

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.1381/1999

FRIDAY, THIS IS THE 3RD DAY OF MAY, 2002

HON'BLE MR. C.S. CHADHA .. MEMBER (A)

HON'BLE MR. A.K. BHATNAGAR .. MEMBER (J)

1. Beni Madhav Singh,
S/o Sri R.J. Singh,
Safaiwala,
O/o the Station Superintendent,
N. Rly., Allahabad.
2. Ram Baran Tripathi,
S/o Sri Prayag Dutt Tripathi,
Porter, O/o the Station Superintendent,
N. Railway, Allahabad.
3. Nagendra Prasad Dwivedi,
S/o Sri Ram Sakha,
Porter, O/o the Station Superintendent,
N. Railway, Allahabad.
4. Arun Kumar Singh,
S/o Sri Nagendra Singh,
Porter, O/o the Divisional Railway Manager,
N. Railway, Allahabad.
5. Rajendra Babu Pandey,
S/o Siddha Narain,
Khalasi, O/o the Commercial Manager,
N. Railway, Allahabad.
6. Sohan Lal,
S/o late Chandrika Prasad,
Safaiwala, O/o the Station Superintendent,
N. Railway, Kanpur.
7. Umesh, S/o Sri Panna Lal,
Safaiwala, O/o the Station Superintendent,
N. Railway, Allahabad.
8. Chandra Hari Pathak,
S/o Late Sri Shambhu Prasad Pathak,
WR/Bearer, O/o the Station Superintendent,
Allahabad.
9. Haveli Singh,
S/o Ram Kheawan,
Porter,
O/o the Station Superintendent,
Allahabad. ...

Applicants

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Chowdhury

10. Rakesh Kumar,
S/o Ram Bharose,
Safaiwala,
O/o Station Superintendent,
Allahabad.

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Applicants

(By Advocate Shri S.C. Srivastava)

Versus

1. Union of India,
through the Chairman,
Railway Board, Rail Bhavan,
New Delhi.

2. Divisional Railway Manager,
N. Railway, Allahabad.

3. Divisional Commercial Manager,
N. Railway, Allahabad.

4. Mohd. Azahar Shams,
Divisional Commercial Manager,
N. Railway, Allahabad. ...

Respondents

(By Advocate Shri A.K. Gaur)

O R D E R - (ORAL)

Hon'ble Mr. C.S. Chadha, Member (A):

The case of the applicants is that they appeared for the examination held by the Railways for promotion to Group 'C' post of Ticket Collectors from Group 'D' in the 33 1/3% departmental promotion quota. They have challenged the validity and legality of the examination held, alleged it to be biased inasmuch as the examination and viva-voce test were manœuvred by Respondent No.4, to help candidates of a particular community.

2. The first major objection raised by the applicants is that only 85 candidates were called for the viva-voce test, when in fact, 129 should have been called., i.e., 3 times the number of the likely vacancies. The second objection was that the written test consisted of only 35 marks and passing marks were kept arbitrarily at 21 marks

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by the Respondent No.4. The next allegation is that the viva-voce, interview test comprises of 65 marks which was definitely manoeuvred to help those candidates who could be given more marks in the viva-voce in a subjective manner. Another objection raised by the applicants is that the examination should have been bilingual and should have contained at least one question in Arithmetic which it did not and therefore, the entire examination was illegal and invalid.

3. Before we go into the merits of the case, we have to deal with the preliminary objections raised by the learned counsel for the respondents. He has stated that since the entire panel has been sought to be quashed, if the Tribunal passes such an order, it will be adverse to the members contained in the panel and therefore, without impleading them, an order adverse to them cannot be passed. He has cited in this behalf two rulings of the Hon'ble Supreme Court. The first ruling cited by the learned counsel for respondents is AIR (1985) SC 167 in the case of PRABODH VERMA & OTHERS Vs. THE STATE OF U.P. & OTHERS. The Hon'ble Supreme Court held that where a large number of parties/persons vitally affected are not made respondents, the Court could not proceed against them. We have gone through the facts of the case. The concerned persons ~~in not~~ were deprived of a right which could have been done without hearing them. In this particular case, the counsel for the applicants states ~~that~~, and we agree with him, that they are not challenging the merit or demerit of any of the persons

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in the panel. They are challenging the very nexus of the examination and as such, we are afraid, this ruling does not apply to the present case. The second ruling on the subject - JT 2001 (5) SC 42 in the case of ALL INDIA SC & ST EMPLOYEES ASSOCIATION Vs. A. ARTHUR JEEN & OTHERS, the Hon'ble Supreme Court held that there was no justification for the Tribunal to quash the entire panel. In that case, the question related to various quotas, and appointments made from a particular quota of handicapped persons was challenged.

Because particular persons were affected, the Supreme Court held that they should have been heard. We again reiterate that in this case, the merits or de-merits of the individuals are not being challenged and therefore, certainly without impleadment, the case of the applicants is not weakened.

On

4. However, we have to see the case on merits. We are afraid, on merits the case of the applicants is extremely weak. The one major ruling pointed out by the counsel for the respondents, on which he relied, is that persons who appear in an examination without demur and latter challenge the validity of the examination cannot do so. The Hon'ble Supreme Court in the case of OM PRAKASH SHUKLA Vs. AKHILESH KUMAR SHUKLA - (1986) SC 1043, held that the petitioners challenging the validity of a competitive examination as not held as per law cannot be granted any relief if they appeared for the examination without protest. The learned counsel for the applicants states that they had no opportunity to protest as they saw the paper only after entering the examination hall and the improprieties in the examination paper were

Reserve

It would have known. We agreed with the applicants provided they protested ~~immediately after~~ leaving the examination hall. But, it is seen that they sat in the examination ~~although~~ ^{as} they felt that the examination was not as per law. No such objection was made by the applicants at the time of the examination or soon thereafter. It is apparent that only when they learnt that they failed in the examination that they approached this Tribunal. In fact, the right course would have been to first make a representation to the department itself and approach this Tribunal only on the rejection of their representations.

Their approaching the Tribunal is an after-thought and in terms of the Supreme Court decision quoted above, they are not entitled to any relief.

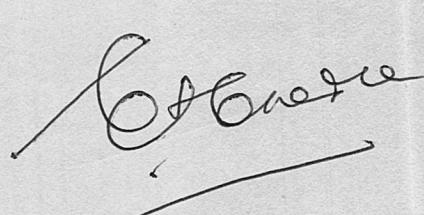
5. Further, on the merits of the allegation that less number of candidates were invited for the interview, the learned counsel for the respondents has pointed out that only as many as those who were successful in the written examination were called and if this number happened to be less than three times, the number of vacancies, no illegality is committed. We are in agreement with this view and we feel that since only 85 qualified in the written examination, only they could be called for the interview. We are very sorry to observe that the applicants had approached this Tribunal ^{baseless} ~~for~~ not with clean hands. They made allegations against Respondent No.4. It has been averred before us that 65 marks were kept apart for the viva-voce test, simply to suit the

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designs of Respondent No.4, whereas, the learned counsel for the respondents has pointed out in para 17 of the counter affidavit that the distribution of marks has been strictly in accordance with the Railway Board Circular dated 16.11.1998 and 8.12.1998, which has not been challenged by the applicants. According to the said circulars, the break-up of marks is 35 marks for the written test, 15 for the viva-voce, 30 for the personality, leadership, academic and technical qualifications, 20 for the record of service. Therefore, it is highly objectionable to state that 65 marks were set aside for the viva-voce by the Respondent No.4 himself to suit his ulterior motives. We therefore, do not feel it necessary to grant ^{any} relief to a person who approaches the Tribunal without clean hands.

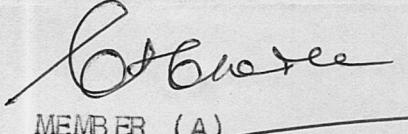
6. The objection that less number of candidates were called for the personality test has been shown to be incorrect and above. The objection that more marks were wilfully, ^{and} wrongfully awarded for the viva-voce and personality has been shown to be incorrect in terms of the Railway Board's ^{in the year 1986} circulars referred to above, and in terms of the Supreme Court judgement of 1986 since the applicants did not file a protest against the impropriety of the question ^{paper} soon after the examination, their contention in this behalf cannot be considered ^{at all.}

7. In the circumstances above, although we over-rule the objection of the Respondents that all the panelists



should have been impleaded, we feel that the O.A. has no merits because the applicants sat for the examination without demur and later raised ^{baseless & unfounded for} objections because they failed at the examination. In terms of the Supreme Court order of 1986, they have no locus-standi ^{for to challenge the validity of the examination}. The O.A. is therefore, rejected. There shall be no order as to costs.


MEMBER (J)


MEMBER (A)

psp.