

[RESERVED]

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

ORIGINAL APPLICATION NO.1487 OF 2004

ALLAHABAD THIS, 25th, THE TH DAY OF MARCH, 2011

HON'BLE SHRI S.N. SHUKLA, MEMBER (A)
HON'BLE SHRI SANJEEV KAUSHIK, MEMBER (J)

Shri Ajai Kumar s/o Shri Late Kunjal Lal R/o 114/3 Lukar Ganj, Allahabad.

(By Advocate: None present)Applicant

V E R S U S

1. Union of India through the General Manager, Northern Central Railway, Allahabad.
2. The Chairman, Railway Recruitment Board, Allahabad.
3. The Divisional Railway Manager, Northern Central Railway, Allahabad.

Respondents

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(By Advocate : Shri P.Mathur, Standing Counsel for the Union of India.

ORDER

PER MR. SANJEEV KAUSHIK, MEMBER (J):

By way of instant Original Application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has impugned order dated 1.10.2004 passed by respondent No.2 whereby the candidature of the applicant has been rejected on the ground of adopting unfair means of impersonation and further debarred him from appearing from all Examinations to be conducted by the Railway Recruitment Board for life time.

(Annexure A.1).

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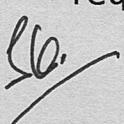
2. Brief facts of the case are that the respondents issued advertisement in Employment News Paper i.e. Employment Notice No.3/95-96 inviting application for the post of Assistant Station Master. The applicant being fully eligible in terms of the above stated advertisement applied. The applicant was allowed to sit in the preliminary examination. He was sent a call letter on 24.11.2001 for appearing in main examination. He was issued provisional Roll No. 3621326 (Annexure A.2). As per the Schedule fixed for the main examination the applicant appeared. The result of examination was declared in newspaper on 1.1.2002, he was declared successful (Annexure A.3). He was also sent a call letter by the respondent No.2 on 13.2.2002 calling for interview and psycho analysis test (Annexure A.4). It is further submitted by the applicant that when the final list of successful candidates were displayed the applicant's name did not find mention there. The applicant was issued a letter on 2nd July 2002 wherein he was called for verification of documents. Accordingly he appeared before respondents on 5th August, 2002 for verification of relevant documents (Annexure A.5). When the applicant did not hear anything from the respondents for a long period in this regard then he stated to have made a representation on 13.7.2004 to Respondent No.2. Despite the above representation when respondents did not disclose anything then the applicant approached this Tribunal by way of O.A. No. 960/2004 which was disposed of



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on 31.8.2004 with a direction to the respondents to dispose of pending representation of the applicant dated 13.7.2004 by means of a reasoned order within a period of two months from the date of communication of this order (Annexure A.7). It is stated that in compliance of the order passed by this Tribunal the respondents No.2 passed impugned order dated 1st October, 2004 rejected his claim and cancelled his candidature and further he was debarred in appearing from any examinations conducted by the Railway Recruitment Board for life time. Hence the instant Original Application.

3. Upon notice the respondents filed detailed Counter Affidavit. In the Counter Affidavit the respondents admitted the fact that the applicant appeared in the examination and was declared successful in Written Examination. The respondents stated that since a large number of candidates appearing in the examination and as such to have a transparency in the selection and to eliminate chances of impersonation/unfair fraudulent means in the ensuing examination in order to protect the interest of the genuine and meritorious candidates, certain procedure has been adopted by the Railway Recruitment Boards by holding a two tier examination system and it is only after qualifying in the preliminary examination, an individual is permitted to appear in the Main Examination and on being found successful, is required to undergo Psychological and interview and to



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complete certain requisite mandatory requirement for his empanelment. As per the procedure, test in English and in Hindi, candidate is required to give five signatures in his own handwriting in Hindi and English respectively. Apart from the same, a left thump impression of the candidate is also obtained on the application form. Apart from the aforesaid precautions, test in English and Hindi in candidate's own running handwriting and one signature each in Hindi and English are taken in the question booklet and one signature in Hindi and English are taken in the answer sheets and attendance sheets respectively. Left thump impression is also taken on the question booklet. In the instant case the applicant had qualified in the preliminary examination and such was entitled to appear in the main examination in which he was found successful and therefore, was required to undergo a Psychological test and interview which is a mandatory requirement for his empanelment. It is further submitted that when the documents of the applicant was verified on 13.2.2002 at the time of Psychological test and interview it was detected that the signature and the hand writing of the examinee on the question booklet and on the answer sheets were not matching with the original. Therefore, as per the procedure, before taking final decision, all such doubtful cases are sent to the Government Examiner of the Questionable Documents which is the Govt. Agency for confirmation of the doubt. Accordingly the case of the

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applicant was forwarded and when it was found that the applicant used fraudulent means in the examination then his candidature was rejected in pursuance of Railway Board Letter date 9.3.2000 and was debarred from appearing in the Recruitment Board Examinations held by the Railway Recruitment Board. (Annexure A.1).

4. During the course of hearing nobody appeared on behalf of the applicant even on the revised call. Therefore, by exercising the powers under Rule 15 of the C.A.T. (Procedure) Rules 1987 we proceed to dispose of the instant O.A. on merits after hearing Shri P. Mathur, learned counsel for the respondents.

5. What we have gathered from the averments made in the original application is that the applicant sole grievance is violation of principal of Natural Justice in passing the impugned order. He further alleged that the order is arbitrary, illegal and violation of article 14 of Constitution of India. Order also smack Arbitrariness also.

6. On the other hand Shri P. Mathur, Learned Counsel for the respondents submitted that the Railway Board has circulated letter dated 9.3.2000 whereby taken a unanimous decision that if any candidate find indulging in malpractice then after got examining his paper and after affording an



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opportunity of hearing in respect of the defect; final order be passed debarring candidate from appearing in Examination conducted by the Railway Board. In the instant case on verification of documents, it was found that the handwriting of the applicant is not corresponding with the handwritings on question paper then the same was forwarded to the Govt. Agency for getting expert opinion. After having the expert opinion a letter dated 7.2.2002 was sent to the applicant calling upon him to appear on 5th August, 2002 at 10.30 a.m. with relevant documents failing which the candidature will be cancelled. It is only after complying with the principle of natural justice the impugned order was passed which was subsequently confirmed by the appellate authority. There is no infirmity in the order and he supported the impugned order.

7. Admittedly, respondents have not alleged mass mal practice in selection. Only few individual were allegedly found indulging in malpractice. Therefore the question which is to be decided "whether the principle of natural justice is required to be followed by issuing notice to individual (the applicant) and to provide him personal hearing before passing impugned order". It is well established that even the candidate selected and find place in merit list has no vested right to seek appointment against the vacancy against whom select list was prepared. Even the Govt. can cancel the Select List. But in

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the case in hand as observed above whole selection has not been cancelled only few candidates including the applicant were singled out an their candidature were later on cancelled. Though the respondents called for the expert opinion before cancellation of candidature, but in this process applicant nowhere has been associated. It is no where the case of the respondents that the applicant or the alleged impersonator was caught red handed by the Invigilator during the course of the Examination. It is alleged that while checking the documents, they came to know that the applicant used unfair means; therefore after conducting ex-party inquiry the competent authority conveyed the decision to the applicant. Admittedly there is no allegation of *malafide* against respondents.

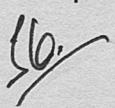
There is also no quarrel that no candidate acquires an indefeasible right to a post merely because he has appeared in the examination or even found a place in the select list. But as per the Hon'ble Supreme Court decision the decision of cancellation is subjected to judicial review. In the instant case since the applicant complaints violation of well established Principal of **audi alteram patrum** as well as arbitrariness in action of the respondents in passing the impugned order. Therefore in the light of above it is to be examinee.

8. In case in hand it is not that the respondent has annulled the entire selection, it is only the applicant and few other

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persons have been signed out on the ground of impersonation. Therefore, it is clear that here question of individual Right is involved. Therefore, we have to see whether the decision taken by the respondents is in conformity with Article 14 of the Constitution of India as well as principles of natural justice has been complied with before passing impugned order. It is a fundamental rule of law that no decision must be taken which will affect the rights of any person without first being informed of the case and giving him/her an opportunity of putting forward his/her case an order involving civil consequence should be made by connecting with rule of natural justice. The law must, therefore, be now taken to be well-settled that procedure prescribed for depriving a person of livelihood must meet challenge Article 14 and such law would be liable to be tested on the anvil of Article 14. The order effecting the civil rights, is result in civil consequences would have to ensure the requirement of article 14. So it must be right, just and facts and not arbitrary, fanciful or oppressive. There can be no distinction between a quasi-judicial function and an administrative function for the purpose of principle of natural justice. Therefore, fair play in action requires that the procedure adopted must be just, fair and reasonable. Article 21 clubs life with liberty dignity of person with means of livelihood without which the glorious content of dignity if persons would be reduced to animal existence. When it is



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interpreted that the colour and content of procedures established by law must be in conformity with the minimum fairness and opportunity justice, it would relieve legislative callousness despising opportunity of being heard and fair opportunity of defence. Equality is the antitheses of arbitrariness. In this background it is conclusively held by the Hon'ble Apex Court in a number of cases that the principle of natural justice are part of article 14 and the procedures prescribed by law must be just, fair and reasonable. In

Mohinder Singh Gill Vs. Chief Election Commissioner 1978 (1)

SCC 405 the constitution bench of Hon'ble Supreme Court held that:-

"Civil consequences cover infraction of not merely property or personal right but of civil liberties, material deprivations and non-pecuniary damage. In its comprehensive connotation even thing fact affects a citizen in his civil life inflicts a civil consequences."

Similar in the case of *State of Orisa Vs. (Miss.) Binopani Devi AIR 1967 SC 1269* Hon'ble Supreme Court held that:-

"Even an administrative order which involves civil consequences must be made consistently with the rule of natural justice the person concerned must be informed of the case, the evidence in support thereof supplied and must be given a fair opportunity to meet the case before an adverse decision is taken. Since no such opportunity was given it was held that superannuation was in violation of principles of natural justice."

9. Subsequently, also the Hon'ble Supreme Court held that an even order having civil consequence must be passed after

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providing opportunity to the concerned employee. Reliance is placed on Hon'ble Supreme Court in *Sahara India (Firm), Lucknow Versus Commissioner of Income Tax, Central-I and another-(2008) 14 Supreme Court Cases 151*; *Harbanslal Sahnia and another Versus Indian Oil Corporation Limited and others-(2003) 2 Supreme Court Cases 107*; *Sidheshwar Sahakari Sakhar Karkhana Limited Versus Union of India and others-(2005) 3 Supreme Court Cases 369*; and *ABL International Limited and another Versus Export Credit Guarantee Corporation of India Limited and others-(2004) 3 Supreme Court Cases 553*. All these decisions have a single underlying theme that even a pure administrative act that entails civil consequences shall be addressed with reasonableness and rules of natural justice would require a right of hearing by application of the principle of *audi alteram partem*. This fundamental breach partakes the character of violation of fundamental right. Principle of natural justice flow from rule which have been laid down by the Courts as being the minimum protection of the rights of the individual against the arbitrary precedence that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those right. These rules are intended to prevent such authority from doing injustice.

10. What is meant by the term "principles of natural justice" is not easy to determine. Lord Summer (then Hamilton, L.J.) in



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R. v. Local Govt. Board (KB at p. 199) described the phrase as sadly lacking in precision. In *General Council of Medical Education & Registration of U.K. v. Spackman* 1943 AC 627 Lord Wright observed that it was not desirable to attempt "to force it into any Procrustean bed" and mentioned that one essential requirement was that the Tribunal should be impartial and have no personal interest in the controversy, and further that it should give "a full and fair opportunity" to every party of being heard.

11. In view of the admitted facts of the case in hand that the applicant has not afforded opportunity before passing impugned order. Therefore, clubbing with the authoritative pronouncement of Hon'ble Supreme Court the impugned order deserving to be set aside.

12. Now the case can be judge from another angle that is the allegation of arbitrariness in taking decision. it is alleged by the applicant that all has been done behind his back, therefore, it smacks arbitrariness in taking decision and show clourable exercise of power of respondents on part of respondents. Recently in a decision in East Coast Railway and others Vs Mahadev Appa Rao and others Reported as 2010(7) SCC 678 the Hon'ble Supreme court has consider the concept of "arbitrariness". The relevant para are reproduce as under:-

18. What then is meant for arbitrary/arbitrariness and how far can the decision of the competent authority in the present case be described as arbitrary?



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19. *Black's Law Dictionary* describes the term "arbitrary" in the following words:

"Arbitrary.--- "1. Depending on individual discretion; specif., determined by a judge rather than by fixed rules, procedures, or law. 2. (Of a judicial decision) founded on prejudice or preference rather than on reason or fact. This type of decision is often termed arbitrary and capricious."

20. To the same effect is the meaning given to the expression "arbitrary" by *Corpus Juris Secundum* which explains the term in the following words:

"ARBITRARY - Based alone upon one's will, and not upon any course of reasoning and exercise of judgment; bound by no law; capricious; exercised according to one's own will or caprice and therefore conveying a notion of a tendency to abuse possession of power; fixed or done capriciously or at pleasure, without adequate determining principle, non rational, or not done or acting according to reason or judgment; not based upon actuality but beyond a reasonable extent; not founded in the nature of things; not governed by any fixed rules or standard; also, in a somewhat different sense, absolute in power, despotic, or tyrannical; harsh and unforbearing. When applied to acts, "arbitrary" has been held to connote a disregard of evidence or of the proper weight thereof; to express an idea opposed to administrative, executive, judicial, or legislative discretion; and to imply at least an element of bad faith, and has been compared with "willful".

21. There is no precise statutory or other definition of the term "arbitrary". In *Kumari Shrilekha Vidyarthi and Ors. v. State of U.P. and Ors.* (AIR 1991 SC 537), this Court explained that the true import of the expression "arbitrariness" is more easily visualized than precisely stated or defined and that whether or not an act is arbitrary would be determined on the facts and circumstances of a given case. This Court

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observed:

"The meaning and true import of arbitrariness is more easily visualized than precisely stated or defined. The question, whether an impugned act is arbitrary or not, is ultimately to be answered on the facts and in the circumstances of a given case. An obvious test to apply is to see whether there is any discernible principle emerging from the impugned act and if so, does it satisfy the test of reasonableness. Where a mode is prescribed for doing an act and there is no impediment in following that procedure, performance of the act otherwise and in a manner which does not disclose any discernible principle which is reasonable, may itself attract the vice of arbitrariness. Every State action must be informed by reason and it follows that an act uninformed by reason, is arbitrary. Rule of law contemplates governance by laws and not by humour, whims or caprices of the men to whom the governance is entrusted for the time being. It is trite that 'be you ever so high, the laws are above you'. This is what men in power must remember, always."

22. Dealing with the principle governing exercise of official power Prof. De Smith, Woolf & Jowell in their celebrated book on "Judicial Review of Administrative Action" emphasized how the decision-maker invested with the wide discretion is expected to exercise that discretion in accordance with the general principles governing exercise of power in a constitutional democracy unless of course the statute under which such power is exercisable indicates otherwise. One of the most fundamental principles of rule of law recognized in all democratic systems is that the power vested in any competent authority shall not be exercised arbitrarily and that the power is exercised that it does not lead to any unfair discrimination. The following passage from the above is in this regard apposite:

"We have seen in a number of situations how the scope of an official power cannot be interpreted in isolation from general principles governing the exercise

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of power in a constitutional democracy. The courts presume that these principles apply to the exercise of all powers and that even where the decision-maker is invested with wide discretion, that discretion is to be exercised in accordance with those principles unless Parliament clearly indicates otherwise. One such principle, the rule of law, contains within it a number of requirements such as the right of the individual to access to the law and that power should not be arbitrarily exercised. The rule of law above all rests upon the principle of legal certainty, which will be considered here, along with a principle which is partly but not wholly contained within the rule of law, namely, the principle of equality, or equal treatment without unfair discrimination."

23. *Arbitrariness in the making of an order by an authority can manifest itself in different forms. Non-application of mind by the authority making the order is only one of them. Every order passed by a public authority must disclose due and proper application of mind by the person making the order. This may be evident from the order itself or the record contemporaneously maintained. Application of mind is best demonstrated by disclosure of mind by the authority making the order. And disclosure is best done by recording the reasons that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained is clearly suggestive of the order being arbitrary hence legally unsustainable.*

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26. *If a test is cancelled just because some complaints against the same have been made howsoever frivolous, it may lead to a situation where no selection process can be finalized as those who fail to qualify can always make a grievance against the test or its fairness. What is important is that once a complaint or representation is received the competent authority applies its mind to the same and records reasons why in its opinion it is necessary to cancel the examination in the interest of purity of the selection process or with a view to preventing injustice or prejudice to those who*

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have appeared in the same. That is precisely what had happened in Dilbagh Singh's case (*supra*). The examination was cancelled upon an inquiry into the allegations of unjust, arbitrary and dubious selection list prepared by the Selection Board in which the allegations were found to be correct. Even in Tarun K. Singh's case (*supra*) relied upon by Mr. Malhotra an inquiry into the complaints received against the selection process was conducted no matter after the cancellation of the examination. This Court in that view held that since the selection process was vitiated by procedural and other infirmities cancellation thereof was perfectly justified.

28..... The minimum that was expected of the authority was a due and proper application of mind to the allegations made before it and formulation and recording of reasons in support of the view that the competent authority was taking. There may be cases where an enquiry may be called for into the allegations, but there may also be cases, where even on admitted facts or facts verified from record or an enquiry howsoever summary the same maybe, it is possible for the competent authority to take a decision, that there are good reasons for making the order which the authority eventually makes. But we find it difficult to sustain an order that is neither based on an enquiry nor even a *prima facie* view taken upon a due and proper application of mind to the relevant facts. Judged by that standard the order of cancellation passed by the competent authority falls short of the legal requirements and was rightly quashed by the High Court.

30. We may hasten to add that while application of mind to the material available to the competent authority is an essential pre-requisite for the making of a valid order, that requirement should not be confused with the sufficiency of such material to support any such order. Whether or not the material placed before the competent authority was in the instant case sufficient to justify the decision taken by it, is not in issue before us. That aspect may have assumed

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importance only if the competent authority was shown to have applied its mind to whatever material was available to it before cancelling the examination. Since application of mind as a thresh-hold requirement for a valid order is conspicuous by its absence the question whether the decision was reasonable having regard to the material before the authority is rendered academic. Sufficiency or otherwise of the material and so also its admissibility to support a decision the validity whereof is being judicially reviewed may even otherwise depend upon the facts and circumstances of each case. No hard and fast rule can be formulated in that regard nor do we propose to do so in this case. So also whether the competent authority ought to have conducted an enquiry into or verification of the allegations before passing an order of cancellation is a matter that would depend upon the facts and circumstances of each case. It may often depend upon the nature, source and credibility of the material placed before the authority.

It may also depend upon whether any such exercise is feasible having regard to the nature of the controversy, the constraints of time, effort and expense. But what is absolutely essential is that the authority making the order is alive to the material on the basis of which it purports to take a decision. It cannot act mechanically or under an impulse, for a writ court judicially reviewing any such order cannot countenance the exercise of power vested in a public authority except after due and proper application of mind.

Any other view would amount to condoning a fraud upon such power which the authority exercising the same holds in trust only to be exercised for a legitimate purpose and along settled principles of administrative law.

13. Now in view of settled law, we proceeded to examine the facts of the case admittedly, the impugned order dated 01st October, 2004 (Annexure-A-1) has been passed without



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affording an opportunity of the hearing to the applicant which is reproduced as under:-

"Government Examiner of Questionable Documents has confirmed that signature on application form/personal data sheet and that on attendance sheets/Question Booklets/Answer sheets are of different person. Thus, it has been established that the candidate Shri Ajay Kumar did not appear himself in the written examination and rather somebody else appeared in the written examination on his behalf and adopted unfair means of impersonation in the above mentioned examination. Thus, on account of this mal practices and offence he has been debarred by RRB/Allahabad for life time vide letter No. RRBA/Debar/ALD/2004 dt. 24/09/2004."

14. The reading of the above relevant part of the impugned order it is ample clear that behind the applicant inquiry was conducted. Wherein, categorical finding has been recorded that *'Ajay Kumar did not appear himself in the written examination and rather somebody else appeared.'*

15. The impugned order has its forgoing consequences as it also create stigma on the applicant as he has been debarred life time to appear in the examination to be conducted by the respondents. This action of the respondents cannot be termed free from arbitrariness and also suffers from, well established principle of Natural of Justice as discussed above coupled with the authoritative judgments (Supra). Therefore, in view of the settled preposition of law no person condemned unheard we have no hesitation to set aside the impugned order.

Thus the question posed in the original application is

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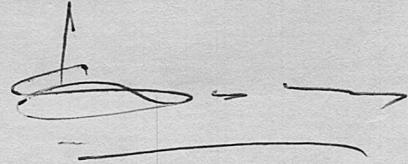
decided in affirmative consequently, the impugned order dated 01st October, 2004 (Annexure-A-1) is set aside with directions to provide to the applicant all the material used against him, including the report of the forensic expert, within six weeks of receipt of certified copy of this order. The applicant will be allowed at least six weeks for submission of his defence, thereafter, Respondent No. 3 will pass a fresh reasoned and speaking order as per rules within further six weeks of receipt of applicant's defence.

16. With these directions, the O.A. is disposed of finally.

No cost.


MEMBER (J)

Sj*


MEMBER (A)