

(RESERVED)

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH**  
**ALLAHABAD**

ALLAHABAD THIS THE 19<sup>th</sup> DAY OF April, 2011.

**HON'BLE MR. JUSTICE S. C. SHARMA, J.M.**  
**HON'BLE MR. S. N. SHUKLA, A.M.**

**ORIGINAL APPLICATION NO. 1247 OF 2005**  
**U/s 19, Administrative Tribunal Act, 1985**

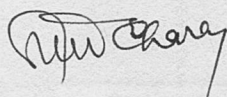
1. Parshu Ram Pandey, aged about 46 years.
2. Ramesh Kumar Chaubey, Aged about 46 years.
3. Ravindra Kuamr, Aged about 42 years.
4. Shanker Lal, Aged about 47 years.
5. Sankatha Prasad, aged about 54 years.
6. Ram Bali Yadav, aged about 48 years.
7. Raj Banshi Singh, Aged about 41 years.

All are working on the post of peon in the office of Chief Commercial Manger/ Claims, Northern Railway, Railway Station, Varanasi.

.....Applicant

**VE R S U S**

1. Union of India through the General Manager, Northern Railway, Headquarters Office, Baroda House, New Delhi.
2. The General Manager, Northern Railway, Baroda House, Headquarters Office, New Delhi.
3. The Chief Claim Officer, Northern Railway, NDCR Building, State Entry Road, New Delhi.
4. The Dy. Chief Commercial Manager/Claims, Northern Railway, Railway Station Building, Varanasi.
5. The Senior Commercial Manager/Claims, Northern Railway, Railway Station Building, Varanasi.





6. Shri R. S. Prasad, The then Sr. Commercial Manager/Claims, Northern Railway, Varanasi, At present Senior Commercial Manager, N. Railway, Moradabad. (Chairman Selection Committee).
7. Shri Nirmal Kumar Bhengra (S.T.).
8. Shri Prahlad Chaubey.
9. Shri Nathuni Yadav.
10. Shri Ram Adhar.
11. Smt. Usha Devi
12. Shri Satyam Sarkar (S.C.)
13. Shri D.T.P. Lepcha (S.T.)

Respondent Nos. 07 to 13 are working in Group 'D' category in the office Chief Commercial Manager/Claims, Northern Railway, Station Building, Varanasi.

.....Respondents

Advocate for the applicant: Sri S. S. Sharma

Advocate for the Respondents: Sri P. Mathur

### **ORDER**

**Delivered by Hon'ble Mr. Justice S. C. Sharma, Sr. Member 'J'**

Under challenge in this O.A. is the order dated 07<sup>th</sup> October, 2005 issued by the Dy. C.C.M./Claims, N. Railway, Varanasi, declared as a result of selection for promotion on the post of Clerk-cum-Typist in grade ₹3050-4590/- against 33-1/3% under the promotee quota as per notification dated 13<sup>th</sup> April, 2005 (Annexure-A-1). Further prayer has also been made for giving a direction to respondent No.2, the Chief Claims Officer/N. Railway, State Entry Road, New Delhi to appoint

*(Signature)*



review D.P.C./Selection Committee to reevaluate the Answer Book of the applicants and their marks be re-totaled and the totals be checked for Arithmetical Errors by the aforesaid committee. And that the applicant be granted all consequential benefits. The facts of the case may be extracted as follows:-

2. It has been alleged by the applicant that the present application is against the various irregularities and illegalities committed by the Selection Committee in selection of Clerk-cum-Typist in grade ₹3050-4590/-/- against 33-1/3% under promotee quota as per notification dated 07<sup>th</sup> May, 2005 issued by Dy. C.C.M./Claims, N. Railway, Varanasi for which written test was held on 07<sup>th</sup> May, 2005 and panel of seven candidates has been issued. And the applicants were deprived of the due promotion due to malafide, discriminatory and unfair action on the part of the respondents. That the applicants were initially appointed in Group 'D' post on different dates from 1975 to 2000 and all the applicants have been working on regular post of Peon under the Chief Commercial Manager/Claims, N. Railway, Varanasi. There was nothing adverse against the applicants and they were liable to appear in selection for the post of Clerk-cum-Typist against 33-1/3% under promotee quota for Group 'D' post are to be filled up, 62.2/3% by direct recruitment through

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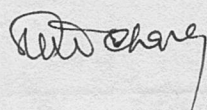


the agency of the Railway Recruitment Board and 33-1/3% by promotion by selection of specified Group 'D' staff. Selection was conducted and finalized on the basis of written test only and no Viva-Voce test is conducted. That the general candidates have to secure 60% marks for passing in the Written Test and SC and ST candidates has to secure 50% marks for passing the written test. There is also a provision of making promotion against quota from the best among the failure candidates of S.C. and S.T. on *ad-hoc* basis for six months. It was also essential to give training for promotion to the S.C. and S.T. candidates before selection and the selection was conducted on 13<sup>th</sup> April, 2005 for selection for the post of Clerk-cum-Typist for the promotee quota in order to filled up 12 posts (General-9, S.C.-2 and S.T.-1), eligible candidates were called to appear in the Written Test including the applicant five candidates were S.C., two candidates were S.T. and 15 candidates were from General category all those candidates were working in Group-'D' category on different post in the office of Chief Commercial Maanger, N. Railway, Varaasi. The selection committee was constituted by the competent authority comprising of Sri R. S. Prasad, Sri Vijay Kumar, Sri Vijay Kumar respectively President/Chairman, Members. The appointment of the selection committee was not as per rules. There had been





irregularities in conducting the examination even favoritism was shown during the written examination in writing the answer to the question paper. It is submitted that there was none to help the applicants as they are simply sincere and hard working and having concerned to their duty only. As such they solved the question papers of their own under strict supervision for them. The applicants done fairly in the written test and they were confident that they would secure not less then 60% marks as required to pass the written test. The question paper in the aforesaid examination was containing the six questions and out which five questions required to be solved. The Answer Sheets were evaluated and examined by Sri R. S. Prasad, Chairman of the Selection Committee and the result was declared on 07<sup>th</sup> October, 2005 and 07 persons were selected in which one S.C. and two S.T. rests are of General category. The selection was vitiated and numerous irregularities were committed, firstly, there had been malafide evaluation of Answer Books by Shri R. S. Prasad, Senior Commercial Manager, Chairman of the Selection Committee. Secondly, Sri Anil Soni, P.A. to Sr. Commercial Manager, Sri R. S. Prasad, Chairman, of the Selection Committee openly helped Sri Nirmal Kumar Bhengra, S. T. in copying the answer of question of question paper. That Sri Satyam Sarkar, D.T.P. Lepcha and





Smt. Usha Devi having no ability to write even a simple application have been declared pass in the written test. That Nirmal Kumar Bhengra, S.T. and D.T.P. Lepcha, S.T., were working in Bungalow of Sri R. S. Prasad, Chairman of Selection Committee and they were doing all domestic work in his bungalow i.e. cooking, cleaning and other domestic etc. and that is why they were declared pass and Mr. R. S. Prasad favoured him. It has also been alleged that two posts were to be filled up from S.C. candidates whereas, five S.C. candidates were to appear in the examination, only one S.C. candidate namely Satyam Sarkar was declared successful and per rule one S.C. candidate as best amongst the failures of four candidates should have been taken in the provisional panel. Mr. Lepcha, S.T. candidate who was working in his bungalow as his domestic servant declared successful as best among the failure though as per rules best among the failure should have been taken from S.C. candidates, therefore the selection proceedings were vitiated on this account. Irregularities were committed in examining the answer books. That the applicant attempted to the best of their capability and capacity and they had been waiting that they will be declared successful but they have not been declared successful, hence the O.A..

*Stitchery*



3. Respondents filed the Counter Reply and it has been alleged that the applications were invited from Class-IV employees, of the office of the Dy. Chief Commercial Manager/Claims, N. Railway, Varanasi to fill up 12 vacancies of Class-III for the post of Clerk-cum-Typist, in the grade of Rs.3050-4590/- against 33-1/3% quota. That the 22 candidates belonging to the Class-IV category applied and they were called for appearing in written examination on 07<sup>th</sup> May, 2005. The written examination was conducted as per rules very fairly without any complaint of copying and malpractice from any nook or corner during the examination. That the result of the written examination was declared on 07<sup>th</sup> October, 2005, in which only seven candidates were declared pass and as per their performance in the written examination. And the applicants were not declared passed on the basis of their performance in the written examination. That thereafter, on failure in the written examination, the applicants were making unsuccessful attempts to malign the conduct of examination by alleging mass copying and favoritism etc. These applicants did not make any complaint during the course of examination or after examination and prior to that declaration of result; no complaint was made by them and they are stopped from challenging the same by raising the contrary pleas. That, there

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had been conditional checking of papers; and the candidates who came into the criteria of qualifying the written examination were declared pass/successful. As per rules the training for S.C. and S.T. candidates for promotion before selection was arranged, the applicants are required to put strict proof of the averments in para under reply regarding constitution of Selection Committee. And the allegations made in the O.A. regarding constitution of selection is wrong, no officer namely Vijay Kumar, Senior Commercial Manager, Northern railway, S.E. Road, New Delhi as given at serial (iii) in para under reply had ever been the member of selection committee for the selection in question. No complaint was made by the applicants during the course of examination or after the examination. Since the applicants could not qualify the examination they are making such a false and frivolous allegation which is far from the truth. If there was any wrong they should have been agitating the matter even during the time of examination and the applicants kept mum for a long period. Personal allegations have also been made against the member of the committee which is highly objectionable and baseless. That S.C. candidate, Satyam Sarkar was declared pass on the basis of relaxed standard prescribed for scheduled caste candidate. As regard scheduled Tribe candidate namely Sri Nirmal Bhengra, he has

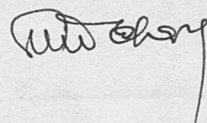
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been declared pass under general category as per marks obtained by him in the Written Examination, Sri D.T.P. Lepcha another S.T. candidate has been taken under the standard of best against failures. The allegations made in O.A. are hypothetical, that the O.A. is misconceived and liable to be dismissed.

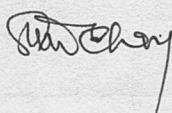
4. Rejoinder has also been filed on behalf of the applicant and the allegation of the Counter reply has been disputed.

5. We have heard Mr. S. S. Sharma, Advocate for the applicant and Mr. Prashant Mathur, Advocate for the respondents and perused the entire facts of the case. It is an admitted fact that all these applicants had been working with the respondents as Class-IV employee, and it is admitted fact that posts were advertised in order to fill up the post of Clerk-cum-Typist and as per rules 62-2/3% posts were filled by direct recruitment from the agency of the Railway Recruitment Board and 33-1/3% of the post were to be filled by promotion by selection among the group-'D' staff. All the 12 posts were earmarked for promotee quota and out of these 12 posts -09 posts were of General and two posts of S.C. and one post of S.T. from the group 'D' staff. The candidates who applied for the test





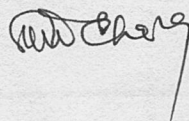
were called for written test on 07<sup>th</sup> May, 2005. Five candidates were of S.C., two candidates were of S.T. and 15 candidates of general category were appeared in the Written Test. The selection committee was constituted by the competent authority comprising of Sri R. S. Prasad, Sr. Commercial Manager/Claims, N. Railway, Varanasi, Sri Vijay Kumar, Assistant Personnel Officer, N. Railway, Baroda House, New Delhi, and Sri Vijay Kumar, Sr. Commercial Manager, S.E. Road, New Delhi respectively President/Chairman, Members. It is also admitted fact that only seven candidates were declared successful in the written examination. The applicant alleged that various irregularities and illegalities were committed in the selection for the post of Clerk-Cum-Typist of 33-1/3% promotee vacancy. It has been alleged that the constitution of selection committee was in violation of the Railway Board's orders. It is an established fact that the applicants participated in the written examination without any objection and the same committee notified the application form from the eligible candidates and they were called for written examination on 07<sup>th</sup> May, 2005. At the time of examination or prior to examination no objection at all was raised regarding constitution of the selection committee and when applicants remained unsuccessful in the examination they made objection. Firstly, the applicants





are stopped from raising any objection against constitution of selection committee and also regarding irregularities during the examination. Because incase there had been mass copying or certain employees helped certain candidates in attempting the question then this complaint should have been made to the invigilator but at that time no complaint has been made in this connection. No evidence or proof has been shown by the applicant that there had been irregularities and bungling in conducting the written examination on 07<sup>th</sup> May, 2005 or certain persons helped the certain particular persons in attempting the written examination as well as in the copying and merely on the application by unsuccessful candidates regarding the irregularities and illegalities in examination is not tenable. It has been argued by the learned counsel for the respondents that none of these candidates either during the examination or after the examination had made complaint in respect of the examination.

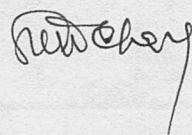
6. It has been alleged by the applicant that there is a provision for imparting the training to the S.C., S.T. candidates for promotion before written examination, but no training as per rules has been provided to the S.C. and S.T. candidates. Firstly, it will be material to state that none of the S.C. or S.T.





candidates who appeared in the examination made complaint that the training was not provided before the examination to the S.C. and S.T. candidates. It has been alleged by the respondents that as per rules the coaching was provided to the S.C. and S.T. candidates and on the basis of overall performance of the candidates the result was declared and seven candidates remain successful in the examination. Satyam Sarkar was an S.C. candidate was declared pass on the basis of relaxed standard prescribed for Scheduled Caste candidates. And Sri Nirmal Bhengra, was an S.T. candidate who has secured highest marks was placed in the General Category as per rules and Sri D.T.P. Lepcha another S.T. candidate has been taken as best against failures as per the rules.

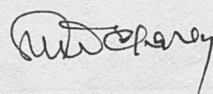
7. It has been argued by the learned counsel for the respondents that the applicants have filed the O.A. after final panel had been declared. And the applicants participated in the selection but they could not obtain the requisite marks for being placed in the panel. And they made no complaint during the examination or before declaration of the result hence they can not be permitted to challenge the selection process after having participated in the examination. It has also been argued by the learned counsel for the respondents that once the applicant had





appeared in the examination conducted by the respondent and failed then they can not raise any objection in this connection on the ground that there had been irregularities or illegalities in constitution of selection committee or in the selection panel etc. and reliance was placed on the judgment of Hon'ble Apex court report in AIR 1995 SC 1088 = (1995) 3 SCC 486 Madan Lal Vs. State of Jammu & Kashmir the Hon'ble Apex Court has held as under:-

*"9. .... The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a 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. In the case of Om Prakash Shukla v. Akhilesh Kumar Shukla (AIR 1986 SC 1043) it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner."*

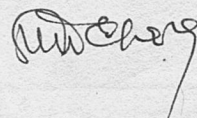




Under these circumstances, in view of the above judgment of Hon'ble Apex court the applicant raised pleas regarding irregularities etc. when the applicants had already participated in the examination. There are other judgments of the Hon'ble Apex Court reported in (2008) 4 SCC 171: 2008 (2) Supreme 328 Dhananjay Malik & others Vs. state of Uttranchal & Others the Hon'ble Apex Court held as under:-

*"7. It is not disputed that the respondent-writ petitioners herein participated in the process of selection knowing fully well that the educational qualification was clearly indicated in the advertisement itself as BPE or graduate with diploma in Physical Education. Having unsuccessfully participated in the process of selection without any demur they are estopped from challenging the selection criterion inter alia that the advertisement and selection with regard to requisite educational qualifications were contrary to the Rules.*

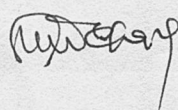
8. It has also been argued by the learned counsel for the applicant that Sri. R. S. Prasad, Chairman of the selection committee after written test took the considerable period for declaring the result of the selection. That the written examination was conducted on 07<sup>th</sup> May, 2010 and the result was declared on 07<sup>th</sup> October, 2010 there is delay and it shows that there had been malafide, but no evident has been produced in this connection and merely due to the reasons that the result





was declared after considerable delay, then it can not be inferred that there had been irregularity and illegality during the selection. There can be several reasons for the delay like approval of the higher authorities is to be obtained and there can be delay in this connection. As no evidence has been shown to us hence we are of the opinion that the examination has been conducted fairly and according to rules and in selection process seven candidates remained successful in order to filled up 12 posts as the candidates were not eligible hence all the posts were not filled up. And it is wrong to allege that favoritism has been shown by Mr. R. S. Prasad due to the reasons that the Nirmal Kr. Bhengra and D.T.P. Lepcha are working at the bungalow of R. S. Prasad and they had been doing all domestic works and hence they were declared successful in the written examination, but there is no substance in this contention. There is no proof as required against the respondents to prove all the irregularities and illegalities and nothing has been shown by the applicant to prove the irregularities and illegalities mentioned in the O.A. and the allegations made in the O.A. are without any substance, we are of the opinion that the examination was conducted fairly by the respondents.

9. For the reasons mentioned above we are of the opinion that there is no merit in the O.A. as the applicants remained



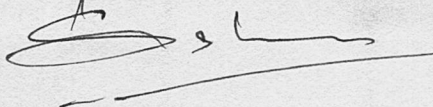


unsuccessful in the examination hence they made a complaint.

Whereas, the applicants made no complaint prior to examination or during the examination or prior to declaration of the result and, if any, candidates remain unsuccessful in the examination then he may make such complaint and allegations.

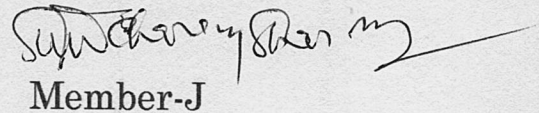
In our opinion O.A. lacks merits and liable to be dismissed.

10. O.A. is dismissed. No order as to costs.



Member-A

/Dev/



Member-J