

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated this the 20th day of May 2010.

CORAM:

HON'BLE MR. A. K. GAUR, MEMBER(J)HON'BLE MRS. MANJULIKA GAUTAM, MEMBER (A)

Original Application No. 1576 of 2004
 (U/s 19 of the Administrative Tribunals Act 1985)

Astha Bhujia Pandey,
 S/o Shri Late R.S.Pandey,
 R/o 43, Jail Road,
 Shahpur (Geeta Vatika), Gorakhpur.
 Presently working as O.S.
 under COS/N.E.Railway, Gorakhpur.Applicant

By Adv: Shri. S. Narain

V E R S U S

1. Union of India through General Manager,
North Eastern Railway, Gorakhpur.
2. Chief Personnel Officer,
North Eastern Railway, Gorakhpur.
3. Controller of Stores,
North Eastern Railway, Gorakhpur.
4. Sanjay Kumar Mishra,
Depot Material Superintendent I,
N.E.Railway, Gorakhpur Cantt.
5. Digambar Jha,
Depot Material Superintendent II,
N.E.Railway, Samastipur.
6. Rameswar Rai,
Chief Vigilance Inspector (S)
N.E.Railway, Gorakhpur.
7. Sanjay Kumar Tripathi,
Depot Material Superintendent II,
In the office of Dy.COS/Stores Depot,
Gorakhpur. ...Respondents

Manjuliika Gautam

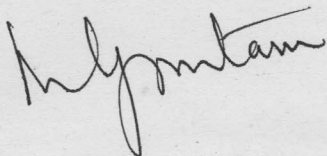
By Adv: Sri. K.P.Singh

ORDER

HON'BLE MRS. MANJULIKA GAUTAM, MEMBER (A)

The applicant applied for the post of Assistant Controller of Stores/Assistant Material Manager in scale Rs.7500-12000 in Group 'B' for which the notification was issued 20.2.2004. This selection was to be done purely on the basis of merit and the only criteria was that, candidates should have completed 5 years of service in the grade of 400-2300. The applicant was considered eligible for the post vide letter dated 4.10.2004 and he appeared for the written tests held on 30.10.2004 and 31.10.2004. According to the result declared on 20.11.2004, the applicant topped in merit in the written tests. Viva Voce was also conducted on 1.12.2004, where he performed well. But, when the final panel was declared on 6.1.2004, the applicant was shocked to find that his name was not included in the panel.

2. The case of the applicant is that he made a written request for a copy of the syllabus in Hindi dated 14.10.2004 i.e. prior to the written test on 30.10.2004 and 31.10.2004. But the Hindi Syllabus was not provided to him. He has also alleged that, in the written examination because the paper were bilingual, Hindi and English translations were not accurate and therefore, the candidates faced a lot of difficulty. In spite of his good performance in the written tests and viva voce and also his good service record, the applicant's name did not figure in the list of 4 persons



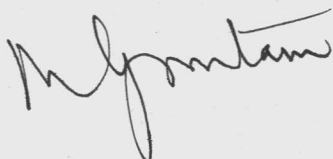
selected. Aggrieved by this he has filed the present OA. Seeking the following reliefs:

- i. Issue a writ order or direction in the nature of certiorari quashing written examination and the panel dated 6.12.2004 issued by respondent No.3. (Annexure No.6 to compilation No.I).
- ii. Issue a writ, order or direction in the nature of mandamus commanding the respondents to conduct a fresh written examination formulating the correct questions in bilingual form.
- ii(a) That in the alternative to relief (i) and (ii) the respondent No.1 to 3 be directed to modify the panel dated 6.12.2004 of the post of A.M.M. (Group'B)' and include the name of applicant in the said panel and further they be directed to post him on the post of AMM (Group'B') and provide him all the benefits of the said post including salary with effect from the date, the same have been allowed to other candidates of the same panel dated 6.12.2004.
- iii. Issue any other writ order direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the present case in favour of the petitioner.

3. In the counter affidavit filed by the respondents it has been stated that, there is no requirement under the rules for submitting the syllabus both in Hindi and English. Also that the applicant waited for eight months after issue of the notification dated 20.2.2004 to represent regarding providing of syllabus in Hindi. The counter affidavit also states that the applicant is the Post Graduate in Political Science and has passed High School and Intermediate examinations with English as one of the subjects. There is a denial that, there is any discrepancy between Hindi and English translations, no complaints were made by any candidate regarding the same during the course of the examination. Even the fact that, the applicant secured 60% marks in the written



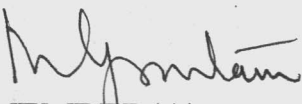
examination and topped in the list of candidates shows that, he had no difficulty in answering the questions. It is stated by the respondents that as per Recruitment rules, the panel for selection of Group 'B' posts is prepared on the basis of merit and performance of the applicant in the written test, service records and viva-voce. Alongwith the written arguments the respondents have provided a tabular chart which shows the marks secured by seven candidates including the applicant in the written tests, service record and viva voce. From the chart it is amply clear that four candidates secured more marks than the applicant and therefore, they were put in the panel. The applicant as per the chart available was placed in the 5th position. In the written arguments filed by the respondents they have cited several rulings of the Apex Court according to which **"the candidates who have participated in the viva voce willingly cannot challenge the selection before the Tribunal. All India SC & ST employees association and another Vs. A. Arthur Jeen and others MANU/SC/0251/2001: (AIR (2001) 2 SCR 118351)." In another ruling of the Supreme Court in the case of Union of India and others Vs. S.Vinod Kumar and Ors. AIR 2008 SC 5, it was held that **"those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same."** In the case of Om Prakash Shukla Vs. Akhileh Kumar Shukla and ors (1986) 1 SCR 855, the three judges Bench of the Hon'ble Supreme Court held that, **"the candidates who appeared in the examination without protest and subsequently found to be not successful in the examination, the****



question of entertaining a petition challenging the said examination, would not arise.”

4. After hearing both counsel and perusing the record on file, we are of the opinion that the applicant has not succeeded in making out any case for intervention in the matter. On the basis of the Supreme Court rulings cited above, there is no question of challenging the examination in which he participated willingly. Also on the basis of the record provided by the respondents it is abundantly clear that the candidate is placed at position No.5, whereas four other candidates secured better marks than him and therefore, were placed in the panel.

5. O.A. is accordingly dismissed. No costs.


MEMBER(A)


MEMBER(J)