

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD

(14)

Dated : This the 6th day of June 2002.

Original Application no. 1696 of 1994.

Hon'ble Mr. Justice RRK Trivedi, Vice-Chairman
 Hon'ble Maj Gen K.K. Srivastava, Member (A).

1. Ram Autar Dubey, S/o Sri R.A. Dubey, PA, Gorakhpur Head Post Office, Secretary, All India Postal Employees Union P IV & EDAs Gorakhpur Region, Gorakhpur; on behalf of AIPE Union, PIV Gorakhpur.
2. Ram Sringar Singh, S/o late Shri R.D. Singh, PA, Gorakhpur Division, Secretary, All India Postal Employees Union P III & EDAs, Gorakhpur Division, Gorakhpur, on behalf of AIPEU III, Gorakhpur.
3. Saiyad Sabir Husain, S/o Sri Sadiq Husain, EDME Civil court, Post Office and Secretary National Union of Postal Employees, Gorakhpur Division Gorakhpur on behalf of NUPE Gorakhpur and self.
4. Satish Chandra Rai, S/o S. Rai, Asstt Circle Secretari Bhartiya Postal Employees Union, on behalf of Bhartiya Postal Employees Union, Gorakhpur
5. Uma Shankar Pathak, S/o late Sri P. Pathak, R/o Tighra PO.Pipeeganj, Postman Gorakhpur University Post Office Divisional Secretary Bhartiya Dak Postal Employee Union, Postman & Group 'D', Gorakhpur.

... Applicants

By Adv : Sri J.M. Sinha
 Sri A. Tripathi

VERSUS

1. Union of India,
 through Secretary, Department of Post,
 Dak Bhawan, Sansad Marg,
 New Delhi.
2. The Senior Supdt. Post Office, Gorakhpur Division,
 Gorakhpur.
3. P.M.G., Gorakhpur Region,
 Gorakhpur.

... Respondents

By Adv : Km Sadhna Srivastava



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O R D E R

Hon'ble Maj Gen K.K. Srivastava, AM

In this OA, filed under section 19 of the A.T. Act, 1985, the applicants have challenged the order of respondent no. 2 dated 12.9.1994 cancelling the Postman examination of Gorakhpur Postal Division held on 17.4.1994 and have prayed that the same be quashed and the respondents be ~~directed~~ directed to declare the result of 1993 examination held on 17.4.1994 and also to cancel the order regarding re-examination 1993 scheduled for 11.12.1994 proposed in the impugned order.

2. The facts, in short, giving rise to this OA are that the examination for promotion to the cadre of Postman/ Village Postman 1993 was held by the Senior Supdt. of Post Offices (in short SSPOs) Gorakhpur, respondent no. 2 on 17.4.1994. In all 166 candidates of group 'D' and Extra Departmental cadre appeared in the same including the applicant no. 3 with roll no. GR 41. The said examination has been cancelled wide order dated 12.9.1994. A representation was sent to respondent no. 3 through various unions. Respondent no. 3 on joint meeting on 30.9.1994 ~~and~~ assured to review the case. Respondent no. 3 wide letter dated 13.10.1994 (Ann A2) informed the Staff Unions that the examination for Gorakhpur Postal Division was cancelled not only for copying but it was cancelled because of number of irregularities. Aggrieved by this the applicants have filed this OA which has been contested by the respondents by filing counter affidavit.

3. Heard Shri A. Tripathi, learned counsel for the applicant and Miss Sadhna Srivastava, learned counsel for the respondents and perused records.

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4. Sri A. Tripathi submitted that the examination was held against the vacancies of 1993. The applicant Unions also circulated the information to their members. The candidates applied for the same, paid the fee, prepared for the examination and appeared in the examination held on 17.4.1994. There has been no occurrence of any violation of rules of use of unfair means or leakage of question paper nor any case of mass copying. The examination was held ~~xxx~~ both for RMS Wing as well as Postal Wing. The centre was the same under the same supervisor who conducted the examination. The result of the RMS wing has been declared, but that of postal wing has been irregularly cancelled without any reasonable ground.

5. The learned counsel for the applicant submitted that the examiner of paper 'B' Arithmetic reported that Roll no. 20, 34, 35, 70, 161 and one other while answering question no. 1 had solved the problem using names Amit and Vineet where as the names used in question papers were Ankit and Nitin. The common error of the six candidates was suspected to be a case of mass copying. This presumption of the examiner is based on conjecture and surmises. Had there being mass copying, the supervisor would have reported the matter. The sitting arrangement was such that there was no scope of any mass copying. In fact the candidate had crammed the answer from guide book because of which they used the incorrect names. Even before APMG, ~~xxxx~~ circle, the candidates were asked to solve the same question which they solved like wise. Therefore, there is no question of any mass copying. If the examination for the postal division Gorakhpur was to be cancelled, the entire examination including that of the RMS Wing, should have been cancelled, as the centre was same. The learned counsel

(17)

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in support of his argument cited number of judgments. He has placed reliance on the judgment of Hon'ble Supreme Court in Rajesh Kumar & Ors Vs. The Institute of Engineers 1997 (2) LBESR 764 (SC), holding that crammers inter-se do not have any nexus with each others. Text of a book and a common source of cramming established on connection, that per-se cannot be evidence of any conspiracy between crammers to adopt unfairmeans in examination unless there be material to show that there was copying of answer books, descended from the answer book of one of the candidates or directly from the book leading to the copying by others. The Hon'ble Supreme Court in Rajesh Kumar's case (supra) quashed the order cancelling result of the examination. The learned counsel cited specially the judgment of Hon'ble Allahabad High Court in Arjun Singh Vs. Additional Secretary, Board of High School and Intermediate Bareilly, 1998 (2) LBESR 651 (All), in which the Hon'ble Allahabad High Court held that suspicion remained suspicion and it would not make any student responsible for using unfairmeans. In this petition before the Hon'ble Allahabad High Court the allegation was for use of unfairmeans and the result was cancelled because the applicant did not make necessary calculation (rough work) / answering question in math paper. The ground for cancellation was suspicion that the petitioner adopted unfairmeans, though the petitioner was not found adopting unfairmeans. Sri A. Tripathi, also relied heavily on the judgment of Hon'ble Allahabad High Court, in Ajay Kumar Vishwakarma Vs. Regional Secretary Board of High School and Intermediate Education UP Allahabad 2000 (1) LBESR 218 (All). The Hon'ble Allahabad High Court held that mere same mistake in answer committed by some students cannot be a reason for cancellation of result and thereby quashed the order cancelling result.

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6. Sri A. Tripathi finally submitted that the respondents have committed illegality in cancelling the examination of Gorakhpur Postal Division, in case the examination had to be cancelled the entire examination should have been cancelled..

7. Resisting the claim of the applicant Miss Sadhna Srivastava, learned counsel for the respondents has submitted that the eligibility condition for the said examination was two years service in group 'D' cadre of permanent employees and five years service in respect of ED candidates, While finalising the applications of the ED candidates it was found that candidates having put in three years service against requirement of 5 years service were inadvertently allowed to appear in this examination. Therefore, the examination was to be cancelled on score of eligibility criterion alone. Miss S. Srivastava, further submitted that one examiner Sri OP Tripathi, SSPOs Mathura, reported that answer scripts of roll no. 20, 24, 35, 66 & 70 incredibly tallied and similar mistake also tallied. An enquiry was held by the PMG respondent no. 3 who decided that the examination held on 17.4.1994 in respect of Gorakhpur Postal Division should be cancelled because there was non observance of eligibility criterion and also there was case of mass copying. Even there was no wide circulation of the notification regarding the Postman/Village Postman Examination 1993.

8. Km S. Srivastava, finally submitted that the sanctity of the examination was tampered with by candidates. The examiner has correctly concluded about mass copying and the same was established during enquiry. The candidates had the opportunity to take the examination already notified for to be held on 11.12.1994 by impugned order dated 12.9.1994 (Ann A1).

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9. We have considered the submissions of the learned counsel for the parties and have closely perused records. ^{including the original records}

10. The examination of Postman/Village Postman held on 17.4.1994 has been ordered to be cancelled by ^{dated 3.9.1994} order of respondent no. 3 ie P.M.G. Gorakhpur. The respondents have been justified in cancelling the said examination for valid reasons. Firstly, that the case of mass copying was reported by the examiner of maths ^{and} secondly because there has been irregular admission ^{and} lack of wide publicity of ED candidates having less than 5 years. While we agree with the learned counsel for the applicant that the answers can be crammed by the candidates and in that case the answers have to be identical, We would like to observe that this contention does not hold good for maths questions. It would be too much of coincidence that the same question was crammed by the candidates of Gorakhpur Postal division only. No man of common prudence will accept that cramming works in answering maths questions. We also observe here that the examination was for promotion as Postman/Village Postman ^{on which post} ~~were~~ one has to do lot many calculations and in case a candidate has to rely upon ^{ED} crammings the maths questions, he will not be able to do justice while doing the actual work in field. The second ground on which the examination has been cancelled is that the ^{ED} candidates having less than 5 years of service were irregularly admitted to appear in the said examination. If such an administrative error ^{had} been committed it was the duty of the respondents to have corrected the same, and, therefore, in our opinion the action of the respondents has been correct and in accordance with law.

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20

levels of ~~SDF~~^h, Sub Divisional Inspectors only who did not
and Extra Departmental
circulate the same to all the sub post Masters ~~/~~^h Branch post Masters

was received in respect of RMS wing, the result of RMS wing was correctly declared. We do not find it a fit case for

being devoid of merit. There shall be no order as to costs.

[Handwritten signature]

2

Dated : 06 / 06 / 2002

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