

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

T.A.No.347/86

(O.S. No.417 / 83)

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Deo Pras

.....

Plaintiff

vs.

Union of India & 15 others .. Defendants.

Hon. Mr. A. B. Gorthi, * Member (A)

Hon. Mr. S. N. Prasad, Member (J)

(By Hon. Mr. S.N. Prasad, J.M.)

The above original Suit No.417 of 1983 which was filed by the plaintiff in the Court of City Munsif, Varanasi, has been received in this Tribunal by way of transfer u/s. 29 of the Administrative Tribunals Act, 1985 and the same has been registered here as T.A. No.347/86.

2. Briefly stated the facts of the above O.S.No.417/83 inter-alia, are that the plaintiff was appointed as clerk on 6-12-1951 and was promoted as Senior Clerk on 29-11-57 and as Head Clerk on 10-12-1980 and subsequently was given the scale of Rs.425-700 (R.S.) retrospectively with effect from 1-10-80 and was posted in the Electrical Department and continues as such and stands for further promotion to the post of O.S. Grade II in scale of Rs.550-750. As a result of upgrading for the post of ministerial staff the post of Head Clerk have been upgraded as grade II in scale Rs.550-750 w.e.f. 1-10-80. The Railway Board vide circular No.F.C.III/76/PS-3/U.P.G./, dated 14-7-76 made policy decision that wherever the upgraded posts are to be filled up by promotion, if

from a particular category no written test was required rather
ould be on the basis of seniority and consideration of service
ard and by the letter of the Railway Board dated 29-10-79
and 14-2-80 it was clarified and modified that from written test
in selection there will be only objective types of question. As a
result of upgrading the upgraded posts of O.S. Grade II in the
Electrical Department were to be filled up as on 1-10-80 for
which the plaintiff being eligible and entitled for the said post
of O.S. Grade II by virtue of Seniority and unblemished service
record was required to attend the selection.

3. Though as per above letter of Railway Board only objective
type of questions were to be asked but arbitrarily and whimsically,
in violation of the directions of the Railway Board, subjective type
of questions were asked despite representation of the ~~XXXX~~
plaintiff dated 16-2-82 and telegram dated 2-3-82 and other
representations. The defendants against the claim and interest of
the plaintiff illegally and in violation of the mandatory rules
finalised the selection declaring defendants No.3 to 16 who
are juniors to the plaintiff as selected ones and as such the
plaintiff has filed this Suit for declaration to the effect that
the selection held on 28-2-82 and the panel published on
1-7-82 and 1-2-83 regarding the post of O.S. Grade II Scale
Rs.550-750 for Electrical Department are wholly illegal, void and
ineffective, and the plaintiff is entitled to the said post by
virtue of seniority and service record with effect from 1-10-80
with all consequential benefits.

4. The defendants in their written statement have, inter-alia, contended that the post of office Superintendent Grade II in Electrical Department grade Rs. 550-750 is selection post in which promotions are made by positive act[~] of selection by a duly constituted selection Board. The plaintiff appeared in the selection of the above post but did not succeed. Railway Board vide their letter dated 29-10-79 decided that for filling up upgraded post arising out of the re-structuring of the cadre, selection should be held for promotion on the basis of objective type questions to avoid delay in selection. This was to be confined to the selection for upgraded posts in connection with restructuring of cadre as on 1-1-79 only ; whereas in respect of promotion to the post caused due to resultant vacancies this condition was not laid down and subjective questions could be asked in such cases. It has further been contended that only the candidates who appeared in the examination and failed have raised such objections to achieve their aim by hook or crook. It has further been stated that the selection of Office Superintendent Grade-II was finalised as per extant rules, regulations and procedure and panel was made properly and the persons who were empanelled by duly constituted Selection Board have joined and are working. It has further been stated that the plaintiff, without any protest again appeared in the Selection of Office Superintendent Grade II (Rs. 550-750) when the vacancy was caused second time on 26-5-84, in written and viva-voce test and was empanelled by duly constituted selection Board and accordingly the plaintiff has been promoted as office

Superintendent Grade II as per office order dated 2-7-84 and has the post and consequently the plaintiff has no claim against the selection finalised before in which he appeared but could not pass. In view of the above circumstances the plaintiff's suit is liable to be dismissed with costs.

5. We have heard the learned Counsel for the parties and have thoroughly gone through the records of the case.

6. The learned Counsel for the plaintiff while drawing our attention to the pleadings of the parties and to the papers filed by the parties has argued that as per circular letter of the Railway Board dated 29-10-1979 for filling up upgraded posts arising out of recent restructuring of cadres, selection should have been held on the basis of objective type questions only instead of written test as normally prescribed wherever such selection are yet to be held to avoid delay in selection; but the respondents have held the selection for the above post on the basis of subjective type questions in violation of the above policy matter and in violation of the prescribed rules and procedure and as such the plaintiff's suit should be decreed and in support of his arguments has placed reliance on the ruling reported in A.I.R. 1979, Supreme Court page 1628 :-

" R.D. Shetty, (Appellant) Vs. The International Airport Authority of India and others (Respondents) wherein it has been enunciated :-

" Constitution of India, Arts. 12 and 14 - International Airport Authority is State - Tenders called for running restaurant and snack bars - Qualifications laid down as requisite - It cannot accept tender of person who does not fulfil the requisite qualification."

7. The learned counsel for the defendants, while adverting to the pleadings of the parties and particularly to the aforesaid letter of the Railway Board dated 27-10-1979, has argued that a careful perusal of this letter of the Railway Board clearly shows that selection was to be held on the basis of objective type questions only instead of written test as normally prescribed and this was resorted to only with a view to avoid delay in selection for upgraded post in connection with restructuring of cadres as on 1-1-79 only and not for other resultant vacancies otherwise; and has further argued that there has not been ~~any~~ ^{any} violation of ^{any} rule; regulation or procedure and as such the Suit of the plaintiff should be dismissed.

8. We have carefully perused all the papers filed by the plaintiff per list 20-C and also the papers filed by the defendants through the application dated 10-2-1987 and have considered ^{all} the view points and all the aspects of the matter and the material on record.

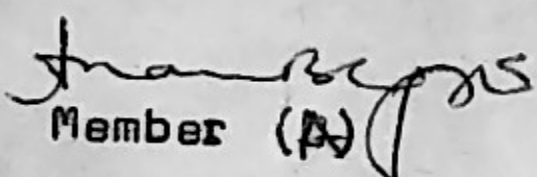
9. This is worthwhile reproducing the relevant portion of the above letter dated 27-10-79 (paper No. 7 of list 20C) ^{which is} as follows :-

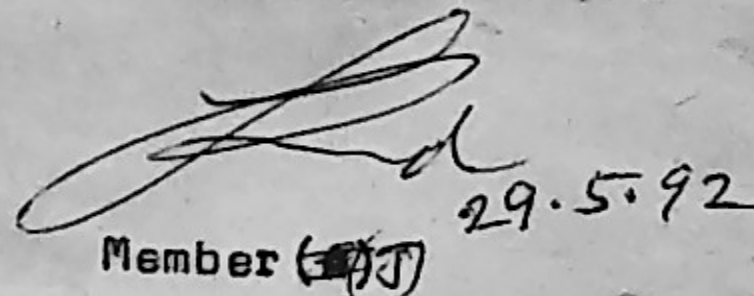
"The Ministry of Railways have decided that for filling up upgraded posts arising out of recent restructuring of cadres, selection should be held on the basis of objective type questions only instead of written test as normally prescribed wherever such selection are yet to be held. This may be done to avoid delay in selection and should be confined to the selection for upgraded posts in connection with recent restructuring of cadres as on 1-1-1979 only."

10. Thus, a careful perusal of the above clarifies the whole position and it becomes crystal clear that only objective type questions were to be the basis for selection of such posts which were held for filling up upgraded posts arising out of recent restructuring of cadres only with a view to avoid delay in selection for upgraded posts as on 1-7-1979 and not for selection for other promotional posts caused due to resultant vacancies otherwise and as such we find that in the instant case in

near to the selection which was held on 28-2-82 for the
ve post on the basis of subjective types questions
for filling up resultant vacancies on promotional post
other than ^{the} filling up upgraded post arising out of
restructuring, there has been no violation of any rule,
procedure or of statutory or mandatory provision or
any violation of the principles of natural justice and
the above ruling relied upon by the learned counsel for
the plaintiff is found to be of no avail to the plaintiff,
as the facts of the instant case are found to be different
from the facts of the above ruling.

Consequently, we hold that the plaintiff has
failed to prove his case and the above Suit of the plaintiff
is dismissed. In the circumstances of the case the parties
to bear their own costs.


Member (A)


Member (B) 29.5.92

Dated 29th May, 1992, Allahabad.

(tgk)