A-2 to Comp.II).*
- (iii) *To issue mandamus directing the Railway Recruitment Board, respondent No.3 to declare final result of the selections held for the posts of Shroff, category no.6 of Employment No.6 of Employment No.1/96 - 97 for which written test was held on 29.12.96 and interview on 17.10.97 and in case the applicants are finally selected to issue mandamus to the appointing authority to make appointment in accordance with law.*

2. In brief, the facts of the case are that an advertisement was issued in the Employment News on 15.06.1996 for recruitment to 14 posts of Shroff under the undivided Northern Railway. The applicants, being fully eligible for the advertised post, duly applied against the advertisement. The written examination was held as a part of selection process in which the applicants participated. The result of the written examination was published on 25.9.1997, wherein the applicants were declared as successful and therefore, called for Interview. On 17.10.1997, the applicants appeared at the Interview. Later on in the year 1997, some of the candidates, who had failed to qualify in the written test, filed an O.A. No.1075 of 1997, challenging the aforesaid selection process on the basis of certain alleged malpractice. The applicants in the present O.A., who had succeeded in the written test, were not impleaded as a party in the aforesaid O.A. i.e. 1075 of 1997.

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3. On 30.08.1999, Original Applications bearing No.727 of 1995 and O.A. No.635 of 1997 which were pending before this Tribunal relating to challenging of the selection process in respect of different posts on the ground of alleged malpractice, were disposed off by this Tribunal with the direction to the Railway Board to conduct an inquiry into the alleged malpractices and take appropriate action on the basis of the finding of the inquiry. On 11.2.2000, O.A. No.1075 of 1997 was also disposed of by this Tribunal in terms of order already passed in O.A. No.727 of 1995 and O.A. No.635 of 1997. Regarding the order in O.A. No.1075 of 1997, it has been alleged by the applicant that certain directions which were given by the Tribunal in the operative part of its order were not in conformity with the orders passed on 30.08.1999 in O.A. No.727 of 1995 and O.A. No.635 of 1997. In February, 2000, the applicants of the present O.A. moved M.A. No.807 of 2000 seeking review of the order dated 11.2.2000 passed in O.A. No.1075 of 1997 by highlighting the mistakes in Para-3 of the Tribunal's order dated 11.2.2000. By its order dated 01.03.2000, the Tribunal held that Para-3 of the order dated 11.2.2000 was not in conformity with the order dated 30.08.1999 passed in O.A. No.727 of 1995 and O.A. No.635 of 1997 and directed the Railway Board to take appropriate action regarding cancellation of examination in question in the light of inquiry made by them and in the event the entire selection was decided to be cancelled, then the interest of the candidates, who had appeared in the examination, should be protected by granting

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relaxation of age, if necessary. It has been alleged that the Chairman of Railway Recruitment Board, Allahabad in contravention of the aforesaid direction of the Hon'ble Tribunal and without making any inquiry into the allegation of malpractice, proceeded to cancel the entire selection for the posts of Shroff vide impugned Notice dated 24.4.2000. An O.A. No. 543 of 2000 was filed challenging the cancellation notice dated 24.4.2000 for a direction to the Railway Recruitment Board to declare the final result of the selection held for the posts of Shroff.

4. It has been alleged that the order passed by the respondents is illegal and without jurisdiction because before passing the order for cancelling the examination, the Railway Recruitment Board was duty bound to make its own inquiry into the matter and on the basis of findings of the inquiry to decide as to whether the examination was required to be cancelled or not. Thereafter, a letter dated 23.3.2001 was sent by Shri Dharam Singh on behalf of the General Manager (P) Northern Railway, New Delhi to the Chairman, Railway Recruitment Board, Allahabad informing him that the indent for the 14 posts of Shroff which has been sent earlier may be treated as cancelled. Subsequently, in its letter dated 22.4.2004 the Railway Board intimated that in view of withdrawal of the indent for the posts of Shroff by Northern Railway, there could be no question of re-conducting the written examination for the said posts.

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5. On 02.03.2005, M.A. No.1057 of 2005 was filed by the Respondent Nos. 1 to 4 in the O.A. bringing on record an order dated 12.1.2004 passed by the Tribunal in an O.A. similar to the present O.A. No.21 of 2004 (A.K. Singh v. Union of India & Ors). The said O.A. was dismissed on the statement of the counsel for the respondents that subsequent to the withdrawal of the indent for the posts of Shroff vide letter dated 23.3.2001, the question of conducting the selection by the Railway Recruitment Board, Allahabad did not arise. Taking into account the above development M.A. No.1755 of 2005 (Amendment Application) was filed on behalf of the applicants in the present O.A. seeking appropriate amendment therein so as to challenge the legality and validity of the order dated 23.3.2001 passed by the Respondents' Railways withdrawing the indent of 14 posts of Shroff. The said M.A. was allowed by the Tribunal and necessary amendments were incorporated in the O.A..

6. Learned counsel for the applicant submitted that an identical O.A. No.543 of 2000 had been decided by this Tribunal vide its order dated 26.11.2010. The said O.A. was found to be lacking in merit and was accordingly dismissed. He argued that the aforesaid O.A. was dismissed taking into account certain facts elicited from certain documents which were not part of the pleadings. The learned counsel stated that in the aforesaid

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order the main ground on the basis of which the O.A. was dismissed related to detection of certain irregularities committed in conduct of the written examination, which in the view of the Tribunal go at the very root of the selection process and as the case had been thoroughly inquired by the chairman of the RRB, the selection process was cancelled only after undertaking such an exercise. Counsel for the applicant further submitted that as the facts of the Inquiry, in which alleged malpractice had been resorted to in the written examination held on 29.12.1996, had not been brought on record in the pleadings or during the course of the argument in O.A. No.543 of 2000, the dismissal of the order of the Tribunal dated 26.11.2010 primarily based on the findings of the inquiry report of the RRB cannot be sustained. In background of these facts, the learned counsel urged for setting aside the impugned order dated 23.03.2001.

7. Shri P. Mathur, counsel for the Respondents submitted that the matter in the present O.A. is identical to the O.A. No.543 of 2000 which was decided by this Tribunal on 26.11.2010. He mentioned that during the hearing of the present O.A., the counsel for the applicant emphasized on the point that records of the RRB produced before the Tribunal, as stated in Para 8 and 9 of the order dated 26.11.2010 and relied upon while disposing of the O.A. had not been shown to the Applicant and as such the Applicant had been deprived of his right to argue the case on the basis of

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documents which was taken into account by the Tribunal. Learned counsel argued that the original records were produced before the Tribunal primarily to demonstrate that the order for cancellation of the examination in question was based upon the finding made after a detailed inquiry was made and as per the direction of the Executive Director RRB. The inquiry was conducted on the basis of at random checking of the model answer/Keys along with other relevant documents.

8. Learned counsel for the respondents further argued that a bare perusal of the order passed by co-ordinate Bench of this Tribunal dated 26.11.2010 clearly suggests that it came to the firm opinion that there was no arbitrariness or mala fide reasons in cancellation of the examination in question as it was done only after conduct of a detailed inquiry which clearly brought out malpractice that were apparent in the answer booklet. The counsel stated that the case of *Union of India & Ors. vs. Rajesh P.U., Puthuvalnikathu and another reported in (2003) 7 Supreme Court Cases 285* as cited by counsel for the Applicant was not applicable in the present case. He also said that having regard to the fact that Tribunal has already decided the matter in an identical O.A. and no Review or any objection till date has been filed by the Applicant in that O.A. the order of the Tribunal dated 26.11.2010 has attained finality and has a binding effect in relation to the present O.A. which, therefore, deserves to be dismissed.

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9. We have heard counsel for the parties and perused the entire records on the pleadings. It is sufficiently clear that the present O.A. is identical with the matter in the O.A. No.543 of 2000, which has already been adjudicated upon by an order dated 26.11.2010 by a coordinate Bench of this Tribunal. The main grievance of the Applicant's counsel against the aforesaid order of this Tribunal is that it is primarily based upon records and fact which were not part of the pleadings and hearing and yet these facts and documents were relied upon for deciding the above O.A. Had these facts and documents been brought to the notice of the applicants, he would have had an opportunity to submit his counter reply to them. On this point raised by the Applicant, it would be pertinent to mention that during the course of hearing of the present O.A., the original records relating to the conduct and findings of inquiry into examination in question were produced before the Tribunal by the counsel for the respondents. A photocopy of the aforesaid documents was also taken on record. A study of these documents led us to a firm opinion that a detailed inquiry at the appropriate level (by the Chairman, Railway Recruitment Board, Allahabad) was indeed conducted and clear malpractice in the form of cutting and overwriting in the checked answer sheets were manifest. Therefore, having account of this fact, the cancellation of the examination dated 23.3.2001 appears to have been made on

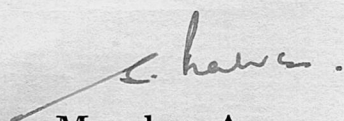
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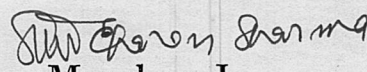
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justifiable and valid grounds and no arbitrariness or mala fide intention can be attributed to the respondents in the matter.

10. Having regard to the facts, circumstances and the information emerging out of the original record produced before us by the counsel for the Respondents, we are of the opinion that order dated 26.11.2010 passed in O.A. No.543 of 2000 is based upon proper appreciation of facts and we do not find any reason to differ with it.

11. Accordingly, the Original Application is dismissed with no order as to costs.


Member-A


Member-J

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