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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 14 of 1987

Harish Chandra Applicant.

Versus

Union of India & another Respondents.

Hon'ble Ajay Johri, A.M.
Hon'ble G.S. Sharma, J.M.

(Delivered by Hon. Ajay Johri, A.M.)

In this application received under Section 19 of the Administrative Tribunals Act XIII of 1987 the applicant, Harish Chandra, who is employed as a Head Clerk in the Divisional Railway Manager's office, Moradabad, has challenged the denial of his promotion to the grade of Assistant Superintendent (P) as a result of his not being allowed to complete his selection test on an allegation of copying in the examination hall.

2. The applicant's case is that he was called to appear in a written test on 14.9.1986 for the selection to the post of Assistant Superintendent (P) along with other candidates. After the examination had started he found a typed piece of paper lying near his table. He picked it up and handed it over to the Invigilator but the Invigilator took it otherwise and reported the matter to the Officer-in-charge of the examination. The applicant clarified his position to the Officer-in-charge of the examination saying that he stood up to hand over the piece of paper in good faith to the

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officer concerned and he had no mala fide intention. He was thereupon allowed to continue and was given a fresh answer book to answer the paper as he had written a few lines on the original answer book. According to the applicant there was mass copying in this examination and apprehending that such a position might damage his merit he pointed out to the Invigilator ^{Copyeng,} and one candidate _{35 who} was caught red handed and turned out of the examination. He has further alleged that the Incharge of the examination after discovering that the person against whom the applicant reported and was caught red handed was a Brahmin and has been implicated at the instance of a Scheduled Caste employee became infuriated and came to the applicant and snatched away his answer book and ^{as well} turned him out of the examination hall. The applicant brought it to the notice of the higher authorities but no action was taken. He made written representations also to the Divisional Railway Manager (DRM) on 4.10.1986 followed by a reminder on 6.11.1986 requesting to be allowed to sit in the supplementary examination, but he was not allowed to appear and DRM vide his letter dated 2.12.1986 declared the result of the written test giving the list of the candidates, who were called for the viva voce test but the applicant's name was not in the list. The applicant has, therefore, sought relief that he may be allowed to appear in the supplementary test and may be fitted ~~at~~ the appropriate position on the panel which is under formation against the post reserved for Schedule Caste community. He has also sought relief that the debarring of the applicant from the examination and consequent supersession by his juniors be declared illegal and void and the

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respondents be directed to interpolate the name of the applicant on the panel of Assistant Superintendent formed in January, 1987. According to the applicant because he belongs to the Schedule Caste community and he was due promotion against the reserve vacancy and relaxed standard was to be applied to him to judge his suitability there was no reason for him to adopt unfairmeans and, therefore, he has been deprived of the rightful claim.

3. In opposing the application the respondents have said that the applicant was the third Scheduled Caste candidate and not the senior-most amongst those who were called for the written test. During the course of the written test held on 14.9.1986 the Invigilator reported to the Officer conducting the examination that the applicant was found copying. The printed material as well as the answer book on which he had copied word by word from the printed material was taken away by the Invigilator and the applicant was supplied with another answer book to enable him to stay in the examination hall to avoid leakage of paper outside. The matter was referred to the Controlling Officer. The Controlling Officer decided that the applicant be debarred from the written examination and he should also be taken up under Disciplinary and Appeal Rules for gross misconduct. Accordingly half an hour after the incident the second answer book was also collected from him and he was expelled from the examination. They have annexed the photostat copies of the printed material as well as the answer book as Annexures 'A' & 'B' to the reply. They have denied that there was mass copying in the examination. According to them only two candidates, the

applicant and another were found using unfair means. The answer book of the other candidate was also taken away and he was also debarred. On his representation to DRM the applicant has been advised on 9.2.1987 that despite prior warning he was found copying and, therefore, he has been correctly debarred. This letter has been acknowledged by the applicant on 16.2.1987. Since the applicant was debarred from the written examination there was no question of his being allowed to appear in the supplementary written test.

4. In his replication the applicant has denied that he was ~~xxxxx~~ caught copying. According to him he himself stood up to hand over the piece of paper to the Invigilator, who had brought it to the notice of the Incharge and who on being satisfied allowed him to continue with another answer book. The very fact of giving him the second answer book would indicate that there was no intention on the part of the Invigilator to ask him to leave the examination hall. This is also supported by the fact that the other person~~s~~, who was caught was turned out of the examination hall at the time he was caught red handed. According to the applicant he was so well prepared that he could from memory write down verbatim the same as was in the printed paper which he handed over. No remark was made by the Invigilator on his answer book also that he was found copying. Thus the action of the respondents to debar him was arbitrary and against natural justice.

5. We have heard the learned counsel for the parties. Sri R.P. Srivastava, learned counsel for the applicant submitted that no proof has been produced

that copying was done and since there was a relaxation that even if the applicant got 10 marks he would have qualified in the selection, there was no need for the applicant to copy. Also the applicant has been superseded without obtaining the General Manager's approval as laid down in the relevant instructions. The learned counsel for the respondents, Sri A.K. Gaur, opposed these contentions on the point that the applicant has not come with clean hands and that he was caught red handed while copying and, therefore, he has no case. We have also perused the documents submitted along with the application and the reply.

6. In his representation dated 4.10.1986, which is placed at page 16 of the paper book, the applicant has said that only 15 minutes had elapsed when he suddenly discovered that a printed paper was lying near the place where he was sitting and he picked it up with a view to give it to the Invigilator and as he was in the process of getting up, he saw the Invigilator coming towards him, who took away his answer book as well as the printed paper. By that time he had only written two lines in his answer book. Thereafter within 10 minutes another person, viz. Ved Mani Sharma was also caught copying and both of them were ^{By Sent} ~~sent~~ out from the examination hall and the answer books were taken from them. He has further said that he had not misused the printed paper which was found lying near his seat. We have also seen a photostat copy of the answer book and of the printed paper alleged to have been seized from the applicant. In answer to question no.1 on his answer book the applicant has written three lines and those

three lines are verbatim copy of the paragraph 2 of
we are
the printed paper and/~~xxx~~ not convinced that even with
an excellent memory a person will be able to reproduce
the lines in the manner in which the applicant had
written in the answer book. The printed paper reads
as follows :

"The following penalties may, for good
and sufficient reasons and as hereinafter
provided....."

This sentence has been reproduced as it is in the
answer book of the applicant in reply to question no.1.
Such a faithful reproduction is hardly possible when
a person has to prepare for an examination where he
has to answer on a wide variety of subjects without
knowing the questions that may be in the paper. It may
have been possible for a person who knew the paper in
advance and who could cram the contents of the answer
from the book. The probability, therefore, of the
applicant using the paper to give his reply in the
answer book to the question no.1 exists and on his own
showing the applicant has alleged that in this examina-
tion mass copying was being restored to by the candidates
^{by the}
and it would be difficult to rely on the version of the
applicant that he was not amongst those who ~~were~~ indulg-
ing in the unfair means of using material for copying
^{by}
during examination.

7. The plea taken by the applicant that he was
given another answer book on the understanding that he
could now reply to the question paper and, therefore,
the subsequent decision to take away the second answer
book also was as a result of the bias created in the
mind of the superior officer because the applicant had

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been responsible to get a person, who was Brahmin by caste, apprehended and he belonged to the Schedule Caste is only a vague statement. He has not produced any other material to prove the mala fides of the Officer-in-Charge of the examination. Mala fides can be easily alleged but it is very difficult to prove and there should be concrete evidence to support one's case. The applicant's plea for mala fides on the part of the Incharge of the examination is, therefore, devoid of force. He has been unsuccessful in making out a case of mala fides. The material submitted by him are very ^w feeble and vague and are an attempt to build up a case which unfortunately totally fails. The application, therefore, is liable to be dismissed on this score too.

8. ³ The next submission advanced by the learned counsel for the applicant is that in view of the relaxations available to Scheduled Caste candidates, the applicant would not resort to copying. He was required to score only 10 marks in the written test and to achieve this was not difficult. This is an imaginary argument. It is human nature to follow the path of least resistance. Realizing mass copying was in the offing, the chances are that the applicant succumbed to the temptation of copying and in his attempt to copy he was apprehended. We will not like to attach much value to this plea ^{and so} knowing what human nature is the odds are against the applicant.

9. The last submission made by the learned counsel for the applicant was that SC/ST candidates, who are superceded their cases should be put up to the General Manager for review. The applicant's case does

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not fall in this category. He was not superceded because he got lesser marks. He was debarred from appearing for being found copying. If he chose to use unfair means to obtain a promotion and he was detected in the process of doing the same he cannot come forward and say that he has been superceded. There was nothing to review in his case and his representations were examined by the respondents and he was finally replied also. Thus we do not agree that this ground has any basis.

10. In the result we dismiss the application without ^{any} ~~any~~ order as to costs.

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Member (A).

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19/11/87
Member (J).

Dated: November 19th, 1987.

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