

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

Allahabad this the 21 day of October 1994

Original Application No. 1158 of 1994.

Hon'ble Mr. T.L. Verma, Judicial Member  
Hon'ble Mr. S. Dayal, Administrative Member.

1. Virendra Kumar Srivastava, A/a 36 years, S/O Shri J.B. Lal, R/o 32-B, Kairy Railway Colony Gorakhpur, Working as S.S.O (A) under F.A. & C.A.O. NE Railway, Gorakhpur.
2. Ajai Kumar Srivastava, A/a 33 years, S/o latent Raghunath Prasad, R/o 188 Jafra Bazar, Lala Toli, Gorakhpur, working as S.S.O. (A) under F.A. & C.A.D (Con) N.E. Railway, Gorakhpur.

C/A Shri V.K. Burman ~~versus~~ ..... Applicants.

Versus

1. Union of India through General Manager, N.E. Railway Gorakhpur.
2. F.A. & C.A.O. N.E. Railway, Gorakhpur.

..... Respondents

C/R Shri P. Mathur

Q R D E R

Hon'ble Mr. S. Dayal, Member 'A'

The applicant has approached this Tribunal through this application under section 19 of the Administrative Tribunals Act, 1985, seeking the issuance of a writ for quashing L.D.C.E/93 Examination and all pending proceedings including the preparation

of panel in pursuance of the examination.

2. The relief has been claimed on the ground of violation of circulars of the Railway Board dated 14.01.82 and 03.01.88 with regard to the examination. Inspite of requirement of ~~minimum~~ <sup>the setting</sup> questions on policy and rules relating to official language of upto 10 % of total marks, no questions on the subject were included in the question paper. Although the requirement was that General Knowledge paper should be both in Hindi and in English, it was provided in English only. The evalution was done by an examiner not well versed in Hindi Language. There were serious lapses in the examination which made it liable to be quashed.

3. The arguements of the learned legal representative of the applicant Shri V.K. Barman and the learned legal representative for the respondents Shri D.C. Saxena were heard. The matter was argued at great length by both of them. The counsel for the applicant mentioned in addition to the averments made in the petition that since the allegation was personal it should have been contradicted in an affidavit by F.A. & C.A.O. instead of which the affidavit has been filed by Shri Rameshwar Rai, who had no personal Knowledge. The learned counsel for the respondents cited <sup>the applicants</sup> rulings to say that once <sup>they</sup> appeared at the examination, they accepted jurisdiction. The allegation against the examiner should have been proved and the examiner should have been impleaded by name if affidavit of <sup>the</sup>

examiner was required. He also said that of the two applicants. Shri V.K. Srivastava had opted for English medium and Shri A.K. Srivastava showed his knowledge of English by making his representation in English. He further cited the case of prof G. Sarana Vs. University of Lucknow (AIR 1976 SC 2428) in which it has been held that the applicant, having known the constitution of the Selection Committee, ~~had~~ did not raise any objection and voluntarily appeared before the committee with the expectation of favorable recommendation. He drew attention to paragraph 27 of the reply of respondents and said that the applicants should have waited till their representation was decided. The ruling of the Supreme Court however, will not be applicable to this case. The Supreme Court had dealt with the effect of candidate appearing before a committee for interview on the ~~basis~~ <sup>the known bias</sup> of the members alleged subsequently. In this case the allegation is that the written examination was not conducted as per the instructions of the Railway Board and the policy of the Government.

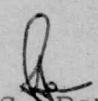
4. The facts of the case are that the applicants belonged to the cadre of Senior Section Officer (A) in the scale of Rs. 2000 to 3200 in Group C. Promotion from this post to the cadre of Assistant Accounts Officer in the scale of Rs. 2375 to 3500 in Group B was to be done to the extent of 70% of vacancies by means of selection and the remaining 30% by means of limited competitive departmental examination. The Railway Board had issued orders (Annexure A-2 and A-3) that 10% of total marks allotted for testing the professional ability of the employees should be on official language policy and rules. It was also provided in the latter of the two orders that the examination papers would be in Hindi and English and the examinees could answer in any one of the two languages according to option given by them in advance. In the examination the General Knowledge paper was set in English only which was provided to those candidates also who had opted for Hindi Medium. There were no questions on official language policy.

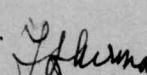
and rules. It is alleged in the application that paper were set and evaluated by the F.A& C.AO who had no working knowledge of Hindi. There were 126 examinees for 11 posts but only 4 qualified for viva voce and none of them was from Hindi medium. It is mentioned in paragraph 15 of the <sup>written reply, to</sup> ~~rejoinder~~ that there were 47 candidates with English and 79 candidates for Hindi Mediumum.

5. It is necessary in this case to take up the arguement of the learned counsel for the respondents on the issue of premature filing of the application at the very beginning. It is clear from the advertisement made in paragraph 5 of the reply and Annexure CA I that the General Manager has to approve the recommendations based on the examination and for reason to be recorded in writing, he may not approve them and order a fresh examination. Section 20 of the Administrative Tribunals Act 1985, stipulates that a tribunal shall not ordinarily admit an application unless it is satisfied that the applicant has availed of all the remedies available to him under the service rules for redressal of grievances. It is also stipulated in section 2 (b) of the Act that where no final order is made by the competent authorities on the representation of an applicant, and six months have not elapsed from the date on which a representation was preferred, the person shall not be deemed to have availed of all remedies under the relevant service rules. It is admitted that the representation is dated 02.08.94 and must have been preferred on that date. Therefore, the application will be premature before the passage of <sup>the</sup> ~~the~~ six months or order is passed on the representation.

6. Therefore, the application is treated as premature at this stage. However, as the learned counsel for the applicant has expressed his apprehension that the applicants and the Tribunal will be presented with a fait accompli immediately after the passage of the order, the respondents are directed in the interest of justice not to issue appointment order before one month of the date of communication of the order on representation by the applicants in order to allow the applicants to approach the Tribunal in case they are aggrieved by the order of the departmental authority.

6. There shall be no order as to costs.

  
(S. Dayal)  
Administrative Member

  
(T.L. Verma)  
Judicial Member

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