

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Dated: This the 3 day of 8 2006.

Original Application No. 1172 of 2004.

Hon'ble Mr. Justice Khem Karan, Vice-Chairman  
Hon'ble Mr. P.K. Chatterji, Member-A

1. Sunil Kumar Yadav, S/o Late Jagannath Prasad, R/o Raiganj, North, GORAKHPUR.
2. Ashwani Kumar Yadav, S/o Sri R.P. Yadav, R/o Humayunpur, North, GORAKHPUR.
3. Shiv Kumar Sinha, S/o late L.P. Sinha, R/o EWS, 404/405, Rapti Nagar, Phase-4, Behind JIC Chargawan, GORAKHPUR.
4. Rajesh Lal Srivastava, S/o Late H.C.L. Srivastava, R/o Hamayunpur, GORAKHPUR.

. . . . . Applicants

By Adv: Sri R.P. Singh.

V E R S U S

1. Union of India through the Secretary, Ministry of Railways, Rail Bhawan, MUMBAI.
2. Chairman, Railway Recruitment Board, N.E. Railway, GORAKHPUR.
3. General Manager, N.E. Railway, GORAKHPUR.
4. Financial Advisor and Chief Accounts Officer, N.E. Railway, GORAKHPUR.

. . . . . Respondents

By Adv: Sri K.P. Singh.

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O R D E R

By Hon'ble Mr. P.K. Chatterji, Member-A

In this OA No. 1172 of 2004, the applicants four in number, namely Sunil Kumar Yadav, Ashwani Kumar Yadav, Shiv Kumar Sinha and Rajesh Lal Srivastava, ~~made OA~~ <sup>have impugned</sup> against the alleged arbitrary action of the respondents in selecting candidates in clerical Grade II of Account Line in N.E. Raialway, Gorakhpur, who have obtained lesser marks <sup>4</sup> than the applicants, thus ignoring the claim of the applicant who has secured higher marks.

2. The facts of the case as narrated by the applicants are that in the year 1988, 50 posts of Account Clerk lying vacant were advertised in the employment news paper for the N.E. Railway, by the Railway Service Commission, Muzaffpur and Gorakhpur. All the four applicants applied for the post and admit cards were issued to them for appearing in the written test. After they had qualified in the written test, the applicants were called for interview. The applicant No. 1 was called for interview on 12.09.1995, applicant No. 2 on 13.09.1995 and applicants No. 3 and 4 on 14.09.1995. The interview was conducted by the Board in the Chairmanship of the Railway Recruitment Board and three other Members and the final result of the written test and the interview were declared on 29.09.1995. None of the applicants figured in the list of selected candidates.

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3. It has been further alleged by the applicants that all of them had secured good marks in the written test which were as follows:

- a. Applicant No. 1 125 marks
- b. Applicant No. 2 122 marks
- c. Applicant No. 3 123 marks
- d. Applicant No. 4 124 marks

It is stated by the applicants that none of them was granted any marks in the interview on the ground that all the applicants had adopted foul means in the written test and so they were placed in the category of Suspected Foul Means (SFM). This has been stated by the applicants in para 4.8 of the OA. It is the allegations of the applicants that the Interview Board had illegally and without any basis or complaint had placed the applicants in the category of SFM. If it was not so the applicants would have certainly been declared successful because all of them had secured high marks in the written test.

4. The applicants have further stated in the OA that in an exactly identical case i.e. OA No. 1220 of 1996 was filed by a candidate Mohd. Azimuddin before this Tribunal and the Tribunal was pleased to allow the OA vide its judgment and order dated 18.03.2004, copy of which has been annexed in the OA. When the applicants came to know about the aforesaid judgment they made representation dated

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15.04.2004 to the Chairman of the Railway Recruitment Board, but the representation has still not been disposed of. It is the claim of the applicants that their case is fully covered by the judgment and order of this Tribunal dated 18.03.2004 and should be decided accordingly.

5. The relief sought by the applicants are as follows:

- a. A writ, order or direction suitable in nature commanding the respondents to declare the applicants as having been selected in the competitive examination of Clerical Grade II of the Accounts N.E. Railway, Gorakhpur and to forthwith issue them the letter of appointment and to appoint them in accordance with law.
- b. any order, writ order or direction as this Tribunal may deem fit and proper under the circumstances of the case.
- c. To award costs.

6. The counter affidavit was filed by the respondents 21.03.2005. The respondents have categorically denied the allegations made by the applicants. Firstly, they have stated that the judgment dated 18.03.2004 referred to in the OA by the four applicants is not exactly identical as the facts and circumstances of the case and the cause of action are different. Whatever be the circumstances, the respondents assert, that OA was filed individually by Mohd. Azizuddin and so the

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applicants are not entitled to the benefit of the judgment. It has further been disclosed by the respondents that all the four applicants had filed another OA No. 1176 of 1997 which was dismissed by the Tribunal on 10.04.2002. The photocopy of the judgment is enclosed with the CA. Regarding allegation of illegally placing the four applicants in the category of SFM, the respondents have stated that the interview was conducted by one Board from 11.09.1995 to 14.09.1995. It has been categorically denied by the respondents that all the four applicants were placed in the SFM category. On the other hand, only one of the applicants namely Ashwani Kumar Yadav with Roll No. 97716 was placed in the category of SFM. Other three applicants were interviewed and given marks as well. However, on the basis of total marks secured by them in the written test and for interview they could not find place in the final select list. While marks of the last candidate in the select list was 127, the maximum total marks which has been secured by the applicant Shiv Kumar Sinha. 126.

7. The respondents have cited the marks obtained by the four applicants in the written test as well as in the interview, which is as follows:

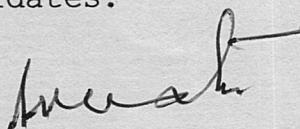
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Sl No	Roll No.	Applicants	Marks obtained in written test	Marks obtained in Interview	Total
1.	90118	Sunil Kumar Yadav	111	08	119
2.	97716	Ashwani Kumar Yadav	126	SFM	
3.	101045	Shiv Kumar Sinha	121	05	126
4.	99339	Rajesh Lal Srivastava	116	6	122

8. In one of the previous hearing, on this case the Tribunal had directed that the respondents should submit relevant papers relating to the test i.e. the marks and the tabulation sheet including the marks of the interview. These were produced before us on 27.07.2006 and we have perused the records. We have also gone through all other relevant records of the case including the judgments referred to in the OA and the CA. We have also heard the learned counsel for the parties in the final hearing.

9. The points for consideration in our view are as follows:

- a. Whether all the four applicants were debarred from sitting in the interview as alleged by them in the OA.
- b. Whether the respondents are justified in treating either one or more amongst the applicants as belonging to the SFM category.
- c. As to what extent the judgment dated 10.04.2002 in the OA is applicable to these candidates.



10. Regarding point No. 1, the respondents have made it absolutely clear that only one of the applicants was treated as SFM category and was debarred from interview and other three applicants were allowed to take part in the interview and marks were granted in the interview. The respondents have produced the extracts of the marks obtained by the applicant in the written test as well as in the interview. We have also gone through the records pertaining to the selection which were produced before us and have satisfied that not all of them were debarred from interview on the allegation of the adopted foul means. We are disappointed that the applicants have not submitted correct factual position in this regard in the OA.

11. Regarding point No. 2, we are of the view that the respondents have the responsibility and moral obligation to conduct the selection in proper way and to eliminate any unfair means. Learned counsel for the respondents have pleaded strongly that ~~right~~ the officials holding the examination are duty bound to prevent malpractices. The Tribunal is justified in preventing injustice done to any applicant. It is also open to the Tribunal to pick out the cases of malafide and violation of natural justice, <sup>in</sup> issue of appointment orders. However, the Tribunal cannot interfere with the day to day conduct of the examination and also the manner in which

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malpractices are to be detected ~~deducted~~ and eliminated. The learned counsel for the respondents has cited from a number of decisions of the Apex Court in related matters such as **Nutan Arvind Vs. U.O.I. & Ors, 1996 (2) SCC 488, Durga Devi Vs. State of Himachal Pradesh 1997 (4) SCC 575, State of MP Vs. Srikant Chapekar, JT 1992 (5) SC 633, Dalpath Aba Saheb Soltake Vs. B.B. Mahajan AIR 1990 SC 434 and Smt. Anik Katiyar Vs. U.O.I. & Ors 1997 (1) SLR 153.** It has been decided in the above mentioned judgment that the Court and the Tribunal are not required to perform the role of Appellate Authority or interfering in the proceedings of the DPC. They should not sit in judgment over the selection made by the DPC unless the selection is vitiated by malafide or on the ground of arbitrariness. The Tribunal is not to judge the comparative merits of the candidates and consider fitness or suitability for their appointment. It is also not open to the Tribunal or Court to act as an Appellate Authority over the decisions made by the competent selection committee for the purpose of assessing the relative merits of the candidates.

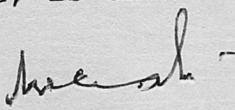
12. Regarding point No. 3 i.e. whether the direction of this Tribunal dated 18.03.2004 in OA No. 1220 of 1996 we would <sup>not</sup> like to comment much except that the relevant judgments of the Apex Court cited above make it clear that the Courts and the

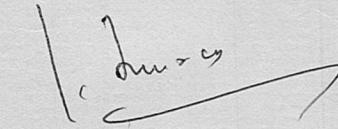
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Tribunals are not required to look into the validity of the decision of the competent selections authority on relative merits of the candidates unless there is any apparent miscarriage of justice.

13. In this case, however, the applicants have called into the question the intention of the Selection Committee; in other words malafide has been attributed. For this reason we wanted to satisfy ourselves with the relevant records of the case. We found that a good number of candidates were debarred from taking part in the interview on the ground of SFM. It is not that they have picked and chosen only the applicants with any malafide. Not only that, the allegations of the applicants that all of them had been debarred on the ground of SFM is also been corroborated by the facts. Only one out of four applicants was debarred from taking part in the interview on the ground of SFM. For these reasons we are satisfied that the respondents did not act out of any malafide intention.

13. For the aforesaid reasons and considerations we are of the view that the OA does not succeed and, therefore, is dismissed. No cost.

  
Member (A)

  
Vice-Chairman

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