

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

O. A. No. 08 of 1995 DATE OF DECISION : 22.12.95

T. A. No.

V. K. Srivastava & another - - - - - APPLICANT(S)

Sri Vik Barman - - - - - ADVOCATE FOR THE
APPLICANT(S)

V E R S U S

OOI & others - - - - - RESPONDENT(S)

Sri V.K. Goyal, Sri P. Mathur &
Sri Sudhir Agarwal - - - - - ADVOCATE OF THE
RESPONDENT(S)

C O R A M

The Hon'ble Mr. S. Das Gupta, Member (A)

The Hon'ble Mr. T. L. Verma, Member (T)

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy of the judgment ? ✓
4. Whether to be circulated to all other Bench ? ✓

/KP/-

(SIGNATURE)

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH,
ALLAHABAD

Dated : Allahabad this ^{22nd}...day of December, 1965.

QUORUM : Hon'ble Mr. S. Das Gupta, Member-A
Hon'ble Mr. T. L. Verma, Member-J

Original Application No. 68 of 1965.

1. Virendra Kumar Srivastava,
 S/o. J. B. Lal, r/o. 32-B, Dairy Rly.
 Colony, Gorakhpur.

2x Working as SSO(A) Under FA & CAO,
 NER Gorakhpur.

2. Ajai Kumar Srivastava,
 S/o. late Raghu Nath Prasad,
 R/o. 180, Jafara Bazar, Lala Toli,
 Gorakhpur working as SSO(A)
 Under FA & CAO, NER Gorakhpur.

.....Applicants.

Versus

1. Union of India through General
 Manager, North Eastern Rly,
 Gorakhpur.

2. FA & CAO , N.E.Rly, Gorakhpur

3. Jai Bind Kumar

4. Indra Prakash

5. Girish Chandra Srivastava

All working as SSO(A) under FA & CAO
 NE Rly., Gorakhpur

.....Respondents.

ORDER

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

This application under Section 19 of the

Administrative Tribunals Act, 1985 has been filed for quashing L.D.C.E. /93 Examination and all pending proceedings in regard thereto including preparation of panel in pursuance thereof and for issuing a direction to the respondents that 70% selection may not be held till the L.D.C.E./93 which is subject matter of this application has been finally decided.


2. The applicants are working as Senior Section Officers(A) which is a Class III Post and carries pay scale of Rs. 2000-3200/-. A notice for selection of the Assistant Accounts Officer Grade 'B' in the pay-scale of Rs. 2375-3500/- for 11 posts under the scheme of the limited Departmental Competitive Examination was issued on 20.12.1993. The applicants alongwith others applied for appointment to the said post. Written test for selection of suitable candidates was held in April, 1994, and result of the written test was declared on 25.7.1994. The applicants ~~have~~ failed to qualify in the written test. The validity of this examination has been challenged on the ground of violation of circular of the Railway Board dated 14.1.1982 and 3.1.1988 in holding the examination. It is stated that according to the aforesaid instructions, 10% of the total marks allotted for testing professional ability of the employee should be set apart for questions on official language policy and Rules. The further case of the applicants is that though the rules required that General Knowledge question be set both in Hindi and English language, the paper was set in English only. The evaluation of the answer books was done by a person not well versed in Hindi language. There were, it is alleged, serious

lapses in conducting the examination. The irregularities committed in conducting the examination, it is stated have vitiated the entire examination and hence should be quashed.

3. Earlier also O.A.No.1158 of 1994 was filed questioning validity of the examination on the same ground with the same reliefs. The said O.A. was dismissed by order dated 21.10.1994 by a bench of this Tribunal on the ground that the same was pre-mature. The representations filed by the applicants have been disposed of by order dated 22.12.1994.

4. The respondents have contested the claim of the applicants on the ground that no irregularity has been committed in conducting the examination and that the instructions dated 14.1.1982 and 3.1.1988 issued by the Railway Board are only directory and as such deviation, if any, from the aforesaid instruction in conducting the examination does not invalidate the examination.

5. We have heard the learned counsels for the parties and perused the record. The respondents have not disputed the fact that no question on official language policy, and rule had been set and also that General Knowledge questions were not made in bilingual form. The first question, therefore, that falls for our consideration is whether the aforesaid instructions are mandatory in nature. Copy of the Railway Board's letter dated 14.1.1992 may be seen at Annexure-A-2. The instructions issued by the aforesaid letter are being extracted for convenience of reference:-



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"As per the policy of the Govt. it is necessary to promote the use of official language gradually in all the offices in the Central Govt. keeping this in view, the Rly Ministry consider that the employees working in the Rly Administration should possess a minimum acknowledge of the policy pertaining to official language and rules regarding the use of Hindi to achieve this the Rly Ministry have decided that a few question on official Language Policy and official language rules should be set in the examination that are conducted as a part of the selection for promotion within Gr. 'C' and from Gr. 'C' to Gr. 'B' and also in the LDCE which are conducted to fill up 30% of the vacancies in the Gr. 'B'. Ten percent of total marks allotted for testing the professional ability of the employees should be set apart for questions on official language policy and official rules. In the case of LDCE question on official language and official rules should be included in the paper of General knowledge.. While the employees should be encouraged to attempt ^{questions} on official language, policy and the official rules, the questions should not be compulsory. "

6. To ^{import the} decision of the Railway Board, as contained in the letter extracted above, is that a few questions on official language policy and ~~official~~ ~~xxxxxx~~ Rules should be set in the examination that are conducted as a part of the selection for promotion within Grade 'C' and from Grade 'C' to Grade 'B' and also in the limited Departmental Competitive Examination (L.D.C.E. in short) which are conducted to fill up 30% of the vacancies in Group 'B'. 10% of the total marks allotted for testing the professional ability of the employee should be set apart for questions on official language policy and ~~official~~ ⁱⁿ Rules. It further directs that ~~in~~ the case of L.D.C.E. questions on official language and official rules

should be included in the paper of General Knowledge. It would further appear from the ^{aforesaid} instructions ~~that~~ ^{attempt} that while the employees should be encouraged to ~~attempt~~ questions on official language policy and the official rules, the question should ~~not~~ be compulsory. The tenor used in the instructions referred to above does not indicate that it was mandatory to include the question on official language policy and rules. This ~~conclusion~~ is further supported by the fact that the question on language policy should not be made compulsory.

7. As per instructions dated 3.11.1988 issued by the Railway Ministry, the candidates in the qualifying competitive departmental test, conducted for technical and non-technical posts should have the option to write answer paper in Hindi and candidate should be allowed to use such technical words in English where ^{equivalents} ~~equalities~~ are not known to them. It further states that the question papers of all the departmental tests whether technical or non-technical should invariably be prepared in bilingual form and each question paper, according to the aforesaid instructions, should contain the clear mention about the option of the Hindi medium. The fact that the instructions issued vide letter dated 3.11.88 leave discretion to the competent authorities to prepare question paper in bilingual form, leave no room for doubt that the instructions ~~with~~ ^{pertaining} ~~respect~~ to preparing question paper in bi-lingual form also is not mandatory in nature. From the perusal of the instructions as a whole, it ^{is} absolutely clear that the entire exercise has been done to encourage the use of Hindi and the discretion to prepare the question

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paper in bilingual form has been given so that the omission to do so in cases where it is not practically possible to prepare question paper in bilingual form is not taken to be a breach of the mandatory instructions. The respondents have, in the counter-affidavit stated that the questions on General Knowledge are generally objective in nature and as such it was not always practically possible to frame such questions in bilingual form. Be that ^{as} it may, we have already seen above that the direction as to the preparation of the question paper in bilingual form is only directory in nature.

8. This leads us next to the consideration of the question whether omission on the part of the respondents to comply with the aforesaid directions resulted in rendering the examination as invalid. In this connection, it may be relevant to mention that the syllabus for the impugned examination was circulated by letter dated 20.8.1991. The copy of the syllabus of the examination, circulated by letter dated 20.12.1993 may be seen at Annexure-R-1. From the syllabus circulated, it is evident that it did not include official language policy and Rules, as a subject of the examination for promotion to the post of Assistant Accounts Officer Group 'B'. The applicants did not raise any objection to the exclusion of the official language policy and rules from the syllabus at the time when the vacancies were notified and the applications were invited for the said examination. The examination were held in April, 1994. The applicants did not send any protest note to the concerned authority with regard to the omission to set questions on official language policy and rules after the examination was held and before the result was declared. It was

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for the first time, after the results were pronounced and the applicants failed to qualify in the written examination, ^{that} the representation dated 2.8.1994 was filed. The learned counsel for the private respondents Sri Sudhir Agarwal urged that the applicants having appeared at the examination with full knowledge of the omission are now estopped from challenging the validity of the same on the ground of the alleged omission. The learned counsel ~~for~~ has placed reliance on the following decisions of Hon'ble Supreme Court in support of his contention:-

- (i) A.I.R. 1986 S.C. Page 1043.
(Om Prakash Shukla vs. Akhilesh Kumar Shukla & ors.)
- (ii) A.I.R. 1990 S.C. Page 1744
(Ossein & Geletine Manufacturers Association of India Vs. Modi Alcoholic and Chemicals Ltd.).
- (iii) 1994(II) J.T. Page 619
(Krishna Lal vs. State of J & K)

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In the case of Om Prakash Shukla, recruitment test held for appointment of Class III Officers in the ~~Office~~ ^{Judge} of District of Kanpur was challenged on the ground that examination had not been held according to law. The High Court accepted the plea raised by one of the candidate who was not selected and quashed the examination. The Supreme Court while setting aside the order passed by the High Court has held that :-

"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."

In the instant case also, the applicants appeared at the examination without protest and have ~~xx~~ waited until the result of the examination was announced -ed, and only on their finding that they do not find place in the list of candidates who qualified in the test, for being called for interview, ~~for~~ submitted representation. In view of the ratio of the decision of the Supreme Court, referred to above, the application of the applicants also deserves to be dismissed on the ground of their having not agitated the matter immediately after the syllabus was circulated and/or the examination was held in alleged contravention of the instructions issued by the Railway Board in 1982 and 1988 respectively.

In Ossein and Gelletine Manufacturers Association 's case, the application of the respondent No. 1 under Section 22 of the Monopolies and Restrictive Trade Practice Act was allowed by the Central Government. In the said case, order was passed by an Officer different from the one who had heard the parties. The decision was challenged on the ground of violation of principle of natural justice. The Hon'ble Supreme Court has rejected the plea of violation of principle of natural justice on the ground that the appellants had had a fair hearing and the Government's decision has been reached after considering all the pros and cons.

In Krishna Lal's case, the services of the appellant were terminated on the basis of report submitted by anti corruption Commission. The appellant had earlier moved the High Court of Jammu

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& Kashmir by filing writ petition without success. The writ petition was dismissed on the ground that the dispute involved complicated ~~the~~ questions of fact. The second writ, however, was dismissed with the observation that "this order will not prevent ~~from pursuing~~ whatever other remedy may be available to him under law." He then filed a suit before the District Munsif. The munsif decreed the said suit and held the termination of his services as illegal for non-compliance with the mandatory provisions. The appeal was up-held by the District Judge. The High Court of J & K however, allowed the second Appeal and dismissed the suit inter-alia on the ground that the same was barred by limitation and also that the jurisdiction of the Civil Court was been barred under Section 20 of the J & K Prevention of Corruption Act, 1962. The Supreme Court has set-aside the order of the High Court while remanding the case to the High Court for fresh decision, the Hon'ble Supreme Court has held that the mandatory requirement can be waived by the person, for whose benefit it has been made, and that an action in violation of the same would be a nullity if the requirement has not been waived.

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9. We have already noticed above that the applicants have by their conduct waived the requirement alleged omission whereof has given rise to this application by not challenging the same immediately after the syllabus was circulated and after the examination was held. In this view of the matter, even if it is held that the instructions are mandatory in nature, then also violation thereof perse does not ~~xxx~~ render the examination as invalid.

10. We, however, find substance in the argument of the learned counsel for the respondents that no prejudice has been caused to the applicants on account of the aforesaid omission. It is not in dispute that the candidates are required to give option for giving answer either in Hindi or English. Applicant No.1, in his application dated 3.1.1994 (Annexure-R-2), has given his option for answering in English language. The omission on the part of the respondents to prepare General Knowledge question in bilingual form has thus, caused no prejudice to the applicant No.1.

11. According to Railway Board's letter dated 20.8.1991, the candidate for being successful in the examination has to secure minimum qualifying marks in both paper I and Paper II. It has not been denied by the applicant that they have failed to qualify in Paper II. In view of this, even if they qualify in paper-I, they cannot be treated as having qualified in written writ examination. That being so, non-inclusion of question pertaining to official language policy and rule in paper I has caused no prejudice to them.




12. The impugned examination has also been challenged on the ground that the then F. A. & CAO who evaluated answers book, was not well versed in Hindi language. We have no material before us as may substantiate this contention of the learned counsel for the applicant. The respondents, have filed service folder of Miss. Snigdha Majumdar the then F. A. & CAO. From the **entries** made in the service folder, of Miss.

Majumdar, it appears that she has passed Hindi Higher Standard way back in 1963. The examinations were held in 1994, *thirty* years after Miss. Majumdar had passed Hindi with Higher Standard. It would be presumed that she had improved her proficiency in Hindi ~~in~~ over the years. *Inevitable* conclusion that would ~~be~~ follow *is* that the then FA & CAO who had evaluated the answer paper was fully conversant with Hindi language and as such could not have committed any error in evaluating the answer books written in Hindi.

13.. On a careful consideration of the facts and discussions made above, we are satisfied that this application lacks merit and is dismissed accordingly. There will be no orders as to costs.


Member-(J)


Member-(A)

Pandey/-