

Reserved.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,  
ALLAHABAD.

....

Original Application No. 900 of 2002.

this the 13<sup>th</sup> day of May 2003.

HON'BLE MAJ GEN K.K. SRIVASTAVA, MEMBER (A)  
HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)

Rajesh Kumar Jaiswal, S/o Bachcha Lal Jaiswal,  
R/o 585-D, Mutthiganj, Allahabad.

Applicant.

By Advocate : Sri V. Budhwar & Sri S.K. Misra.

With

Original Application No. 908 of 2002.

Moinuddin Akhtar, aged about 31 years, S/o Sri Bismillah  
R/o 117, Mohatshimganj, Allahabad.

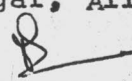
Applicant.

By Advocate : Sri V. Budhwar & Sri B.A. Khan.

With

Original Application No. 919 of 2002

1. Arvind Kumar Gupta, S/o Misri Lal Gupta, 143/1  
Old Laskar Line, Old Bahrana, Allahabad.
2. Alok Gupta, S/o S.N. Prasad, 642, 5th Marg,  
Rly. Colony, South Road, Civil Lines, Allahabad.
3. Adesh Kumar Srivastava, S/o Kaushlesh Kumar,  
687, Husanabad Colony, Husenabad, Jaunpur.
4. Shambhu Sharan Singh, S/o Bhagwan Singh, Village  
Nanhu Mudera, P.O. Gaurniya padrauna.
5. Vinay Misra, S/o Uma Shanker Misra, 55-3  
Bhawapur, P.O. GTD Nagar, Allahabad.
6. Ramesh Singh Kushwaha, S/o Indradev Singh  
Kushwaha, Vill. Bhagwatipur, P.O. Arakhpur,  
Ghazipur.
7. Subas Singh Kushwaha, S/o Banga Singh Kushwaha,  
Vill. Aaripur, P.O. Lawa, Ghazipur.
8. Sanjay Kumar Pandey, S/o Barmeshwar Pandey,  
289-C Tilak Nagar, Allahpur, Allahabad.



9. Avdhesh Kumar Gupta, S/o Shrikrishna Bhagwan Gupta  
Village & post Nonhara, District Ghazipur.

Applicants.

By Advocate : Sri V. Bhdhwar.

Versus.

1. Union of India through Chairman, Railway Board,  
New Delhi.
2. Railway Recruitment Board, Allahabad through its  
Chairman.
3. Chairman, Railway Recruitment Board, Allahabad.
4. Sri N.U. Khan, Member, Railway Recruitment  
Board, N.R., Allahabad.

Respondents.

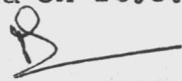
By Advocate : Sri A.K. Gaur.

O R D E R

BY MRS. MEERA CHHIBBER, MEMBER(J)

These three O.As bearing nos. 990 of 2002, 908 of 2002 and 919 of 2002 are identical in nature and have challenged the same orders passed by the respondents to various individuals whereby their candidature has been cancelled for the post of Supervisor (P.Way) and they have been debarred from <sup>appearing in</sup> all examinations to be conducted by all Railway Recruitment Boards (in short RRBs) henceforth on the ground that they have indulged in cheating. All the three O.As have been disposed off by a common order. For the purposes of narrating the facts, O.A. no. 919 of 2002 is being taken as lead case.

2. O.A. no. 919 of 2002 has been filed by as many as nine persons seeking quashing of the order dated 11.7.2002 and have sought a direction to the respondents to declare the results of the applicants on the basis of re-examination held on 26.3.2000



and to permit them to appear in the viva-voce test and incase they are found selected, then to issue appointment orders in their favour.

3. It is submitted by the applicants that a notification dated 1-7th March'97 was issued whereby 18 categories of posts were advertised, but the applicants herein are concerned with the post of Supervisor (P.Way), which was at sl. no.6 of the said advertisement (Annexure A-10). Total 29 posts were advertised, out of which 14 posts were allotted to general category, whereas 5 posts were allotted to S.C., 3 posts for S.T. and 7 posts for O.B.C. Since all the applicants were eligible and qualified, they applied for the said post and they <sup>were</sup> allotted Roll Numbers for appearing in the examination. The examination was held on 17.8.97, but the same was cancelled, therefore, they gave representation to the respondents, but no reply was given to them. Thereafter, another notification was issued on 1.3.97 regarding re-examination to be held in respect of Supervisors (P.Way) on 26.3.2000. All the applicants were allowed to appear in the re-examination, their Roll Numbers and examination Centres have been shown at page 10 of the O.A. It is submitted by the applicants that re-examination was conducted on 26.3.2000 peacefully neither there was any complaint of any cheating, nor any such report was given by the invigilators, who were posted in different centres in the said examination, nor any person was caught red handed while doing examination for either cheating or resorting <sup>to</sup> unfair means. It is further submitted by them that it was totally objective types of question papers, where the applicants were required to fill-up the circles in the answer sheet which they thought ~~that it~~ was right. After



examination was over, question papers as well as answer sheet were taken back by the invigilators. Since all the applicants/<sup>were</sup> ~~doing~~ well in the examination, therefore, they have every hope that they have cleared the said written examination.

4. To the utter surprise of the applicants, ~~when~~ the applicants received a show-cause notice dated 26.3.2001 in individual capacities informing the candidates that all the questions, both correct as well as wrong of Group 'B' series, question booklet ~~have~~ been answered by the applicants on set pattern of choice, which <sup>practically</sup> infact is  $\angle$  impossible to achieve purely by coincidence. It was, thus, stated that it is established that the candidates have ~~been~~ <sup>B</sup> adopted unfair means in the examination. They ~~have~~ <sup>B were B</sup>, thus, asked as to why ~~your~~ <sup>their</sup> candidature for the above selection may not be cancelled and why ~~you~~ <sup>they</sup> may not be debarred from appearing in all RRBS examinations in future and further as to why action may not be initiated against them for being involved in mal-practice to procure Government job by fraud and criminal means (page 84). All the applicants gave their reply stating therein that allegation of adopting unfair means in re-examination held on 26.3.2000 is absolutely baseless as neither any student was caught <sup>B resorting to B</sup> unfair means, nor there was any such complaint by any of the invigilators that unfair means ~~were~~ <sup>B</sup> adopted by the candidates, therefore, they requested that show-cause may be filed, (Annexure nos. 20 to 25 ).

5. The respondents not being satisfied with the reply given by the applicants, issued another O.M. dated 14.5.2001 stating therein that the explanation given by them was not satisfactory and this was a clear

B

<sup>Where B</sup>  
case ~~that~~ the applicants had copied the answers obtained from a common source which amounts to resorting <sup>to</sup> unfair means and consequently giving opportunity of personal hearing to the applicants on 12.6.2001 and 13.6.2001 (Annexure Nos. 26 to 34). All the applicants appeared before the respondent no. 3 and he asked certain questions from the applicants, which were duly replied by them, but yet by order dated 11.7.2001 respondents held applicants' guilty for attempt to commit cheating. Accordingly, their candidature for written examination was cancelled and they were also debarred from all examinations to be conducted by the RRBs and also a right was reserved for initiating criminal proceedings against them (Annexure nos. 1 to 9). It is this order which has been challenged by the applicants in these O.As. The ground for challenging this order is that since all the candidates were not sitting in a same centre, nor in a same hall, nor any candidate was caught red-handed while doing any cheating or resorting to unfair means, nor any report was given by any of the invigilators, therefore, the allegation made by the respondents are totally baseless and are based on suspicion and on the basis of suspicion alone, it is not justified to either cancel their candidature or to debar them from appearing <sup>in B</sup> all further examinations to be conducted by RRBs for all times to come. In support of their contention, applicants' counsel has relied-on the following judgments:

- (i) Rajesh Kumar & Others Vs. Institute of Engineering 1998 SC 5.
- (ii) Ganga Ram & Others Vs. U.P. Madhyamik 2003 (1) A.W.C. 447.
- (iii) Himanshu Singh Vs. Madhyamik Shiksha 1998 (32) A.L.R. 15.
- (iv) Arvind Kumar Pandey Vs. Secretary Board, 1985 UPLBEC 55.
- (v) Km. Shushma Raghav Vs. Secretary Incharge 1996 AII 206.
- (vi) Harish Chandra Tiwari Vs. The Board of High School 1981 AII 144.
- (vii) Sachin Kumar & Others Vs. V.C. purvanchal, 1994 HVD Vol. 1 page 333.



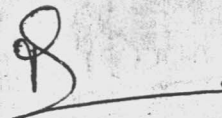
6. Respondents' counsel, on the other hand, relied on following judgments to state that once examining body arrives at the conclusion that examinees used unfair means in answering question, it is not open to the High Court to interfere with the decision (1979 All L.J 676). Similarly 2003 S.C. 59 Hon'ble Supreme Court held that decision of expert body should be given wightage by the Court. He also submitted that finding of the Board is based on sound reasoning, therefore, it is not liable to be interferred with. He also relied on 2001 A.L.J 463, A.I.R 1987 All 208 and 2002 (5) S.C.C 533, and 1985 U.P.L.E.B.C829.

7. We have heard both the counsel and perused the pleadings as well as judgments referred to by both the counsel. There is specific averment made by the applicants that during the examination, there was neither any complaint by the invigilator nor any of the applicants were caught red handed while cheating or resorting to any other unfair means and they were sitting in different centres. These averments are not disputed by the respondents but they have submitted that all the questions of Group 'B' series question booklets were answered on same set of pattern of choice when the paper was objective type so it cannot be a coincidence. They have also submitted that there was a specific complaint that a group of people had managed a question booklet to be smuggled out, prepared a solution and distributed the same to their selected candidates. This complaint was forwarded to Vigilance for investigation. They had carried out computer analysis, which showed that candidates with 'B' series question booklet had shown better performance than booklet of series A, C and D which is highly improbable. Moreover a further check was undertaken with regard to the questions attempted by candidates attempted 'B' series booklet and it was seen



booklet and it was seen that some candidates with good marks had not only wrongly attempted more than 21 questions but their choices of wrong options matched 98%. 37 candidates were found to have followed this pattern. Respondents went by probabilities that since 37 candidates have committed the same mistakes and given similar wrong answers in more than 15 questions and wrong choice has matched 98% it is sure that these candidates had copied the answers from a common solution made available to them from outside source. They have further submitted that during the personal hearing some of the candidates had attempted the questions correctly in exams were put the same questions but they did not answer the questions. Moreover in similar circumstances in another selection for the post of Junior Engineer (Permanent way) held on 07.05.2000, one candidate was caught red handed while copying the solution. On investigations it revealed that some persons confessed to have smuggled out one of the question booklet got it solved and circulated the same to same candidates in different centres. From the above it was evident that similar mode was adopted in these selections as well.

8. In these circumstances we are posed with the question whether candidature of such examinees could have been cancelled and they could have been debarred from appearing in any examination to be conducted by R.R.B even in future? There is no doubt in our mind that if there was enough material before the authorities to come to the conclusion that unfair means have been adopted by a large number of candidates they could always cancel the entire examination in order to hold fair selections. As stated by respondents since computer analysis showed that as many as 37 candidates had attempted the same answers including the wrong answers



answers including the wrong answers complied with the fact that those candidates refused to answer the question during personal hearing when they had already answered the said questions correctly in the answer sheet it does raise a presumption that they might have taken advantage of some solved paper, therefore, it would be justified if such examinations is cancelled but that does not necessarily mean that these candidates had resorted to cheating and unfair means in the examination as held by Hon'ble Supreme Court in A.I.R. 1998 S.C.5. Even in 2003 (1) A.W.C. 447 Hon'ble High Court held that in case of mass copying entire examination is to be cancelled as otherwise it would amount to casting stigma and aspersion only against few. Similarly in 1998 Hon'ble High Court rightly pointed out after all what were the Invigilators doing. We put a question to the respondents what action has been taken against the invigilators. It is quite possible that the said question paper might have been leaked out through a particular coaching centre where these candidates might have taken coaching and they would have been given the same answers by their coaching centre. In such circumstances though it would be open to the authorities to cancel the examination but in our considered view it would not be correct to cancel the candidature of few candidates only and further to debar them from appearing in subsequent examinations also to be conducted by R.R.B. for all times to come because admittedly none of these candidates had been caught red handed while cheating nor these had been any such complaint by any of the Invigilator. After all these candidates were sitting in different halls and they were supervised by Invigilators. If the question papers were smuggled out and answered sheet distributed to some candidates as is being suggested it would definitely have been noticed atleast



by one of the Invigilator, Moreover it is also to be kept in mind that it was objective type paper so if some category of candidates attempting 'B' series question booklet had attempted the same answers, it does not necessarily mean that they had resorted to cheating/ unfair means because if that be so atleast in some centre, some Invigilator would have noticed it ofcourse a doubt does arise because as many as 37 candidates attempted the same wrong answers as well so the authorities were well within their right to cancel the examination itself in order to hold fair exam but in our considered view it was not correct on the part of respondents to have stated for sure that these candidates had used unfair means in the examination to procure Government job by fraud and criminal means. The expression fraud and criminal means denotes is a very serious allegation which cannot be arrived at unless there is conclusive proof. In the instant case since the decision is not based on any conclusive proof and is based only on probabilities and presumptions we do not think it would be correct to debar such candidates from appearing in subsequent exams also for all times to come. Ofcourse if the authorities feel that exam was not held in a fair manner or some students took benefit either by way of leaking of papers or otherwise they can always cancel the <sup>is</sup> ~~candidature of few or~~ whole examination itself because definitely no one can be allowed to take advantage in examination by any other means as that would not be fair competition. Therefore, it would be best to hold the whole examination afresh specially when this court had been informed by the counsel for the respondents that no further steps were taken by the department due to the pendency of this O.A.



9. We, therefore, quash the impugned order and direct the respondents to hold the entire examination again after cancelling the examination held on 26.03.2000 by giving opportunity to all those who had appeared earlier to appear again by issuing a proper notification by advertising the same widely in Newspaper and Notice Board etc. Hon'ble Supreme Court had held in 2002 (ii) S.C. S.L.J 280 where exams are cancelled on the ground that unfair means were adopted by large number of candidates or due to irregularities of illegalities it is not necessary to issue show cause notice to all. Similar view has also been expressed by Hon'ble High Court in A.I.R 1987 All 208. Therefore, it would not be necessary to issue separate show cause notice to all the candidates.

10. In view of the above discussion. O.A. is partly allowed with no order as to costs.

Sd/  
A.M.

Sd/  
A.M.

J  
20/8/07