

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Original Application No: 1791 of 1993

Virendra Kumar & Others. Applicants.

Versus

Union of India & Others. Respondents.

Hon'ble Mr. S.Das Gupta, Member-A

Hon'ble Mr. T.L.Verma, Member-J

(By Hon'ble Mr. T.L.Verma, J.M.)

This application has been filed for a direction to the respondents to permit the petitioners to appear in the test, scheduled to be held on 12.12.93 for the 79 posts of Assistant Station Masters, Guard, Goods Clerk, Coaching Clerk. etc. and to declare the results of the written examinations of the petitioners and other consequential benefits such as, appointment on the post for which he is declared successful on the basis of written/vivo-voce.

2. The facts giving rise to this application in short are that the Railway Service Commission, Allahabad invited applications in the year, 1979 for 1,465 posts including those of Assistant Station Masters category 1, Guards, Goods Clerks etc. About 3,80,000 candidates applied for the said posts. Admit cards were issued to 3,33,094 candidates for appearing at the Written test held on 22.2.1981. 4020 General candidates and 1602 candidates belonging to scheduled castes/scheduled tribes/Ex-servicem qualified in the written test. Accordingly, interview letters were issued to

A2
3

them. A provisional list of candidates in order of merit was prepared. Several complaints of favouritism/ nepotism and corruption were made against the selection held by the Chairman. Shri B.P.Bhargava, the then Chairman held an inquiry on the complaints and submitted the report in the year, 1982. No followup action however, was taken on the said report. The Commission prepared final select list of 1,380 candidates. It is alleged that while preparing the said list, those candidates who were in the top of the provisional list, were dropped on the assumption that they had indulged in mal-practice. The validity of the results declared by the Railway Service Commission, Allahabad was questioned in TA No. 113/1987/^{T.A. 128/1987} (WP No. 6006/1984 & Ana) before this Tribunal. The Tribunal divided the petitioners in number of categories. After considering the rival contentions, the petitions of the petitioners falling in category No. 1,3,4,5 & 9 were dismissed. Direction was issued, to re-examine the candidates falling in category No. 2 in the next selection to be held for similar post in future. Some of the petitioners aggrieved from the above judgement of the Tribunal, filed SLPs before the Supreme Court, which gave rise to Civil Appeal No. 4618/93. In the Supreme Court, while the Civil Appeal was being heard, the learned counsel appearing for the Railways informed the Court that the Railway Authorities were prepared to pool up 79 vacancies to offer an opportunity to the appellants to compete for the jobs. The Hon'ble Court, while setting aside the judgement of the Tribunal, held that the appellants who were before the Supreme Court, shall be eligible to compete for the 79 posts irrespective of

AL

their ages. The Supreme Court also allowed the impleadment applications of those candidates who were parties before the Central Administrative Tribunal and the benefit of the order permitting the appellants to compete for the 79 posts was also extended to them. The writ Petition and the impleadment applications of those candidates who took the original examination but thereafter did not challenge the same, at any stage, were dismissed with the observation that the order is confined only to those persons who were parties before the Central Administrative Tribunal.

3. The petitioners including applicant No. 4 approached the respondents by filing representations for permitting them to appear at the test, scheduled to be held in terms of the directions of the Hon'ble Supreme Court. The respondents, however, did not allow the applicants to appear at the written test. Hence this application for the reliefs mentioned above.

AL
4. It is not in dispute that of the 4 applicants none except Rakesh Sinha, applicant No. 4 was party before the C.A.T. Allahabad in T.A. No. 128/1987, S.K.Pandey and Ors. Vs. Union of India & Ors. This being so, the applicants No. 1 to 3 on the face of it are not entitled to the benefit of the judgement of Supreme Court referred to above.

A2
5

Applicant No. 4, Rakesh Sinah was provisionally allowed to appear in the written examination held on 12.12.1993 by order dated 7.12.1993 passed by a bench of this Tribunal. Thereafter, directions were issued to the respondents to take medical examination of the applicant, along with other successful candidates, in case he has been declared successful in the examination by order dated 6.4.1994. And by order dated 24.5.1994, it was ordered that the applicant No. 4 be sent for training provisionally, if, he is otherwise eligible subject to the decision of the O.A.

5. The claim of the applicants has been resisted by the respondents on the ground that this Tribunal has no jurisdiction to issue directions as prayed for by the applicants in view of the fact that the ~~question in issue~~ *FL* ~~has already been decided by the~~ *FL* ~~apex court~~ *FL* and also because the applicant not having filed application for impleadment in the Supreme Court in the Civil Appeal referred to above was not entitled to the benefit of the judgement of the Supreme Court notwithstanding the fact that he was a party before the C.A.J., Allahabad in TA No. 128/1987.

6. We have heard the rival contentions and perused the record. The judgement in Civil Appeal No. 4617 and 4618 of 1993 deals with 3 categories of persons namely;

- 1) The appellants
- 2) Applicants who had filed impleadment applications who were parties before the Central Administrative Tribunal and

A2
6

- 3) Persons who took the original examination but thereafter, did not challenge the same at any stage to file impleadment applications.

The Civil appeals were allowed in the following terms;

"All the applicants who are before us shall be eligible to compete for these 79 posts irrespective of their ages. The written examination, Vivo-voce and the psychology tests were however applicable shall be completed within 6 months from today. The appointment of these selected candidates shall be made within 2 months thereafter."

So far as the above direction is concerned, there is no dispute about it. The other direction issued pertains to the applicants for impleadment who were parties before the C.A.T. The order in respect of the above is being extracted below for convenience of reference;

"We allow all these applications. The learned counsel for the appellants shall give the number of these applications to the registry within 2 days."

HL
The implication of this order so far as the applicants who were parties before the C.A.T. and had filed applications for their impleadment in the Civil appeal is concerned, is also very clear. The controversy however, is in respect of the order passed in WP (C) 353/1990 which reads as follows;

"This writ petition and impleadment applications have been filed by those candidates who took the original examination but thereafter did not challenge the same at any stage. They were not parties before the Central Administrative Tribunal. We are not inclined to give

A2
7.

them the benefit of our order which we have passed in the appeals arising out of SLP(C) Nos. 14868/88, CC 20090/90 and 9223/91. We confine our order only to those persons who were parties before the Central Administrative Tribunal. The writ petition as well as the applications for impleadment are dismissed."

7. The learned counsel for the applicant No. 4 ~~has~~ strenuously argued that the observation of the Supreme Court in WP(C) No. 353/90 'We confine our order only to those persons who were parties before the Central Administrative Tribunal' leaves no room for doubt that all those who were parties before the C.A.T. were entitled to the benefit of the order passed by the Supreme Court in the Civil Appeals arising out of SLP (C) No. 14868/88, CC 20090/90 and 9223/91 irrespective of the fact that they had filed impleadment or not. applications in the Supreme Court/ We have carefully gone through the directions issued by the Supreme Court quoted above and we have no manner of doubt that the observation referred to by the learned counsel for the applicant refer to only those who were parties before the C.A.T. and had filed impleadment applications in the Civil Appeals referred to above. Since the applicant No. 4 had neither joined the SLP as appellant nor filed an application for impleadment, the benefit of judgement of Supreme Court in Civil Appeal Nos, 4617 & 4618 of 1993 will not extend to him. The supreme Court has very clearly stated that all the appellants before the Supreme Court shall be eligible to compete for these 79 posts irrespective of their ages. By appellants referred to ~~xxxxx~~ in the judgement of the Supreme Court, it means original applicants to the and/ SLP/or added as applicants on their impleadment applications being allowed. That being the position, a

A2
8

person who was not an appellant before the Supreme Court is not entitled to the benefit of the judgement under reference.

8. The learned counsel for the applicant has relied on the principle enunciated by the Supreme Court in K.I. Shephard & Ors. Vs. Union of India & Ors. reported in 1987 Supreme Court Cases (L&S) page 438 in support of his contention that the applicants were entitled to the benefit of the judgement of the Supreme Court notwithstanding the fact that they were not party to the said Civil Appeal. The principle enunciated in the K.I. Shephard case has no application to the facts of the present case and as such the same is of no assistance to the applicant. For proper appreciation of the principle laid down in the said case, brief reference of the facts of the case is necessary. An action was initiated under Section 45 of the Banking Regulation Act, 1949 for amalgamation of 3 private Banks with Punjab National Bank, Canara Bank and State Bank of India respectively under the scheme drawn under the provisions of the Act. Pursuant to the said scheme some of the employees were excluded from employment and their services were not taken over by the respective transferee banks. Some of the excluded employees of the Cochin Bank questioned the legality of the decision to exclude them on the ground that they were not given opportunity to explain their case before excluding them. The High Court rejected the writ petitions filed by them. The Supreme Court while reiterating the principle enunciated in earlier decisions that administrative orders having civil consequence should also abide by the principle of natural justice allowed the appeal

A2
E.

and directed the respondents to take over the excluded employees on the same terms and condition of employment under the respective Banking Companies prior to their amalgamation. In the same order, it was stated that the excluded employees who have not come to the Court, shall also be entitled to the benefit of this decision. In this case, the Supreme Court has reiterated a principle laid down by the Hon'ble Court in earlier decisions and has by specific direction, extended the benefit of the decision to all those who were excluded in violation of the principle laid down in the said case. The case under consideration is altogether different inasmuch as the Supreme Court itself by the order under reference confined its benefit to only those who were appellants before the Supreme Court. The direction to admit appellants to appear in the written test to compete for appointment on the 79 posts was passed under the peculiar circumstances of that case. In the circumstances of the case, discussed, we find that the decision of the Supreme Court in K.I. Shephard's case has no relevance so far this case is concerned.

JK

9. Assuming however, for the sake of argument, that the intention of the Hon'ble Supteme Court was to extend the benefit of the judgement passed in the Civil Appeals referred to above to all those who had appeared at the examination conducted by the Railway Service Commission and the same was not complied with

::9::

A2
10

by the respondents. the remedy of the applicant lay in filing an appropriate application before the Supreme Court for an appropriate action/issuing appropriate direction and not filing original application in the Central Administrative Tribunal. In this view of the matter also, this application is not maintainable. For the reasons stated above, we find no merit in this application and the same is dismissed. There will be no order as to costs.


Member-J


Member-A

Allahabad Dated: 2nd August, 1994

/jw/