

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD

ORIGINAL APPLICATION NO. 1168 OF 2003

ALLAHABAD THIS THE *25th* DAY OF *March*, 2011

Hon'ble Mr. S. N. Shukla, Member-A

Hon'ble Mr. Sanjeev Kaushik, Member-J

Smt. Alka Bhatia, wife of Prakash Bhatia, r/o 10A/9,
Northern Railway, Diesel Colony, Moghsarai, District
Chandauli.

.....Applicant

By Advocate: Sri A. K. Yadav.

Versus

1. The Union of India, through the General Manager (P),
Headquarters office, N.R., Baroda House, New Delhi.
2. The Divisional Railway Manager (P), Northern
Railway, Lucknow.
3. The Head Master, Primary School, Diesel Colony,
Moghsarai, Northern Railway, Chandauli.

..... Respondents

By Advocate: Sri Anil Dwivedi.

ALONGWITH

ORIGINAL APPLICATION NO. 1166 OF 2003

Smt. Chandrawati Devi wife of P. N. Gupta, resident of
10A/2, Northern Railway, Diesel Colony, Mugalsarai,
District Chandauli.

By Advocate: Sri A. K. Yadav.

Versus

1. The Union of India, through the General Manager (P),
Headquarters office, N.R., Baroda House, New Delhi.
2. The Divisional Railway Manager (P), Northern
Railway, Lucknow.

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3. The Head Master, Primary School, Diesel Colony,
Mogalsarai, Northern Railway, Chandauli.
. Respondents

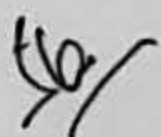
By Advocate: Sri Prashant Mathur.

ORDER

By Hon'ble Mr. Sanjeev Kaushik, Member-J

Since in both the above mentioned O.As. the claim of the applicants are identical, therefore, the facts of the O.A. No. 1168 of 2003 are taken.

2. By way of the instant Original Application filed under Section 19 of the Administrative Tribunal Act, the applicant seeks quashing of the order dated 14.08.2003 (Annexure-A-1) passed by respondent No.2 whereby the services of the applicant has been terminated. The applicant herein was appointed as a Temporary Teacher on 01.08.1989 at Primary School, Diesel Colony in the pay scale of Rs.100-300/- per month. It is submitted that on 23rd April, 1997 the respondent No.2 issued order whereby creating the post of Assistant Teacher in the grade of Rs.4,500-7,000/- and on the newly created post the applicant was appointed for six months by order dated 20.01.1998 which was extended by another order dated 18.05.1998 (Annexure-A-2). It is further submitted that the respondents subsequently also extended the services of the applicant as Assistant Teacher vide order dated 01st May, 2001 and she was given temporary status on 15.02.2001 (Annexure-A-4). It is submitted that policy decision was taken to regularize all teachers including the applicant. But a



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condition was imposed that those who have completed three years of services are to appear in a departmental examination and rest in examination to be conducted by the Railway Recruitment Board. Since the applicant had not completed three years of service, therefore, she has been singled out and was subjected to Written test to be conducted by the Railway Recruitment Board. It is further alleged that services of all those eight teachers were regularized on 23.05.2000 (Annexure-A-5). It was protested by the applicant in its letter dated 12.02.2008 (Annexure-A-8). The applicant actually appeared in the examination and failed. Thereafter, the applicant stated to have approach this Tribunal by way of Original Application No.920 of 2002 alongwith similarly placed teacher, which was decided by this Tribunal on 10th September, 2002(Annexure-A-9) with a direction to decide the pending representation of the applicant within two months. On 14th June, 2003 the services of the applicant has been terminated by the impugned order (Annexure-A-1) hence the O.A..

3. Upon notice the respondents filed the detailed Counter Affidavit and also filed a Supplementary Counter Affidavit. It is submitted that the applicant earlier also filed O.A. No. 920 of 2002 which was decided on 10.09.2002 with a direction to Divisional Railway Manager, Northern Railway to decide the pending representation of the applicant. In compliance of that the competent authority passed an order dated 14.08.2003, therefore, it

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is submitted that this O.A. is barred by principal of *res-judicata* and also under order 2 rule 2 of the C.P.C.. It is further submitted that the applicant was appointed on contractual basis and on expiry of the tenure his services stands automatically terminated. It is argued that on 24th July, 2000 a proposal was forwarded to the Board for regularization of ten substitute teachers including the name of the applicant by Northern Railway, Headquarters (Annexure-SCR-1). On the above stated proposal the respondents received the acceptance with some guidelines for considering the claim of the ten substitute teachers on 13th September, 2000(Annexure-SCR-2). It is submitted that in terms of the instruction dated 13th September, 2000 certain pre-requisite conditions were required to be followed before observation of individuals and the suitability to be judged by the screening committee comprising at least three junior Administrative grade officers including Chairman/Member Secretary of Railway Recruitment Board. It is contended that all those teachers who having the three years of service are allowed to sit in the Departmental Examination which was followed by a viva-voce test, and out of 08 candidates only 06 candidates qualified and their services were later on regularized. Since the applicant did not completed the requisite period of three years of working on the cut of date. To decide the fate of those teachers, who were not having three years of service on the cut of date, the respondents stated to have sent a proposal to Northern Railway, Headquarters on 26th May, 2001 for seeking

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further instructions in the matter. The Railway Board vide letter dated 16.08.2001 granted approval and issued guidelines that all those teachers were subjected to the written test to be conducted by Railway Recruitment Board and further screening should be done by a committee (Annexure-SCR-4). In pursuance to the above stated guidelines issued by the Board the written test was scheduled to be held on 21st October, 2001. The applicant and similar situated persons appeared but applicant failed and as such vide letter dated 28th November, 2001 the services of the applicant was dispensed with w.e.f. 01st July, 2001.

4. We have heard Sri Alok Kumar Yadav, learned counsel for the applicant and Sri Prashant Mathur and Sri Anil Dwivedi, learned counsel for the respondents. Learned counsel for the applicant vehemently argued that earlier fixing the condition of three years service before sitting in the departmental examination is arbitrary and violative of Article 14 of the Constitution of India. He submitted that the respondents can not create artificial distinction between the same sets of employee, the applicants were subjected to the test conducted by the Railway Recruitment Board whereas, there is similarly situated employees who are having three years service on the relevant date were subjected to departmental test. On the other hand the counsel for the respondents has vehemently argued that the instant O.A. be dismissed on the principal of *res-judicata*. Secondly, the applicant can

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not be allowed to question the legality of the decision taken by the respondents for conducting test before regularization. It is submitted that once the applicant had already appeared in the test conducted by the respondents and failed then he can not turn around and impugned the action of the respondents on the ground that he has been discriminated. He referred the judgment passed by Hon'ble Supreme Court reported in **AIR 1995 SC 1088 = (1995) 3 SCC 486 Madan Lal Vs. State of Jammu & Kashmir (SCC p.9). 2008(4) SCC 171 Dhananjai Malik Vs. State of Uttranchal.**

5. We have considered the rival submissions and have perused the record with the able assistance of learned counsel. Admittedly, the applicant was appointed as Substitute Assistant Teacher for fixed tenure, which subsequently, extended. To regularize services of all Temporary Teachers including the applicant respondents took a policy decision 13.09.2000 to regularize their service subject to certain conditions i.e. only those teachers who were having three years of service were allowed to sit in the departmental examination followed by viva-voce. Rest of the teacher who were less then three years of service were asked to appear in the Written Test to be conducted by Railway Recruitment Board. Admittedly, applicants fall in second category i.e. not having three years experience and subject to a test

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conducted by Railway Recruitment Board. In terms of the policy the applicant took chance that by appearing herself in the test. Having not succeeded now challenged the policy on the ground of discrimination or artificial classification between the employees. The applicant did not approach this Tribunal on first instance i.e. before appearing in the examination. Once she subjected herself to the test then she can not later be allowed to challenge the validity of the decision taken by the respondents for conducting examination.

6. It is settled preposition of law that persons can not be allowed to challenge the selection process after having participated on the principle of *Estoppels*. Reliance is placed upon **AIR 1995 SC 1088 = (1995) 3 SCC 486** **Madan Lal Vs. State of Jammu & Kashmir (SCC p.9)** wherein Hon'ble Supreme Court has held as under:-

"9. The petitioners also appeared at the oral interview conducted by the Members concerned of the Commission who interviewed the petitioners as well as the contesting respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at

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*the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the case of **Om Prakash Shukla v. Akhilesh Kumar Shukla** (AIR 1986 SC 1043) it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner."*

The above said decisions of the Supreme Court were followed by the Full Bench of Hon'ble Madras High Court in the decision reported in **AIR 2000 MADRAS 174 titled as R.Murali v. R.Kamalakkannan (FB) and in paragraph 55**, question No.2 was answered thus,

"Question No.2: We hold that writ petitioners are not entitled to challenge the selection after having participated in the written examination on the principle of estoppel."

The above referred judgments are followed in a recent decision in **(2007) 5 MLJ 648 titled as Indian Airlines Ltd. v.K.Narayanan**, wherein the contention of the management therein that person participated in selection in terms of the notification are estopped from challenging the mode of selection or the conditions contained in the instructions/rules was upheld.

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The ratio of the above stated judgment has been again reiterated by the Apex court in the decision reported in **(2008) 4 SCC 171: 2008 (2) Supreme 328 titled as Dhananjay Malik & Others v. State of Uttaranchal & Others in paragraphs 7 to 11 (in SCC)**, the Honourable Supreme Court held thus,

"7. It is not disputed that the respondent-writ petitioners herein participated in the process of selection knowing fully well that the educational qualification was clearly indicated in the advertisement itself as BPE or graduate with diploma in Physical Education. Having unsuccessfully participated in the process of selection without any demur they are estopped from challenging the selection criterion inter alia that the advertisement and selection with regard to requisite educational qualifications were contrary to the Rules.

7. Recently again the lordships of Hon'ble SC reiterated what has been held earlier in **Manish Kumar Shahi Vs. State of Bihar and Ors. (2011) 1 SCC (L&S) 256** (emphasizing on para 16).

8. All the above stated authoritative judicial pronouncement underlying one principle i.e. after participating in selection process, candidates later on can not challenge selection process, which he/she already undergone. Admittedly, the applicant was well aware of the policy before taking part in the process of selection

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despite he appeared in Written examination. The applicant is not entitled to challenge the criteria or process of selection when he failed. Surely, if the applicant's name had appeared in the merit list, he would not have even dreamed of challenging the selection process he invoked jurisdiction of this Tribunal only after she found that she failed. This conduct of the applicant is clearly disentitled her from questioning the selection.

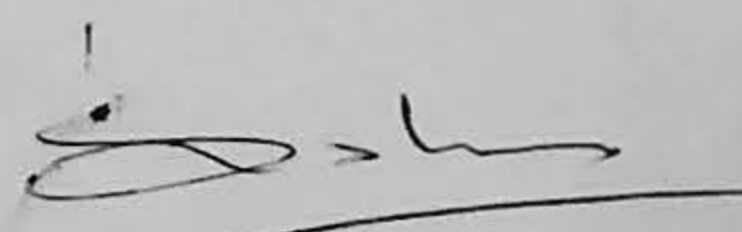
9. In view of the above we find no reasons to interfere with the impugned order hence the O.A. is dismissed being devoid of merit.

10. The O.A. 1166 of 2003 also stands dismissed in view of the reasons recorded in O.A. No. 1168 of 2003.

11. No order of cost.


Member-(J)

/Dev/


Member-(A)