

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD.

Original Application No.293 of 2003.

Allahabad this the 21st day of July 2003.

Hon'ble Maj Gen KK Srivastava, Member-A.  
Hon'ble Mrs. Meera Chhibber, Member-J.

Amit Kumar Sharma  
S/o Shri Kishan Swaroop Sharma  
R/o 165/1, Himmatganj,  
Allahabad-211 001.

.....Applicant..

(By Advocate: sri Rakesh Sinha).

Versus.

1. Union of India  
through Chairman,  
Railway Board,  
New Delhi.
2. Chairman  
Railway Recruitment Board,  
Allahabad.

.....Respondents.

(By Advocate : Sri A.K. Gaur)

ORDER

Hon'ble Mrs. Meera Chhibber, Member-J.

By this O.A., applicant has sought the following relief (s):

- "(i) This Court may be pleased to set aside the order dated 11.07.2002 (Annexure A-1 to this original application with compilation No.II).
- (ii) A direction may be issued to the respondent No.2 to scrutinize the answer sheets of petitioner according to the merit and in case he has passed in the written examination on the basis of answer sheets, he may be allowed to appear in viva-voce test etc. then further proceed for selection.
- (iii) Any other relief, which this Tribunal may deem fit and proper in the circumstances of the case may be given in favour of the petitioner".

2. It is submitted by applicant that respondent No.2 had issued a notification advertising number of vacancies, out of which 29 vacancies of Supervisor (P Way) in pay scale of Rs.1400-3300 were also advertised. Applicant applied as he was eligible. He was allotted Roll No. 1905539 and was allowed to appear in exam. Subsequently



the said examination was cancelled and vide notification  
it was fixed <sup>on 18</sup> 26.03.2000 for re-examination.

3. On 26.03.2000 examination was held peacefully. There was neither any complaint nor anybody was caught while cheating by the Invigilator or indulging in any other unfair means. He was waiting for the results but instead, he was served with a memorandum dated 26.03.2001 on the ground that he had adopted unfair means in written examination in as much as he had attempted Group 'B' series <sup>question</sup> 1 papers on a set pattern choice. He was, therefore, called upon to explain as to why his candidature may not be cancelled and why he should not be debarred from appearing in all Railway Recruitment Board examination in future and why action may not be initiated against him for being involved in malpractice to procure Government job by fraud and criminal means (Pg.13).

4. Applicant has submitted that since he had not indulged in any cheating or unfair means he gave his reply to the show cause notice (Annexure A 3) vide letter dated 14.05.2001 applicant was asked to appear in person (Annexure A 4). Applicant appeared and explained that in objective type <sup>question</sup> 1 paper lengthy answers are not required and if some persons have given answers alike, it does not mean, they have adopted unfair means. Inspite of it, vide memorandum dated 11.07.2002 ~~Respondent No. 2~~ applicant's candidature was cancelled and he was <sup>de</sup>barred from appearing in all the examinations to be conducted by all Railway Recruitment Boards as he had attempted cheating, ~~attempted by him~~ (Pg.12).

5. Applicant has challenged this memorandum in the present O.A. on the ground that mere similarities in question, answer may raise a suspicion of using unfair means but mere suspicion should not be taken as a

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substitute for proof, specially when there was neither any complaint, nor any candidate was caught while adopting unfair means by the Invigilator and specially when examination was conducted at different centres and none of the centres reported cheating. He has thus prayed that the impugned memorandum be quashed and set aside and his result be declared on the basis of his answer sheet.

6. Respondents have opposed the O.A. on the ground that result of the aforementioned examination was not declared due to the reason that investigations were undertaken based on specific complaint that a group of people had arranged a question booklet to be smuggled out, prepared a solution and distributed the same to their selected candidates across the different centres and the complaint was also duly forwarded to the Vigilance Organization for information and necessary action. During the processing of result, a detailed computer analysis was carried out. In the computer analysis, it was noticed that candidates with 'B' series question booklet had shown a better performance than those with booklets of series A.C and D which is highly improbable as in normal circumstances performance of candidates of all four series should be statistically similar.

7. It is further submitted that it was found that some candidates with good marks had not only wrongly attempted more than 21 questions but their choices of wrong options matched 98% of the time. A total of 37 candidates were found to have followed the same pattern of solving. Since there are four choices of answer for each multiple choice question, the chance of selecting a wrong choice is one in four and the chances of two candidates selecting the same wrong choice for two questions is  $1/4 \times 1/4 = 1/16$  i.e. 1:4<sup>2</sup> extending

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this probability the chances of wrong choice of two candidates matching in 15 question is 1:4 ~~which is 12~~

8. Accordingly, show cause notice was issued to 37 candidates to explain as to how they had their responses matched on a set pattern. Since ~~their~~ reply was not found satisfactory. Accordingly, their candidature was cancelled and they were debarred from appearing in all examinations to be conducted by all Railway Recruitment Boards.

9. They have submitted that the orders passed by them are absolutely right and call for no interference, the same may accordingly be dismissed.

10. On 21.07.2003 when this matter came up for hearing both the counsel agreed that this matter is fully covered by the judgment dated 13.05.2003 passed in O.A. No.900 of 2000, therefore, it may be disposed off in terms of aforesaid judgment.

11. We have seen the judgment and find that same facts and points were raised in O.A. No.900/2000 but after hearing both the counsel and discussing all the points raised, the said O.A was decided as follows:

"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 coupled 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 are 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

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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!"

"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 allegations 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".

"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) SC 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 ~~or~~ 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.

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

12. Since this case is absolutely identical, this O.A. is also partly allowed as per para supra.

No order as to costs.



Member-J.



Member-A.

Manish/-