

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

Allahabad : Dated this 21st of May 1999

Original Application No. 1503 of 1992.

CORAM:-

Hon'ble Mr. S.L. Jain, J.M.

Hon'ble Mr. G. Ramakrishnan, A.M.

1. Kiran Kumar S/o Shri B.N. Lal,
16/88, Sobatia Bagh, Allahabad.
2. Mahabir Prasad S/o Late Sri Jagdamba Pd.,
Allahabad.
3. Moti Lal S/o Sri Budhai,
Naini, 179, Allahabad.
4. B.N. Singh S/o Late Sri Masuria Din,
R/o House No. 303, Shahganj,
Allahabad.
5. Mohanlal S/o Ram Lakhan,
Phaphamau, Allahabad.
6. Prema Pandey (Smt) W/O Late
Sri N.N. Pandey, R/o 738/L,
Railway Colony, Lalitnagar,
Allahabad.
7. Vidhya Wati Srivastava
Late Shri Kamal Kumar Srivastava,
R/o Village & Post Karenti,
District Pratapgarh.

(Sri KS Saxena, Advocate)

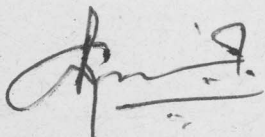
. Applicants

Versus

1. Union of India
(The General Manager,
Northern Rly, Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway, Allahabad
3. The Divisional Personnel Officer,
Northern Rly, DRM Office, Allahabad.

(Sri AV Srivastava, Advocate)

. Respondents



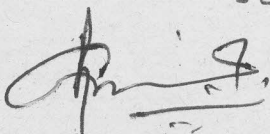
O R D E R

By Hon'ble Mr. G. Ramakrishnan, A.M.

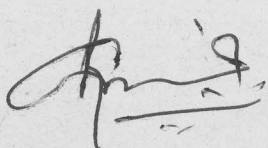
This is an application filed by seven applicants challenging the letter No.752 E/2/ EO-4/ Bhag-6/ Chayan dated 16-9-1992 (Annexure-A-1) of respondent no.2 declaring 101 candidates who had passed the written test and called for interview to be held on 29-10 and 30-10-1992 for promotion to the post of Clerk Grade Rs.950-1500.

2. Facts which are not in dispute are that Divisional Personnel Officer, Northern Railway, Allahabad, vide Circular Letter No.752-E/EO/5/Pt-3/Selection dt. 16-5-91 issued a list of 222 Class IV employees of different branches to appear for written test to be held on 16-9-1991 for promotion to the post of Office Clerk Grade Rs.950-1500 and the applicants were also included in the list. Written test was held on 16/6/1991 and 24-8/1991. A list consisting of 101 employees were declared successful in the written test and were called for interview on 29/10 and 30/10/92 under DRM/ALD's letter No.752/2/EO-4/BHAG-6/Chayan dated 16-9-1992.

3. The applicants claimed in the OA that the selection Board consisted of DEN(Track), DCS and an APO and that DCS set the question paper for the written test and DEN(Track) evaluated the written test answer sheets. Further, the applicants alleged that the DEN(Track) who evaluated the answer sheet as a member of the Selection Board showed favouritism to the candidates belonging to the Engineering Branch as out

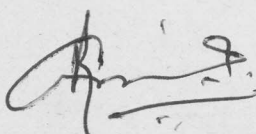


of total 101 successful candidates of the written test, 70 belonged to the Engineering Branch alone and the remaining 31 were shared by Electrical, Personnel, Medical, S&T, Operating, Commercial Branches etc. Further, they stated that for written test out of the total 222 candidates 121 belonged to Engineering Department whereas percent age of successful candidates was 70% in respect of Engineering Branch and about 26% for the rest of the branches. The applicants were of the view that this itself showed the obvious leaning of DEN(Track) towards the Engineering candidates to the detriment of the interest of the applicants. According to the applicants written standard of education and strata of intelligence of all Class IV employees of different branches of the Railway Administration is almost the same, an alarming difference in percentage viz. 26% against 70% is not a normal happening but smacks of favouritism to a sect of candidates participating in the selection. The applicants further gave their educational qualification and dates of appointment and claimed that they were fully qualified for promotion, by virtue of their qualification and length of service. They alleged that due to departmental bias and his long stay in Allahabad both as a Senior Supervisor and officer in the same department and massive contacts with staff both officially and socially, DEN (Track) could not maintain objectivity in the evaluation of answer sheets resulting in undue consideration to those who were below standard, to the detriment of the candidates belonging to the branches other than Engineering branch. The applicants sought for the following reliefs:-



- (i) The interview for the selection scheduled to be held on 29/10 and 30/10/1992 be stayed.
- (ii) The proceedings of this selection be cancelled right from the stage of written test, and results thereof declared be stayed.
- (iii) Each written test, including therein the applicant, be ordered for.
- (iv) The present incumbent of DEN(T) be not associated with the proceedings of the instant selection, and be replaced by an impartial officer.
- (v) Respondents be directed to pay cost of the suit to the applicants.
- (vi) Any other relief(s) that this Hon'ble Tribunal may consider fit and proper under the circumstances of the case.

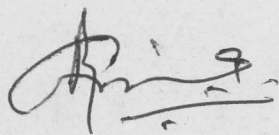
4. Respondents filed counter affidavit and resisted the claims of the applicant. They stated that the selection was for the post of office clerk against promotee quota and Class IV Staff of various branches as prescribed under the rules were eligible to appear in the selection and further the selection consists of written and interview and only those who qualified in the written test were called for interview and seniority had no role as far as qualifying in the written examination is concerned. They stated that the applicants appeared in the written test and without any protest and as they failed to qualify in the written test, they were not called for interview. They stated that a candidates having higher educational qualification but failing



to secure qualifying marks in the written examination could not be called for interview merely because of educational qualification. It was stated that the rules did not envisage separate quota for staff from different branches. Respondents averred that from the records, it was not clear that any favouritism had been shown by Divisional Engineer (T) in respect of the candidates of Engineering Branch and denied all allegations to the contrary. They further urged that as the Divisional Engineer(T) had not been made a party by name any allegation levelled against him should not be legally taken into account. Respondents stated that if the applicants felt aggrieved they should have approached the competent authority prior to appearing in the written examination and having not done so the allegations lost significance. It was claimed that after failing to qualify in the written test, the applicants had filed the OA making vague, evasive, incorrect and fictitious allegations against senior officers and on this score the OA was liable to be dismissed with costs. It was averred that the entire selection was conducted as per rules and no favouritism was shown to any candidate of a particular branch and only those candidates who qualified in the written examination were called for interview.

5. No Rejoinder Affidavit was filed and the learned counsel for the applicants submitted that he did not want to file RA.

6. Heard learned counsel for the parties. Learned counsel took us through the submissions made in the OA and CA respectively. Learned counsel for the respondents

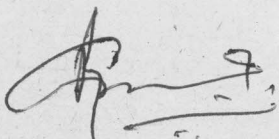


relied on the judgement of the Hon'ble Supreme Court in the case of Om Prakash Shukla vs. Akhilesh Kumar Shukla and others reported in 1986 SCC(L&S) 644 wherein it was held :-

"Moreover, this is a case where the petitioner in the writ petition should not have been granted any relief. He had appeared for the examination without protest. He filed the petition only after he had perhaps realised that he would not succeed in the examination....."(Para24).

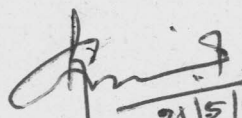
7. We have given careful consideration to the submissions made by the learned counsel for the parties, rival pleadings and have perused the complete records.

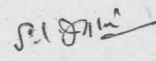
8. The applicants have sought the reliefs through this OA mainly on the ground of favouritism, allegedly shown by the Divisional Engineer (Track) in the evaluation of answer sheets of the written test. They have tried to prove their allegations by means of an analysis of the proportion of staff who have passed the written test from Engineering department and other departments and comparing the same. No other proof had been put forward by them. Further, when they have alleged wrongful action personally by the DEN(T) they have not made him a party by name which had also been pleaded by the respondents. The applicants were aware of the DEN(T)'s continuous stay in Allahabad, but without any protest they appeared in the written test and when they were declared failed in the written test they have challenged the same making personal



allegations of favouritism against DEN(T), but without making him a party in the OA. Respondents have denied the charges of irregularities through the CA. The applicants have chosen not to rebut the same by filing RA nor have they adduced any further evidence/proof. In the circumstances, keeping in view the ratio of the judgement of the Hon'ble Apex Court, the provisions of the Railway Rules regarding selection, and the averments made in the CA, which have not been rebutted, we are of the view that the applicants have not made out a case for intervention by this Tribunal and, therefore, are not entitled for any of the reliefs sought.

9. In the result the OA fails and is dismissed. In the particular facts and circumstances of this OA, we award the cost of this OA assessed at Rupees Six Hundred and Fifty only (Rs.500/- fee for Counsel and Rs. 150/- as other expenditures) to the respondents. We direct the applicants to pay this amount within one month of the date of receipt of the copy of the order.


21/5/49.
Member (A)


Member (J)

Dube/