

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

ALLAHABAD

Dated : This the 19 ~~5~~ day of April, 2005.

Original Application no. 1367 of 2004.

Hon'ble Mr. D.R. Tiwari, Member (A)

Hon'ble Mr. K.B.S. Rajan, Member (J)

Sadhu Ram Yadav,
S/o Sri Jang Bahadur Yadav
a/a 28 years, R/o Village Behadaul Khurd,
Post Suwansa Surwamishrapur,
District Pratapgarh

....Applicant

By Advocate S/Sri T.R. Gupta & Anoop Baranwal

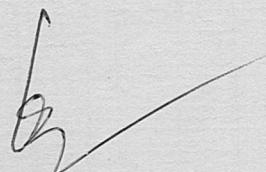
V E R S U S

1. Union of India through the G.M.
N.C.R. ,
ALLAHABAD

2. Railway Recruitment Board, through Chairman
New Annexe Bhawan, Nawab Yusuf Road,
ALLAHABAD.

3. The General Manager,
N.C.R.,
ALLAHABAD.

...Respondents



By Advocate : Sri A.K. Gaur.

Alongwith

Original Application No. 1368 of 2004

Tribhawan Nath Singh,
S/o Sri Ganpati Singh,
Vijay Pratap Singh Muralijot
Ganna Office Ke Peeche,
Near Hospital, P.O. Purani Bastri
District Basti

...Applicant

By Adv : Sri A.K. Srivastava & Sri B.K. Srivastava

V E R S U S

1. Union of India through the Secretary,
Railway Department,
NEW DELHI.
2. The Chairman,
Railway Recruitment Board,
ALLAHABAD.
3. The Member Secretary,
Railway Recruitment Board,
ALLAHABAD.

...Respondents

By Adv : Sri A.K. Gaur

Alongwith

Original Application no. 1389 of 2004.



1. Upendra Kumar, S/o Sri Jagdish Mandal,
R/o Vill Badi Chataiya, P.O. Khawaspur,
P.S. Pirpainti,
Distt: Bhagalpur.
2. Monaj Kumar Mandal,
S/o Sri M.P. Mandal,
R/o Vill Badi Chataiya, P.O. Khawaspur,
P.S. Pirpainti,
Distt: Bhagalpur.
3. Rajiv Kumar Ranjan, S/o Madadeo Singh.
R/o Vill Dayalpur P.O. Sangitabaita
P.S. Kahalgaon,
Distt : Bhagalpur.

....Applicants

By Adv : Sri B. Singh & Sri U.P. Singh

V E R S U S

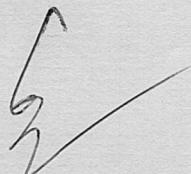
1. Union of India through Chairman,
Railway Recruitment Board,
ALLAHABAD.
2. The Chairman,
Railway Recruitment Board,
Allahabad, DRM's Annexure Building,
Nawab Yusuf Road,
ALLAHABAD.
3. The Secretary,
Railway Recruitment Board,
Allahabad, DRM's Annexure Building,
Nawab Yusuf Road,
ALLAHABAD.

...Respondents

By Adv : Sri A.K. Gaur

Alongwith

Original Application no. 1468 of 2004.



Ashok Kumar Rawat, S/o Hari Lal Rawat,
 R/o Q. No. 566 B RPFC Colony,
 Malgoadham Road,
 Mughalsarai.
 Chandauli.

.... .Applicant

By Adv : Sri T.R. Gupta & Sri A. Baranwal

V E R S U S

1. Union of India through the Secretary,
 Ministry of Railways, Rail Bhawan,
 NEW DELHI.
2. Railway Board, Indian Railways through
 its Secretary,
 NEW DELHI.
3. Railway Recruitment Board,
 D.R.M's Annexe Building,
 Nawab Yusuf Road,
 Allahabad through its Chairman.
4. Railway Recruitment Board,
 D.R.M's Annexe Building,
 Nawab Yusuf Road,
 Allahabad through its Secretary.

...Respondents

By Adv : Sri A.K. Gaur

Alongwith

Original Application no. 1545 of 2004.

1. Ex. Man Ramji Ram, S/o Sri R.S. Ram
 R/o Vill Dharahara, Post Dharahara,
 Chandauli.



2. Subash Chandra Singh,
S/o Sri Onkar Singh,
R/o Vill Barahapur, Post Teliyadih,
Distt : Basti.

....Applicants

By Adv : Sri B. Singh & Sri U.P. Singh

V E R S U S

1. Union of India through General Manager
Northern Central Railway,
ALLAHABAD.
2. The Railway Recruitment Board,
through its Chairman,
Allahabad, DRM, New Annexure Building,
Nawab Yusuf Road,
ALLAHABAD.

...Respondents

By Adv : Sri A.K. Gaur

O R D E R

By K.B.S. Rajan, JM

As the subject matter in the above O.As is one and the same (i.e. quashing of impugned Advertisement Dated 15-10-04, whereby the Respondents had decided to conduct re-examination for the post of Khalasi/Helper II, Class IV on 21-11-2004) and for a direction to take into account the result of the earlier examination conducted on



30-11-2003, all these O.As are clubbed together and this common order is passed.

2. By way of interim order, the respondents were permitted to conduct the examination while the results thereof were restrained to be published.

3. The matrix of minimal facts, necessary to consider the issue involved is given in the succeeding paragraphs.

(a) The Railway Recruitment Board had published an advertisement in Rozgar Suuchna Sankhya 1/03 inviting applications for the post of Khalasi/Helper II (Class IV) .

(b) As per the above advertisement ,
examination was scheduled on 30.11.2003
and the same would be followed by
Physical test thereafter.

(c) Various individuals had participated and the applicants in the above O.As were also participants.

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(d) The applicants were successful in the written examination and also appeared in the Physical test. However, when they were awaiting the call letter for appointment, to their shocked and dismay, they found the impugned advertisement for re-examination and the same has, therefore, been challenged in the O.As praying for quashing of the impugned advertisement and to direct the respondents to appoint the applicants in the post of Khalasi/Helper II.

4. On 19.11.2004, when the case was heard, an interim order was passed to the effect that the proposed examination may be held as scheduled, but the results shall not be declared till the next date of hearing. This order was continued thereafter. The respondents contested the O.As and have stated that for 336 posts of Group 'D', thousands of applications were received and after filtering the candidates, admission card was issued to participating the examination. 2.75 lacs candidates appeared and in order to prevent

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impersonation /or adopting unfair means by the candidates various safeguards were taken. A number of candidates were found copying or using unfair means and criminal action were taken separately in respect of these persons. As a number of irregularities were surfaced such as impersonation etc., after physical test was conducted, it was decided to cancel the examination and order a fresh examination and accordingly, all those who were declared successful in the written test were asked to appear for the re-examination. The respondents had contended that the decision being one in the nature of policy, and there being a number of Apex Court decisions as to the power vested with the authorities to conduct re-examination for justifiable reasons, the respondents prayed for dismissal of all the O.As.

5. On 04-03-2005 when the case was listed, records were called for and the valuable assistance of Shri L.B. Rai, Secretary, R.R.B. was also available. At this juncture, we place on record the assistance rendered by Shri L.B. Rai in

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explaining the entire case, when the counsel for the parties were also present.

6. Written submissions were called for and promptly the respondents had furnished the same.

7. We have given our anxious considerations to the entire matter, perused the pleadings, scanned the records produced, considered the lengthy arguments put forth by the counsel for the respective applicants and on behalf of the Respondents and gone through the written arguments.

8. The Chairman, R.R.B. had by his communication dated 23rd August, 2003 forwarded to the Railway Board a detailed report of the then chairman of the RRB about impersonation and unfair means adopted by a number of candidates in the examination. The General observation as to the same have been given as under:-

- In many case thumb prints given at a time of exam had been smudged in some cases, there were multiple overlapping impression and in one case attempt was made to erase the impression.
- Study of signature samples revealed a lot of ingenuity. English signature were made with separate letter rather than cursive (joined)

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writing. A few letters were usually formed in a distinctive style that could be matched by the candidates at the time of document verification. In such cases, there were often enough differences in flow of signatures, alignment of letters and in formation of many of the other letters to show that different hands were at work.

- Many candidates who had produced large amount of fluent English writing on exam materials collected in the written exam. Were found at the time of document verification to be semi-literate and unable to write in English.
- Many candidates were not able to reproduce their Roll Numbers in words (which had been recorded on OMR sheet at the time of written exam., often in fluent English writing) or to explain the working formula in rough work done on question booklet.
- Recollection of candidates were also tested for details of Centre from which they appeared. Often, candidates could not answer such questions correctly.
- In doubtful cases, candidates were asked some questions from their question booklets. Some candidates replied easily, but others could not.

As such, the proposal to the Board as advanced by the Chairman, RRB was:

"The only effective solution is an existing practice of RRB/ALD for holding 2nd stage examination calling ten times as many candidates as the number of available vacancies. Normally, in main stage exams., number of candidates is limited permitting greater control and measures have been introduced to check for imposters.

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In the present selections, many candidates have been identified as having been involved in impersonation, but initiating action for unfair means against them is a time consuming affair that can only hold up the selection process.

In order to have a fair selection, it would be desirable if fresh written examination with a limited number of candidates where closed control can be exercised. Candidates called for next exams. Should be short listed from the top merit with number equal to ten times the vacancies in respective category/community wise groups. Even then, over 3300 candidates would have to be called for the next exams. "

9. As could be seen from the report of the then Chairman, RRB, the process of selection also included "document verification" during which specimen of the individuals' handwriting is also obtained and the same tallied with the relevant answer papers. Yet another way of confirming the actual appearance of the candidate in the examination was to ascertain the location of the center, in respect of which, some of the candidates appeared, "quite confused and vague about exam centers."

10. By letter dated 14-09-2004, the Railway Board had stated, "Board have gone into the matter

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in detail. In view of nature of malpractice/irregularities involved, it has been decided to conduct 2nd stage examination calling candidates equal to 10 times the number of vacancies."

11. All the applicants belong to that category falling within the above 10 times the number of vacancies and accordingly, they were permitted to appear in the 2nd stage examination and it is this examination that has been challenged on the ground that the Advertisement does not contemplate such 2nd stage examination.

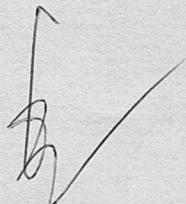
12. The question is whether the respondents are within their rights and powers to hold the 2nd stage of the examination and if the answer is in affirmative, whether by exercising their rights/power any of the vested rights of the applicants got hampered so as to warrant judicial intervention by the Tribunal.

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First the right of the authorities to cancel the examination for some plausible reasons and the power of the court to interfere with such a decision: This has precisely and perfectly been brought out , in the judgment of the Apex Court in the case of *B. Ramanjini v. State of A.P.*, (2002) 5 SCC 533, wherein, at page 538 the Apex Court has held:

"Fair procedure would mean that the candidates taking part in the examination must be capable of competing with each other by fair means. One cannot have an advantage either by copying or by having a foreknowledge of the question paper or otherwise. ***In such matters wide latitude should be shown to the Government and the courts should not unduly interfere with the action taken by the Government which is in possession of the necessary information and takes action upon the same.*** (Emphasis supplied) ."

13. It is not out of place to mention here that even in connection with the right of the authorities to cancel an academic examination, the Apex Court has in the case ***Maharashtra State Board of Secondary and Higher Secondary Education v. K.S. Gandhi***, (1991) 2 SCC 716, at page 742 held as under:-:

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"If there is sufficient material on which it could be demonstrated that the Authority was right in its conclusion that the examination ought to be cancelled then academic standards require that the Authority's appreciation of the problem must be respected. It would not be for the courts to say that we should have examined all the candidates or even their representatives with a view to ascertaining whether they had received assistance or not. To do this, would encourage indiscipline, if not also perjury."

14. Once it is ascertained that there is every right for the authorities to cancel the earlier examination or hold further examination, then arises as to the vested rights of a candidate to question the holding of such examination on the ground that any of his vested rights has been infringed upon. Whether the applicants have at all secured any vested rights at this juncture is the main question. The right to be selected and appointed even under normal circumstances (where such confusion in the examination conducted does not exist) and when select panel reflects a person's name and vacancies are available but the authorities have chosen not to fill up the post, the Apex Court has, in the case of **Babita Prasad v.**

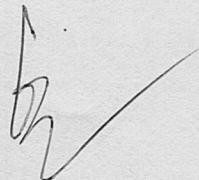
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State of Bihar, 1993 Supp (3) SCC 268, at page 278

held as under:

"In *State of Haryana v. Subash Chander Marwaha*³ as a result of a competitive examination held by the Haryana Public Service Commission for recruitment of candidates for 15 vacancies of Subordinate Judges, a list of 40 candidates, who had obtained 45 per cent or more marks in the examination which was the eligibility condition, was published. Out of the selection list, only 7, who had secured more than 55 per cent marks were appointed in the serial order of the list according to merit. Candidates who ranked at 8, 9 and 13 respectively in the list but had not been appointed filed a writ petition under Article 226 for mandamus, claiming that since there were 15 vacancies and they had the necessary qualifications for appointment and had been brought on the 'select list', the State Government was not entitled to pick out only 7 out of them for appointment. The High Court agreeing with the petitioners issued a mandamus to the State of Haryana to select the candidates so that their names could be brought on the High Court register for appointment as Subordinate Judges in the State of Haryana. The State of Haryana challenged the judgment in this Court. Allowing the appeal, this Court inter alia observed: (SCC pp. 224-25, para 7)

'... that the mere entry in this list of the name of candidate does not give him the right to be appointed. The advertisement that there are 15 vacancies to be filled does not also give him a right to be appointed. It may happen that the Government for financial or other administrative reasons may not fill up any vacancies. In such a case the candidates, even the first in the list, will not have a right to be appointed. The list is merely to help the State Government in making the appointments showing which candidates have the minimum

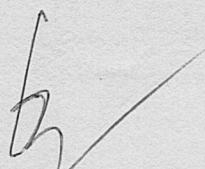


qualifications under the Rules. The stage for selection for appointment comes thereafter,...."

15. Thus, it was held that even the existence of vacancies does not confer a legal right on a candidate to be selected for appointment merely on the ground that the candidate's name was included in the select list.

16. Compared to the above, the applicants are far away from reaching the stage of final selection and appointment. As such, there is absolutely no right that has been crystallized by the applicants to challenge the decision to hold the second stage examination and to claim that the respondents should consider the result of the earlier examination and proceed ahead in making appointment.

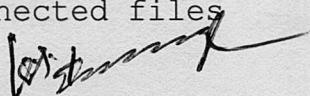
17. A number of other authorities were cited on behalf of the respondents which support their case. As the above authorities are sufficient to come to a decision in this case, the other authorities are not elaborated.

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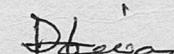
18. In view of the above position, all the Original Applications being bereft of merits are liable to be dismissed and we accordingly order so.

Cost is made easy.

19. A copy of this order be placed in all the connected files



MEMBER-J



MEMBER-A

Girish/-