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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

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Registration no. 674 of 1986

Jai Ram Prasad  
and others

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Applicants.

Vs.

Satya Mitra Bhargava, G.M.  
and another.

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Respondents.

Hon'ble D.S. Misra, A.M.

Hon'ble G.S. Sharma, J.M.

(Delivered by Hon'ble D.S. Misra)

This is a case under section 19 of the A.T. Act XIII of 1985, in which the applicants who were the employees of the Diesel Locomotive ~~WORKS~~<sup>BL</sup> Works, Varanasi have challenged the order dated 31.10.1986 passed by the General Manager, Diesel Locomotive Works, Varanasi cancelling the written examination for Intermediate Apprentice Mechanics held on 28.9.1986.

2. The case of the applicants is that they appeared in the written examination for Intermediate Apprentice Mechanic held on 28.9.1986 and did well in their written examination and were confident of success; that the result of the written examination was ready and was likely to be declared on 3.10.1986; that some of the candidates who are very influential did not do well in the examination and therefore threatened and pressurised the respondents to cancel the aforesaid written examination and General Manager, D.L.W. Varanasi (respondent no. 1) cancelled the written examination; that the Joint Secretary of the Staff Council of the employees

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of the D.L.W., Varanasi gave representation to respondent no.1 against the aforesaid order dated 31.10.1986 cancelling the written examination, but he expressed his inability to do anything in the matter; that the allegation in the impugned order dated 31.10.1986 that there was indication of use of unfair means in the examination in question is wholly vague; that there was no report either of any invigilator or examiner regarding use of any unfair means and therefore, there is no basis or foundation and justification for cancellation of the examination held on 28.9.86; that the impugned order is wholly arbitrary, based on extraneous consideration, unjust, unreasonable, unfair and violative of Articles 14 and 16 of the Constitution of India; that the applicants' right to get selected and appointed as Chargeman-B in the scale of Rs.425-700 has been interfered with and denied illegally. The applicants have prayed that the impugned order dated 31.10.1986 be set aside and the respondents be directed to declare the result of the aforesaid examination held on 28.9.86. By means of an amendment application, the applicants had also prayed for setting aside an order dated 15.1.87 passed by the respondents fixing another date for holding the examination in question on 1.2.87.

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3. In reply filed on behalf of the respondents, it is stated that on account of written complaints received from various sources that unfair means have been adopted in the written examination held on 28.9.86, the competent authority enquired into the complaints received through a committee of Sr. Officers and after coming to the conclusion that unfair

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means had been adopted in the aforesaid written examination decided to cancel the written examination held on 28.9.86 and ordered that fresh written examination be held; no result was declared, and <sup>the</sup> applicants have no legal right to challenge the cancellation; that the applicants' contention that the results of the written examination were likely to be declared on 3.10.1986 is based on presumption and are not admitted; that it is incorrect to say that the aforesaid decision was taken due to any threat or pressurisation of any person; that there is nothing on record to show that any representation against the impugned Notification dated 31.10.1986 was received either from the applicants or from the Jt. Secretary Staff Council; that majority of the members of the Staff Council including the Jt. Secretary submitted a joint representation dated 3.10.1986 to the General Manager D.L.W. stating about the leakage of the question -papers as also that unfair means were adopted in the written examination held on 28.9.86 with the request that the written examination should be treated as invalid; that the inquiry committee which consisted of Sr. Officers has taken all the facts and circumstances into consideration including various precautions taken by the administration for conduct of fair examination and after examining the matter in depth found that unfair means were adopted in the written examination held on 28.9.86; that the competent authority after considering the above facts and circumstances of the case decided to cancel the written examination held on 28.9.86 and <sup>be</sup> ~~were~~ to hold fresh written examination for the purpose; that the decision

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taken for cancelling the written examination is no way hit by Articles 14 and 16 of the Constitution of India, nor it violates the provisions contained therein; and that there is no irreparable loss to the applicants by the cancellation of the written examination.

4.A rejoinder affidavit was filed by the applicants in which the allegations made in the claim petition were reiterated.

5.A supplementary counter affidavit was filed on behalf of the respondents by Sri S.N.Bhargava, General Manager, D.L.W., Varanasi in which the allegations made in the counter-affidavit filed earlier were reiterated. A copy of the complaint dated 3.10.1986 and another undated complaint was filed as annexure R.A.1 and 2. A copy of the inquiry report is filed as annexure R.A 3 and the order of the Chief Mechanical Engineer cancelling written test is attached as annexure R.A.-4.

6.A supplementary rejoinder affidavit in reply to the above supplementary counter- affidavit was also filed by the applicants in which it is stated that the counter-affidavit of Sri Bhargava should be ignored and it is alleged that the reply has been filed to fillup the lacuna in the reply filed earlier. We have considered this matter and we find that the applicant in his application has made the personal allegation of arbitrariness, mala fide and acting under pressure on the part of the General Manager, Sri S.N.Bhargava. The denial of these allegations by way of an affidavit filed by Sri Bhargava is in reply to these allegations and we are of the opinion that in the interest of justice it is proper to consider the averments made by Sri Bhargava.

7.We have heard the arguments of the learned counsel for the parties and have carefully perused the record. The

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applicant have based their claim mainly on the following two grounds: that the cancellation of the examination held on 28.9.1986 in which they were declared successful amounts to the violation of the right acquired by them under Articles 14 and 16 of the Constitution of India; and, that the order of cancellation was arbitrary, illegal and mala fide action of the General Manager, D.L.W., Varanasi Sri S.N. Bhargava. The respondents have denied any violation of Articles 14 and 16 of the Constitution as also the allegation that the order of cancellation was due to any mala fide action on behalf of the competent authority, or the General Manager, D.L.W., Varanasi Sri S.N. Bhargava.

8. There are several decisions of the Hon'ble Supreme Court and the Central Administrative Tribunal on this subject. In the case of State of Haryana Vs. Subash Chander Marwaha and others, S.L.R. 1973(2) page 137, the Hon'ble Supreme Court, have held that unless the statute imposes a legal duty on the authority to perform a certain duty, the aggrieved party has no legal right to enforce its performance. In this case the Public Service Commission Haryana conducted a competitive examination for recruitment of candidates for 15 vacancies in the Haryana Civil Services (Judicial Branch). The result of the competitive examination was declared and published in the Haryana Government Gazette on April 6, 1971. It was a list of 40 candidates who obtained 45 per cent or more marks in the examination. The State Government, which is the appointing authority, made seven appointments in the serial order of the list according to merit. The respondents

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who ranked 8,9, and 13 respectively in that list did not get an order of appointment, although there were vacancies. The reason for not making the appointments was that in the view of the State Government, which was the same as that of the High Court, previously intimated to the State Government candidates getting less than 55 per cent of marks in the examination should not be appointed as subordinate judges in the interest of maintaining high standard of competence in judicial service. The respondents nos. 1 and 3 filed a writ petition for mandamus which was dismissed by the High Court and they filed an appeal by special leave against the order of the High Court of Punjab and Haryana. The Hon'ble Supreme Court held that the government was not bound to fill up all the posts and the mere existence of vacancies gives no right to candidates for appointment-examination is for the purpose of showing that a particular candidate is eligible for consideration for promotion. It further held that before mandamus may issue, it must be shown that statute imposed a legal duty on the authority and aggrieved party has a right to enforce its performance.

9. In Miss Katariya Lata Dulasi Das Vs. Union of India S.L.J. 1987(2) page 683, it has been held that there is no vested right in the matters of appointment recognized and protected by law and even if a person is selected events subsequent to the formation of the panel may render him unfit for appointment. In that case, the petitioner was selected for training of Telegraphs and she joined the training. In the midst of her practical training, she was informed that her name was removed from the strength of training class on the ground of ~~her~~ being overage. This order was challenged by the petitioner and it was submitted by the respondents that during the scrutiny of the application of the petitioner, it was

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discovered that a calculation mistake had happened in respect of her age and having been found overage, the name of the petitioner was removed from the strength of the training class. The tribunal has observed as follows:

"It is well established that there is no vested right in the matters of appointment recognised and protected by law. In O.A.no.241/86. We have held that when a select list of candidates is prepared, it simply indicates that at the given moment, he is considered eligible for appointment. Inclusion of name in the select list does not confer a right for appointment. Events subsequent to the formation of the panel may render him unfit for appointment.

In the case of Bihar School Education Board Vs. Subash Chandra Sinha and others, A.I.R.1970, Supreme Court, page 1269, the Board had cancelled the Secondary School Examination held in March 1969 of all the candidates who appeared at the Hanswadih centre and the reason was that unfair means were practised on a large scale at that centre. 36 students, who were respondents in the above case challenged the order of the Board on many grounds, the Supreme Court has held that no principle of natural justice was violated in this case and the Board had every right to cancel the examination and ordered that a fresh examination be held. It also held that there was no need to give the examinees an opportunity of contesting this because the evidence in the case was perfectly plain and transparent. In our opinion, the above mentioned <sup>Cases</sup> ~~are~~ <sup>are</sup> fully applicable to the present case. The applicants have failed to establish that they had acquired any right under any statute or rules, framed by the competent authority. The examination was held to test the suitability of the candidates including applicants for promotion as Intermediate Apprentice Mechanic and the inclusion of the names

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of the applicants in the list of candidates for appearing in the examination did not confer any legal right on the applicants. We are, therefore, of the opinion that there has been no violation of the provisions of Articles 14 and 16 of the Constitution of India by the act of cancellation of the examination held on 28.9.86. It follows that the order dated 31.10.1986 *and* subsequent order dated 15.1.1987 intimating the intention to hold a fresh examination is not violative of any provisions of law or rules framed by the competent authority.

10. The second ground taken by the applicants is arbitrariness and mala fide on the part of the respondents in cancelling the examination. The respondents have failed to point out any personal bias on the part of the Chief Mechanical Engineer, who on the receipt of complaint from employees and some candidates who appeared in the examination, got an inquiry conducted and after examining the inquiry report of Senior Officers came to the conclusion that unfair means had been adopted, passed an order cancelling the examination held on 28.9.69 and decided to hold a fresh examination. Similarly the allegation of malafide against Sri S.N. Bhargava which has been made in a general way without giving any concrete evidence has been denied by Sri S.N. Bhargava in the affidavit, filed by him. Sri S.N. Bhargava, General Manager, D.L.W. Varanasi is a very responsible officer of the railway administration and there is no reason to disbelieve the categorical denial regarding any malice or mala fide on his part. Similarly the action taken by the Chief Mechanical Engineer in getting the inquiry conducted into the allegations of unfair means adopted in the examination

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held on 28,9.86 and passing an order cancelling of the examination is in the nature of proper administrative action and there is nothing to show any arbitrariness or illegality in this administrative action of the Chief Mechanical Engineer.

For the reasons mentioned above, we are of the opinion that there is no merit in the application and the same is dismissed without any order as to costs.

*[Signature]*  
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A.M.

*[Signature]*  
26/10/87  
J.M.

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