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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration T.A. No.1039 of 1986

Harishanker Singh Plaintiff

Versus

Union of India & Others..... Defendants

Hon. S. Zaheer Hasan, V.C.

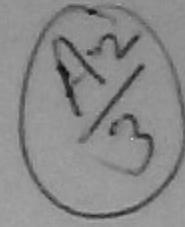
Hon. Ajay Johri, A.M.

(By Hon. Ajay Johri, A.M.)

Suit No. 832 of 1984 Harishanker Singh

Versus Union of India and Others has been received
on transfer from the Court of Munsif (I) Gorakhpur
under Section 29 of the Administrative Tribunals
Act XIII of 1985. The plaintiff joined the North
Eastern Railway Inter College after recruitment
through Railway Service Commission, Muzaffarpur
on 15.4.1981. The Chief Personnel Officer, North
Eastern Railway proposed to hold a selection of
Lecturers in Mathematics, Hindi and other subjects
vide his letter No. E/252/254/A(II) dated 5.12.83
addressed to the Principal, North Eastern Railway
Boys Inter College, Gorakhpur. The plaintiff's name
was at Sl.No.6 in the list of lecturers for
Mathematics. According to the plaintiff the Selection

Board consisted of three persons one representative of Scheduled Tribe, another who represented Scheduled Caste and the third Member who represented the general community. The plaintiff claims that this interview Board was not fit, suitable or efficient for conducting the selection as the Members did not have desired qualifications and did not possess appropriate knowledge to adjudge the efficiency of the candidates. According to the plaintiff a lecturer was required to be Postgraduate with teaching qualifications but all the three Members did not have any teaching qualification and also did not possess any degree in teaching and therefore the Interview Board was nothing but a mockery of the candidates. The plaintiff has further gone on to say that according to the settled principles of law as laid down in the Education Manual and Intermediate Education Act the Committee should have possessed suitable qualification and since the Interview Board had not been appointed according to the norms and act done by them is ultravires, illegal and liable to be quashed. According to the plaintiff he possessed appropriate qualification. He was also found suitable in each respect. He had imparted education to intermediate students and therefore he should have been appointed as a lecturer in Mathematics. However, the Railway Service



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Commission declared the result of the candidates after the ^{35. Selection process} ~~interviews~~. This post should have been filled from the teachers in the scale Rs.440 - 750. The grade Rs. 550 - 900 is not a direct recruitment category and therefore any selection of direct recruits to fill up this post was illegal. According to the plaintiff when a candidate is within the orbit of eligible candidate and was promoted on adhoc basis and he is subsequently called for selection, he is to be selected but in the instant case the rules have been violated, ³⁶ and Even if a candidate is declared unsuccessful he should have been called again for selection after six months. In the instant case Railway Service Commission held the test after seven months but the plaintiff was not given a chance to reappear in the selection. The plaintiff has therefore prayed that by a decree it may be declared that the selection for the post of lecturer Mathematics in the scale Rs.550 - 900 held by the Railway Service Commission for which the interview was held on 28.5.1984 and the result was declared subsequently and the appointment of the candidate from the said panel be declared illegal and that by a decree of injunction in favour of the plaintiff the defendants be directed to consider the plaintiff's promotion to the post of lecturer in Mathematics.

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2. In its written statement the Union of India, defendant No.1 has said that the plaintiff has misrepresented the facts in the plaint. He was appointed as Assistant Teacher in the grade Rs. 440 - 750 on 15.4.1981. Prior to 1.1.1984 the North Eastern Railway Boys Inter College, Gorakhpur had two wings - English Medium High School and Hindi Medium Inter College. In the administrative interest the English Medium High School was upgraded to Inter Standard in July, 1983. As a result of this upgradation and introduction of subjects, 3 posts of Lecturers Mathematics in the scale Rs. 550 - 900 were sanctioned for the Hindi Medium and English Medium Wings of the Inter College. These posts were classified as selection posts and therefore they had to be filled through a positive act of selection. In the intervening period in order to manage the work the plaintiff, who possessed the qualification, was given a chance to work against one of the posts on 16.7.1983. He was also called to appear in the selection held for the post in question. In this selection only viva-voce test was to be conducted. According to the defendants the instant Railway rules provided that a Selection Board for selecting the candidates should consist of three officers one of whom would be a Personnel Officer and none of the Members be subordinate to any of them and for the grade Rs. 550 - 900 the Selection Board was to consist of Officers of Junior Administrative rank.

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Therefore a Selection Board was appointed consisting of three Junior Administrative Officers; Shri A.Tete(MA) Secretary to General Manager, Shri Pratap Singh (BE), Deputy Chief Engineer, Shri N.K.Srivastava, B.Sc.(Engg) Senior Divisional Personnel Officer. The plaintiff appeared in the selection on 21.12.1983 without any protest about the constitution of the Selection Board and also did not submit any representation either after the test or prior to the date of notification of the result. He, however, did not qualify. He submitted an application on 19.1.1984 for being given another chance for the selection. His application was considered but was not accepted. Against the three ~~3 available promoted~~ ~~3 was~~ vacancies of lecturers since none of the ~~candidates~~ found suitable there was no alternative but to resort to direct recruitment through the medium of Railway Service Commission. The vacancy was accordingly notified. The plaintiff had also applied on the prescribed form. A written test was conducted by the Railway Service Commission, Muzaffarpur in which the plaintiff also appeared but he was not able to qualify and therefore the question of calling him for further viva-voce test did not arise. The Railway Service Commission finalised the test and declared the result. On 19.1.1984 the plaintiff moved another application for granting him a further chance. The defendants have challenged the suit

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for lack of notice under Section 80 Code of Civil Procedure. According to them the suit is frivolous and vexatious and is liable to be dismissed.

3. In his replication the plaintiff has reiterated his earlier contention that the Railway Administration was interested in giving the chance of promotion to somebody and therefore the Selection Board intentionally declared him unsuccessful. The plaintiff has gone on to say that there should have been a written test as well as a viva-voce but only viva was held in the departmental selection. According to him Shri V.K. Pandey has been selected by the Railway Service Commission, Muzaffarpur though he was not eligible to be called for the selection as he was merely a clerk in the Chief Mechanical Engineer's office of the North Eastern Railway and did not possess requisite qualification to teach intermediate class. He has also challenged competency of the Board of the Railway Service Commission who constituted the Selection Board as they were not qualified and once he was promoted on adhoc measure he should not have been declared unsuccessful. All this exercise was intentionally done by the Selection Board ^{to} _{an} illegally appointment ^{as} _{to} favourites.

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4. We have heard the learned counsel for both parties. The learned counsel for the plaintiff raised the following contentions :-

- (i) There was only viva-voce test in the departmental selection.
- (ii) Adhoc promotees should not have been failed to avoid harassment in terms of the Board's order.
- (iii) The plaintiff had done satisfactory work and there was nothing adverse against him and he has been wrongly failed.

The learned counsel for the defendants has attacked the contentions of the learned counsel for the plaintiff on the ground that the selection has been made by an Expert Body that is the Selection Board and on the ~~basis~~^{3rd point} of expertise its deliberations could not be challenged and the Railway Service Commission is also an independent Expert Body and unless something irregular has been pointed out the results announced by yet are also not subject to challenge. Shri V.K.Pandey one of the candidates who has been selected by the Railway Service Commission has not been impleaded by the plaintiff and therefore the suit is liable to be rejected for misjoinder.

5. It has not been disputed that the post of lecturer in Mathematics was first to be filled by

promotion of the available persons in the avenue of promotion. It was with this aspect in view that a departmental selection was arranged by the defendants in which the plaintiff appeared and did not qualify. The plaintiff has challenged the competency of the Selection Board, on the short point that the Members of the Selection Board were not from the teaching profession and also did not have adequate qualifications to judge his suitability. The Rules on the appointment of Selection Board seem to be fairly clear. The Selection Boards are constituted under the orders of the General Manager or Head of the Department, or other competent authority not lower than a Divisional Railway Manager or a Divisional Officer. For selection posts in the grade Rs. 550 - 750 and above, the Members of the Selection Board shall not be lower in rank than Junior Administrative Grade Officer or Intermediate Administrative Grade Officer. A Personnel Officer who could be of the next lower grade, though he is an equal Member, has to be one of the Members of the Board. None of the Members of the Board should be direct subordinate to the other. One of the Members must be from the Scheduled Caste/Scheduled Tribe Community. If such officer is not available in the Selection Unit attempt should be made to co-opt one from the adjoining units. The nomination of the Selection Board is normally kept confidential. If the Selection Board desires it can associate an expert in the field to help

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in assessing the professional competence of candidates, but such an expert will have no authority to allot marks in viva-voce test. These rules are based on various circulars issued by the Railway Board from time to time and have been reproduced on page 86 of the Railway Establishment Manual by Bahri Brothers (2nd Edn, 1985). The Selection Board hold a written test where prescribed, examine the service records, confidential reports, interview the candidates and select the best suitable candidates as per merit. We do not find any illegality in the appointment of the Selection Board. It was properly constituted. It was not necessary for it to coopt any professional expert because there was no written examination and the Selection Board comprised of responsible Junior Administrative Grade Officers. Nothing has been produced by the plaintiff to support his charge against the Selection Board, ^{or that} It was not fit, suitable and efficient for conducting the interview. It is not necessary to possess Postgraduate degree in Mathematics for determining the suitability of a candidate to teach intermediate class students in a viva-voce test. According to the written statement given by the defendants one of the Members was a Postgraduate while another Member who did not belong to the Personnel Branch was a Bachelor of Engineering. We do not find any reason to disbelieve

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their capability in judging the suitability of the plaintiff in regard to his capability on the basis of personality, leadership, address, academic qualifications, record of service etc. for teaching intermediate class students. The plaintiff has also mentioned in his petition that the Interview Board Members were not experts in conducting the interview and all Members were 'absolutely inefficient' because they were not 'deserving' the appropriate knowledge to adjudge the efficiency of the candidates. We are not convinced with the allegations made by the plaintiff that the Selection Board assumed the responsibility without being capable of assuming the same in flagrant disregard of any rules or directions laid down for the formation of such Selection Board or any violation of any basic rules in regard to selection of teachers in the grade Rs.500 - 900. The plaintiff's arguments are devoid of force. He has been unsuccessful in making out a case of mala fide, these allegations were the only feeble materials which have been referred to by him in an effort to build up his case which to our mind totally fails. As a matter of fact in the selection of teachers, who are responsible for building up the future generation, one has to be very careful. If all we can buy is peanuts, all we will get would be monkeys. There could be no question of appointing persons to higher grades who are not suitable for the post. In any case promotion is a

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matter of administrative discretion. The authorities had taken adequate steps to select a suitable man by subjecting the eligible candidates to a selection process. The Selection Board was well within its right to decide whether the candidates appearing before it are suitable for the post or not. Because the Govt. servant has not been selected and considered for promotion he cannot complain in a Court of law that any right of his has been infringed or that he had been denied equality of opportunity. We do not find anything illegal in the constitution of the Selection Board and nothing has been brought to our notice in regard to its proceedings. The Tribunal cannot promote or demote a person. It can only demolish a bad order and we find nothing bad in the whole process.

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6. The plaintiff had appeared before the Selection Board. He was not selected on the post advertised by the Railway Service Commission he had also applied for the same and appeared in the test held by the Railway Service Commission, and he was not selected. Aggrieved by his non-selection he filed the above suit. He cannot be appearing before the Selection Board or taking a chance in the examination held by the Railway Service Commission and ³¹ ³² taking a chance for favourable results and now turn round and question the constitution of

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the Selection Board regarding its constitutionality and competency, ^{3V} though he has tried to build up a case of bias against the selection of one Shri V.K. Pandey he has not been able to prove any interested motive behind the selection. We do not see that any principle of natural justice has been violated in his case.

7. From the above it is clear that the fundamental basis of the contentions made by the plaintiff rested on the assumption that he was the most suitable, efficient and capable teacher. According to him, he possessed the highest academic qualification and also had the requisite experience and, therefore, he should have been preferred to all the others who ^{of came} ~~claim~~ to be selected. The argument was that although what should have been considered was academic ^{3V} ~~ent~~ attainments and teaching experience but the Selection Board was not competent to judge the same. Regarding the competency of the Selection Board, we have already discussed the issue above. We draw support from the observations made by the Hon'ble Supreme Court in Lila Dhar vs. State of Rajasthan, (1981) 4 SCC 159, which were as follows:-

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"The object of any process of selection for entry into a public service is to secure the best and the most suitable person for the job, avoiding patronage and favouritism. Selection based on merit, tested impartially and objectively, is the essential foundation of any useful and efficient public service. So, open competitive examination has come to be accepted almost universally as the gateway to public services.

... How should the competitive examination be devised?....

It is now well recognised that while a written examination assesses a candidate's knowledge and intellectual ability, an interview test is valuable to assess a candidate's overall intellectual and personal qualities. While a written examination has certain distinct advantages over the interview test there are yet no written tests which can evaluate a candidate's initiative, alertness, resourcefulness, dependableness, cooperativeness, capacity for clear and logical presentation, effectiveness in discussion, effectiveness in meeting and dealing with others, adaptability, judgment, ability to make decision, ability to lead, intellectual and moral integrity. Some

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of these qualities may be evaluated, perhaps with some degree of error, by an interview test, much depending on the constitution of the Interview Board . . . "

In the petitioner's case the principle of 'nemo judex in causa sua' aptly comes into the play. His assumption that he was most suitable person, in our opinion, is unsustainable. Even in the written test held by the Railway Service Commission he could not qualify. In view of the aforesaid consideration we hold that there was nothing illegal in the entire process of selection for the appointment to the post of Mathematics teacher. The application made by the plaintiff is, therefore, liable to be rejected.

In the result, this application (Suit No. 832 of 1984) is dismissed. Parties shall bear their own costs.

Yours
Vice Chairman.
March 9th, 1987.

अमर शर्मा
Member (A).