

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD

(This the 12th Day of ~~November~~ ^{December}, 2013)

Hon'ble Mr. Justice S. S. Tiwari Member (J)

Hon'ble Ms. B. Bhamathi, Member (A)

Original Application No.1467 of 2004

(U/S 19, Administrative Tribunal Act, 1985)

1. Ashok Kumar Singh S/o Late Parmeshwar Singh, aged about 42 years, R/o Tulsipur, Pachperwa, Murradih (Varanasi).
2. Rama Shanker Singh S/o late Zamindar Singh, aged about 56 ears, R/o Rly Quarter No.T-36-CD, Rly Colony, Bhagwan Bazar, Chapara.
3. Narendra Singh S/o Maryad Singh, aged about 31 years, R/o 181/A, Purawaldi Kydgung, Allahabad.

..... Applicants

By Advocate: Shri O.P. Gupta

Versus

1. Union of India, through General Manager, N.E. Railway Gorakhpur.
2. Divisional Railway Manager, N.E. Railway, Varanasi.
3. Divisional Railway Manager (Personal), N.E. Railway, Varanasi.
4. C.L. Srivastava Divisional T.T.I., N.E. Rly, Allahabad City.
5. Rajendra Singh Divisional, T.T.I. N.E. Rly, Allahabad City.
6. Mohd. Gulam Jilani, Divisional T.T.I., N.E. Rly, Mau.
7. S.K. Yadav, Divisional T.T.I., N.E. Rly, Gorakhpur East.



8. Keshav Mishra, Divisional T.T.I., N.E. Rly, Varanasi.
9. Krishna Nand Dubey, Divisional, T.T.I. N.E. Rly, Varanasi.
10. Avinash Kumar Pathak, Divisional T.T.I., N.E.Rly, Varanasi.
11. Awadesh Kumar, Divisional T.T.I., N.E. Rly, Chapara.
12. Ramagya Singh, Divisional T.T.I., N.E. Rly., Mau.
13. Shiv Shanker Prasad, Divisional Ticket Inspector, N.E. Rly, Bhatani.
14. Jagrata Sangam (SC), Divisional Ticket Inspector, N.E.r. Madadih.
15. Sujeet Kumar Shah, Divisional Ticket Inspector, N.E. Rly, Siwan.

(Respondents No4 to 15 be served through the D.R.M. N.E. Rly, Varanasi, as posted in his division).

..... Respondents

By Advocate: Shri K.P. Singh

ORDER

Delivered by Hon'ble Ms. B. Bhamathi, Member (A)

The present Original Application has been filed under Section 19 of Central Administrative Tribunal Act, 1985 against the irregularities committed in conduct of examination for selection to the post of Chief Traveling Ticket Inspector (6500-10500).

2. The relief/s sought by the applicants are as follows:-

- (i) *By a suitable order selection process for the post of Chief Traveling Ticket Inspector (6500-10500), in view of the notification*




dt.9/8/2004 and declaration of the panel dated 27/10/2004 (Annexure No. A-I) in pursuance of the same may be quashed.

(ii) issue any further order as this Hon'ble Tribunal may deem fit and proper in view of the facts and circumstances of the case.

(iii) Award cost of the petition.

3. The case of the applicants is that they were promoted as D.T.T.I. (5500-9000) between 2002 and 2003. The respondent No.2 called the applicants/ private respondents along with other candidates, by way of option to appear for the combined selection/written test to be held on 4.9.2004 for 21 posts of CTTI (6500-10500) from amongst candidates in the pay scale of Rs.5500-9000 and working as D.T.T.I. and D.T.I. Vide notification dated 09.08.2004, the applicants were mentioned at Sl. No.7, 19 and 37. Accordingly, the applicants appeared for the written test. During the test, the applicants found that there were no objective type questions as required under 219(C) of I.R.E.M. vol.I and as per Railway Board's circular dated 8.3.2002, which provides that in selection/written test for promotion 50% objective type questions should be included in the question paper. Some questions viz short note on forwarding were also out of syllabus. Pre-selection coaching to the scheduled caste/scheduled tribe candidates before the written test, representation of SC/ST member on the Selection Board, question on Rajbhasa, as required by Board's circular of



21.10.1999 were not followed. The applicants immediately orally protested during the written examination. Subsequently, and immediately after writing the exam, the applicants approached respondents, through, the Member of Parliament (Varanasi) by submitting their representation dated 10.09.2004. They again represented to respondent on 13.9.2004 but to no avail. Despite their representation, the respondent declared the result of the written test on 22.10.2004. The applicants did not figure in the list. In the present O.A., the applicants also moved MA No.3079 of 2005 for respondents to produce the relevant question papers of the written test, when the respondents maintained that optional type questions formed part of the question papers and denied applicant's allegations. The MA was allowed by the Tribunal. But the respondents have not complied with the orders of the Tribunal. Instead they filed a Supplementary Affidavit stating that documents are not traceable. The applicants' case is that the respondents have taken no action by way of registering the FIR or by way of departmental action against those responsible for this lapse. This O.A. has been filed on 18.11.2004 and during the pendency of the case, the respondents should have kept the documents in safe custody. Applicants' counsel has cited judgment of the Hon'ble Supreme Court in Civil Appeal No. 4418 of 2004 (UOI & Ors vs. Ex Major Sudarshan Gupta) stating that adverse




inference can be taken against respondent for non production of relevant records.

4. The case of the respondent nos. 1 to 3 is that objective type questions were framed and included as per norms/directives given by Railway Board vide letter dated 28.03.2002. The applicants raised no protest during or immediately after examination. All the questions were asked as per syllabus prescribed. The Pre-selection Training to Scheduled Caste & Scheduled Tribe candidates is restricted to safety category candidates only and it is not applicable in this selection process. The selection board has been appointed as per the Board directives and the selection procedure has been conducted as per rules. There were questions for 5 marks regarding Rajbhasha Hindi i.e. 10% of the total marks as per the Railway Board's circular dated 20.10.1999. The respondents have filed Supplementary Counter Affidavit and submitted that the question paper and answer sheets are not traceable and hence are unable to produce it before the Tribunal. However, the respondents have relied upon the judgment of Hon'ble Supreme Court in **Om Prakash Shukla vs. Akhilesh Kumar Shukla & ors; AIR 1986 SC 1043, All India SC & ST Employees Association & another vs. A. Arthur Jeen & Ors; AIR 2001 SC 1851, and Chandra Prakash Tiwari & thers vs. Shakuntala Shukla & Ors; AIR 2002 SC 2322**, wherein it has been held that the applicant



should have immediately lodged a protest and having taken examination, the applicants cannot now contend that the process of conducting the examination was unfair and seek cancellation of the examination.

5. The case of the private respondents No.4 to 13 and 15 is that requisite number of questions in the written examination of CTTI held on 4.9.2004 were objective type questions and as per norms/directives given by Railway Board vide letter dated 8.03.2002. All the questions were also as per the syllabus. Having been declared unsuccessful, the applicants cannot now seek relief, as prayed for, before this Tribunal. After declaration of the result of the written test, the panel has been announced and has become operative since 16.11.2004. The pre selection training to Scheduled Caste and Scheduled Tribe is restricted to 'Safety Category' candidates. As regards the allegation the short note on 'forwarding' being out of syllabus, it has been stated that 'forwarding' is a very important function for functioning in the commercial department of Railways, as they would have to be knowledgeable on issues pertaining to Ticket checking, passengers amenities/enquiries etc.. One Mr. Jalji Chaudhary Sr. EDPM belonging to SC/ST was one of the members in the selection committee. The requirement of questions of 5 marks regarding



11. We are in no doubt that the Railway Board has issued clear instructions about the inclusion of a certain quantum of objective type questions in the written test as part of selection for promotion to selection posts as contained in Railway Board circular of 8.3. 2002. We also note that the compilation of selection procedure by the Northern Railway for non gazetted selections vide letter dated 21.10.1999 identifies some common mistakes usually committed in paper setting. This circular gives the definition of objective type questions. Besides, in the next round of notification issued by respondents for holding selection on 21.4.2006, specific mention, by way of rectification of the earlier mistake (and subject matter of O.A.), has been made about the need to incorporate 45-50% objective type questions. By way of further circumstantial evidence, it is also noted from the minutes of the PNM meeting held on 22.9.05, the patent error in non adherence to the Board's circular for incorporating objective type questions was highlighted for taking corrective action. The contention of the respondents that the letter of 21.10.99 must be attributed to Northern Railway and not N.E Railway, Gorakhpur, does not mitigate the issue, as similar error occurred in the examination held on 28.7.05 later held by NE Railway for the post of Chief Controller. When the error was pointed out, the examination



Rajbhashya Hindi as per the Board's Circular was also duly complied with.


6. We have perused the O.A, and the Annexure A-1 to A-17 to the O.A., the Rejoinder and annexure RA-1 to Misc. Application No.1954 of 2006, annexure A-1 to Misc. Application No.5285 of 2005 and Misc. Application No.3079 of 2005 and the citation relied upon in the course of hearing of the arguments.

7. We have perused the supplementary affidavit filed by respondents and the various citations made in the course of hearing of the arguments.

8. We have perused the Counter Affidavit and Rejoinder Affidavit, A-1 to the counter affidavit, the supplementary affidavit and annexures A-1 to A-6 filed to the supplementary affidavit by respondent Nos. 4 to 13 and 15.

9. No counter affidavit filed on behalf of respondent no.14 is on record.

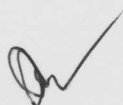
10. Heard the counsel for the parties and have gone through the facts, circumstances and rules, laws and the cited rulings by both the counsels pertaining to the instant case.



was cancelled and fresh examination was conducted by NE Railway. Similarly, another such examination was cancelled by Northern Railway for the same reason on 20-6-2006. This shows that the proness and predisposition to commission of this error is neither incidental nor limited to certain geographic jurisdictions of Railways.


12. The respondent 3 to 13 and 15 who had taken the exams and were declared successful and presently working as TTI have stated that the objective type questions were asked. These were not merely limited to multiple choice questions, but also included 'fill in the blanks', 'true or false', 'one or two word answers' etc.

13. The issue that then arises here is what is the definition of objective type questions. The Northern Railway circular dated 21.10.99, similar to the clarification issued by the Railway Board to the NE Railway vide its letter number 24.3 95, states that besides having multiple choice questions, it includes 'fill in the blanks', true or false', 'one or two word answers' or 'abbreviations'. Even, if we assume for a moment, that the above circular was issued by Northern Railway and not NE Railway, the general instructions of the Railway Board is unequivocal in that it stipulates that 50% or thereabouts should be objective type questions. It stands to reason that while all



multiple choice questions are objective type questions, all objective type questions are not multiple choice questions. Hence, to fulfill quota of 50% objective type questions, other subsets of questions, other than multiple choice questions, could also be termed as objective type questions, which would have applicability across the board and irrespective of Railway jurisdictions.

14. The pertinent question is therefore whether NE Railway included 50% objective type questions, covering all subsets and whether a menu of objective type questions as discussed above were included in the question paper or not. This cannot be arrived at on the basis of claims and counter claims. It can be arrived at quite correctly on the basis of documentary evidence. Therefore, the Tribunal allowed the Misc Application of applicant in 3079 of 2005 directing the respondents to produce the question and answer papers. The respondents took umbrage that the documents are not traceable. The supplementary affidavit shows a deafening silence on the details of actions taken to retrieve the documents. It was the responsibility of respondents to keep the documents in safe custody, more so as the matter was subjudice, as the exams were conducted in September 2004, the OA was filed in November 2004, the MA was filed in 2005. Clearly, the papers were not mature for weeding out as per rules. It is also normal that when crucial documents go missing, criminal action by way of lodging an FIR



or departmental action against persons enjoined to hold them in safe custody is taken. None of this was done; only a brazen report of non traceability of documents has been given under affidavit to the Tribunal. If any one or all of the above actions were taken, we could have given the benefit of doubt to the respondents to say that this was not a case of "unnatural death" of the documents that has been given a quiet burial. What is more shocking than the fatality involved in the disappearance of the documents is the fatalism of the respondents in accepting the non traceability report. The applicants reliance on the judgement of the Hon'ble SC in Civil Appeal no 4418 of 2009 to draw adverse inference is fully met with. By declaring non traceability of the documents, the respondents have succeeded in the unpalatable truth from surfacing, in the instant case. They had the option of being introspective, as was done when the same NE and Northern Railway, suo moto, cancelled the exams, at a later point in time and under a better dispensation, on 28.7.05 and 20.6.06, respectively, after admitting that the objective type questions had not been included. This was done in the highest traditions of transparency, truthfulness, accountability, integrity to meet the ends of justice. It would be appropriate to write the epitaph to sum up this sordid story:


"The question and answer papers are no more
Who killed them, is a matter too sore"



15. The issue that remains to be considered is whether the exams qualify to be cancelled. It is true that respondents 3 to 15 were successful examinees and the applicants were unsuccessful examinees. The former cleared the exams with or without objective type questions. It would, however, be hypothetical to say that applicants would have passed had there been objective type questions or that they failed to clear this exam because of the absence of objective type questions. Had the question and answer papers been traced, this would have been less of a matter of conjecture. Rulings of the Hon'ble Supreme Court as rightly relied upon by the learned counsel for applicants, have been consistent and based on rigorous parameters on this point.

16. As per the judgement of the Hon'ble Supreme Court in the case of Om Prakash Shukla vs Akhilesh Kumar Shukla and others reported in AIR 1986 SC page 1043, it has been held in para 23 of the said judgement as under

"23. Moreover, this is a case where the petitioner in the writ petition should not have been granted relief. He had appeared for the examination without protest. He filed the petition only after he had perhaps realised that he would not succeed in the examination."



17. In the judgement in Chandra Prakash Tiwari and ors vs Shakuntala Shukla and Ors reported in AIR 2002 SC page 2322, it has been held by the Hon'ble Supreme Court at para 33 as under:

"33. It is now well settled that if a candidate takes calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the selection committee was not properly constituted."

18. From the foregoing citations it is clear that once the candidates in the instant case have participated in an examination, which at any stage was perceived to be adverse to their interests, then relief in the form of cancellation of exams cannot be available. Protest, if any, should have been immediate. In fact, non participation in the exams would have been the most clinching form of protest, which would have conclusively undermined the credibility of the examination/selection process. In this case, it is not good enough that the applicants challenged the irregularity of the exam within one week through a representation and /or even before the final results were declared.

19. Based on the declaration of results of the exams that has been challenged, it is on record that the panel has become operational

since 16.11.2004. Hence, no useful purpose would also be served by cancelling the examination at this juncture.

20. In view of the foregoing discussions, we do not see any legal basis, for cancelling the examination, notwithstanding our observations regarding the desultory manner in which the respondents have handled the matter. It is important, however, that such things do not recur and a more prospective and positive approach would be in order. We, therefore, direct that a copy of the Tribunal's order be sent to the Chairman, Railway Board to streamline the conduct of exams through uniformly enforceable and unambiguous circulars, irrespective of geographic jurisdictions and to conduct a departmental inquiry into the mysterious and premature disappearance and non traceability of the question and answer sheets and fix responsibility on officers and staff involved in the matter.

21. With the above observations, we refrain from granting the relief as prayed for by the applicant. Accordingly, the OA is dismissed without costs.

B. Bhamathi
(Ms. B. Bhamathi)
Member-A

S.S. Tiwari
(Justice S.S. Tiwari)
Member-J

Sushil