

CENTRAL ADMINISTRATIVE TRIBUNAL
APPEALABLE DEPARTMENT
BOMBAY.

O.A. No. / ~~S.A. No.~~ 425/03 alongwith OA 113/03

Date of decision 25.8.03

Alok Sarkar & Ors (OA 425/03)

F Ansari (OA 113/03) Applicant(s)

Sri S. Singh (OA 425/03)

Counsel for the

Sri Skom (OA 113/03)

Applicant (s)

VERSUS

Union of India & Ors

Respondent (s)

Sri K. Singh

Counsel for the

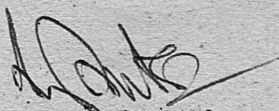
Respondent (s)

C O R A M.

Hon'ble Maj Gen KK Shivashankar V.C./Member (A)

Hon'ble Mr. An Bhatnagar Member (J)

1. whether reporters of local papers may be allowed to see the judgement ?
2. To be referred to the reporters or not ?
3. whether their lordship wish to see the fair copy of the judgement ?
4. whether to be circulated to all benches ?


signature

Manish/

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.425 OF 2003
ALLAHABAD THIS THE 25th DAY OF August 2003

HON'BLE MAJ GEN K.K. SRIVASTAVA, MEMBER-A
HON'BLE MR. A. K. BHATNAGAR, MEMBER-J

1. Alok Sarkar,
C/o Late Shri Arbinda Sarkar,
presently posted as SSE, (Track) Gorakhpur
under Chief Engineer Gorakhpur.
2. Anil Kumar Singh,
S/o Shri R.B. Singh,
presently posted as Section Engineer/P. Way
Varanasi under Senior Divisional Engineer,
Varanasi.
3. Arun Kumar,
S/o Shri J.C. Chawala,
presently posted as Section Engineer/
Works/Dairy under Deputy Chief Engineer,
Gorakhpur Area.
4. Janardan Mishra,
S/o Shri M.S. Mishra,
presently posted as Section Engineer Bridge
under Chief Works Manager,
N.E. Railway,
Gorakhpur.
5. Om Prakash
S/o Shri Kunwar Bete Bahadur,
presently posted as Section Engineer/P. Way
Senior Section Engineer P. Way/Safety/Sonepur.
6. Sukhen Kumar Ganguly,
S/o Late A.M. Ganguly,
presently posted as Section Engineer Way/
Goraul under Senior Divisional Engineer
Sonepur.
7. Ramesh Singh,
S/o Shri R.P. Singh,



Section Engineer (Works)
Tubewell N.E.R. Gorakhpur.

8. Babri Vishal Tripathi,
S/o R.D. Tripathi,
Junior Engineer (P.W.I.)
Balrampur, Under Sr. D.E., N.E.R.Applicants
(By Advocate Shri Saumitra Singh)

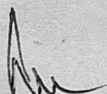
Versus

1. Union of India,
through the General Manager,
N.E. Railway Gorakhpur and others.
2. Chief Personnel Officer,
N.E. Railway,
Gorakhpur.
3. Principle Chief Engineer,
N.E. Railway,
Gorakhpur.Respondents
(By Advocate Shri K.P. Singh)

Alongwith

ORIGINAL APPLICATION NO.113 OF 2003

1. Fakhruddin Ansari,
son of S. Ansari
Section Engineers, Permanent Way,
North Eastern Railway,
Gorakhpur.
2. D.K. Shukla,
son of Late Sri K.D. Shukla,
Section Engineer/Works,
North Eastern Railway,
Gorakhpur.
3. Arun Kumar Singh,
son of R.K. Singh,
Senior Section Engineer/Works/North Eastern Railway,
Kanpur.



4. P.K. Mishra,
son of Sri S.C. Mishra,
Section Engineer/P. Way/T.T. Madhina/North
Eastern Railway,
Gorakhpur.
4. R.C.P. Singh,
S/o Sri Samshunath Singh,
JE-I/P. Way/Engg.Control/North Eastern Railway,
Gorakhpur.
6. M.K. Rao,
S/o Sri Surendra P.D. Rao,
working as Section Engineer (Bridge)
North Eastern Railway,
Gorakhpur.

.....Applicants

(By Advocate Shri S.K. Om)

Versus

1. Union of India,
through General Manager,
North Eastern Railway,
Gorakhpur.
2. Chief Personnel Officer,
North Eastern Railway,
Gorakhpur.
3. Principal Chief Engineer,
North Eastern Railway,
Gorakhpur.

.....Respondents

(By Advocate Shri K.P. Singh)

O R D E R

HON'BLE MAJ GEN K.K. SRIVASTAVA, MEMBER-A

Since both these O.A.s, filed under section 19 of Administrative
Tribunals Act 1985, are inter-related, both these O.As are being
decided by a common order. The pending O.A. is 125/...



O.A. NO.425/03

In this O.A. the applicants have challenged the order dated 03.02.2003 by which the results of the written examinations of Paper-I declared by the order dated 31.01.2003 had been cancelled and also the order dated 05.02.2003 by which the fresh date of re-examination of Paper I has been notified to be held on 01.03.2003. The applicants have prayed for quashing of both the orders with direction to the respondents to finalise the selections pertaining to 10 posts of Assistant Engineers under 30% quota which was so notified vide notification dated August 2002.

2. The applicants, eight in number, have been working as Junior Engineers/Section Engineer/Senior Section Engineer under the respondent's establishment. They appeared for the selection through Limited Departmental Competitive Examination (LDCE) to fill 30% of Grade B vacancies. They appeared in Paper-I and Paper-II on 18.01.2003 and 19.01.2003 and they were declared successful, in the result declared on 31.01.2003 with direction to appear for Viva-voce test alongwith their Medical Certificate scheduled to be held on 11.02.2003. The applicants are aggrieved by the order dated 03.02.2003 by which the result of Paper-I has been cancelled and also cancelling viva-voce test to be held on 11.02.2003. Aggrieved by the same, the applicants have filed this O.A.

O.A. NO.113/03

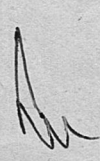
In this O.A. the applicants have prayed for quashing of the entire examination for LDCE held in pursuance of the notification dated 26.08.2002 and ^{to} conduct the entire examination in terms of the guidelines provided in the notification.

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2. The facts, in short are that the applicants are working as Junior Engineer/Section Engineer in grade of Rs.6500-10500/- and Rs.5500-9000/-. On 26.08.2002 notification was issued for filling 10 posts of Assistant Engineers in Group B post against 30% selection quota which is primarily merit based examination. According to the notification the selection was to be conducted in two parts. Firstly as per rule ^{in Written Exam} followed by viva-voce, 10% of the total marks are for testing professional ability and also question as regards written examination on official language policy, it is provided that the question on official language policy shall not be compulsory as per the provisions of para 204.3 of IREM.

3. The grievance of the applicants is that in the first paper of written test held on 18.01.2003, the question pertaining to official language was made compulsory. Secondly only 15% marks inspite of 20% of the professional ability was ear-marked for official language and, therefore, marks of General Knowledge were also enhanced. The applicants have stated that against these irregularities they raised their protest in the examination hall itself but they were advised to raise this protest later on. It is also alleged that certain persons were attempting copying due to Ulterior-motive for extraneous considerations. Immediately after the written examination the applicants filed their representation on 20.01.2002. The respondents vide order dated 05.02.2003 ordered for re-examination for Paper-I to be held on 01.03.2003. The grievance of the applicants is that the entire examination should be held afresh.

4. Shri Saumitra Singh, learned counsel for the applicants in O.A. No.425/03 submitted that the action of the respondents is arbitrary as total number of 276 candidates




^happeared in ^h in which^h
the written examination/14 including the applicants ^h ^h were
qualified. Viva-voce ~~was~~ scheduled on 11.02.2002 and,
therefore, cancelling the examination in respect of Paper I
by order dated 03.02.2003 is illegal and also the letter
dated 05.02.2003 fixing the fresh date for re-examination of
Paper-I as on 01.03.2003 is also irregular.

5. Learned counsel for the applicant further submitted that
representations were filed by unsuccessful candidates even then
the results were declared on 31.01.2003. The action of the
respondents in cancelling the result declared on 31.01.2003
is illegal. The learned counsel submitted ^{that} the Doctrine of
Estoppel by conduct would apply ^{in respect of applicants of OA 113/03} as it is a settled law that a
person having appeared, ^{cannot} ~~again~~ raise the issue of discrepancy.
The applicant has placed reliance on the judgment of Hon'ble
Supreme court in the case of Chandra Prakash Tewari Versus
Shakuntala Shukla 2002 VOL VI SCC 127.

6. Learned counsel for the applicant also argued that since
the impugned order dated 03.02.2003 is totally silent about
the reasons for cancelling the result declared on 31.01.2003
it ^{well} ~~cannot~~ be summarized that it is a case of non-application
of mind and colourable exercise of power. Besides the learned
counsel argued that the question which is alleged to be that of
Rajbhasha, which was made compulsory, is not a question on
Rajbhasha but is a question of General Knowledge. The learned
counsel submitted that no examination should be cancelled on
flimsy grounds.

7. The learned counsel for the applicants has placed
reliance on the judgment of Hon'ble Supreme Court in Munna Roy
Versus Union of India (2000) 9 SCC 283 in which it has been



held that though the mere inclusion in select list does not confer any right and mandamus cannot be issued but court can interfere when an administrative authority takes decision on erroneous reasons. In the case of Munna Roy (Supra) the reasons given in appellant's case were that dubious method was suspected in her selection in as much as she was a graduate as against minimum qualification of matriculate. Such reason described as arbitrary, irrational and not germane. The Hon'ble Supreme Court on this score set aside the decision to cancel the panel. Therefore, applying the law laid down by Hon'ble Supreme Court^h the applicants are legally entitled for relief.

8. On the other hand Shri S.K. Om, learned counsel for the applicant in O.A. No.113/03 submitted that the question, which was made compulsory, is certainly on official language which could not be made compulsory in view of the provisions contained in para 204.3 of IREM-1. The applicants raised the protest in the examination hall itself and since they were advised by the invigilators to raise their protest later on they represented on 20.01.2002 itself. Inviting our attention to the suppl. affidavit filed by the applicants the learned counsel submitted that large scale irregularities and malpractices crept in the selection. In the suppl. affidavit applicants have also relied upon a News-paper report mentioning^h that a large number of candidates did not appear in the second paper of the examination because of the Paper-I which was certainly against the rules. The applicants have relied on the newspaper report filed alongwith the suppl. affidavit alleging that money was also accepted between some officials^h for the selection and only those persons were declared qualified. Newspaper has also alleged that the action of the respondents has been verified by the Vigilance Cell of Railway Board and General Manager. It has been submitted

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that it was only on account of this that the higher authorities found truth in the allegations levelled and consequently cancelled the First paper of the written examination as well as viva-voce to be held on 11.02.2003.

The learned counsel has opposed the contention of Shri S. Singh learned counsel for the applicant in O.A. No.425/03 that the applicants cannot agitate the matter once they have appeared in the selection.

9. The respondents have contested the claim of the applicants in both the OAs by filing counter reply, admitting therein that in First paper certain irregularities were committed and since the irregularities were only in First Paper, therefore, only first paper was cancelled and directed to be held afresh. Respondents have also stated that since there has been no irregularity in paper-II, paper-II should not be cancelled. They have placed reliance on the judgment of Administrative Tribunal Cases in H. Numan Prasad Versus Union of India 1997 ATC VOL 35 page 338. The learned counsel for the respondents Shri K.P. Singh submitted that both the OAs are not maintainable because a considered decision has been taken by the competent authority to cancel Paper-I and to hold re-examination in Paper-I. Besides the applicants of O.A. No.113/03, who have failed in the written examination, have no right to agitate the matter further. The correct course would be for them to appear in Paper-I again. The learned counsel for the respondents further submitted that the applicant no.6 in O.A. No.113/03 did not appear in the Second Paper so applicant no.6 in any case does not have any right to agitate the matter.


10. We have heard counsel for the parties at length, carefully considered their submissions and closely perused

records.

11. Shri S. Singh, learned counsel for the applicant in O.A. No.425/03 submitted that the applicants of 113/03, participated in the examination and cannot agitate the matter as they did not raise protest. He has placed reliance on the judgment of Hon'ble Supreme Court in Union of India Versus Tarun Kumar Singh AIR 2001 SC 2196 and Union of India Versus Chakradhar AIR 2002 SCC (L&S) 361. In the present case the case law cited by the learned counsel is not applicable because the protests were raised in the Examination hall and thereafter immediately after the written examination was over on 19.10.2003, a protest was filed in writing on 20.01.2003 itself.

12. Applicants of O.A. No.113/03 have submitted that there was large scale corruption and mal-practices as alleged in M.A. Respondents have nowhere denied the allegations of corruption etc., though the counter reply was filed at a very subsequent date. In our opinion since the Paper-I has been cancelled and has been ordered to be re-held there appears to be truth in the allegation of the applicants of O.A. No. No.113/03.

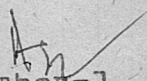
13. It has been argued by the respondents that applicant no.6 himself did not appear in the second paper. We do not find much substance in this argument because once paper-I itself suffers from irregularities, the entire examination gets polluted and, therefore, the entire written examination consisting of Paper-I and Paper-II should have been cancelled. We also find substance in the argument of the applicants that para 304.1 of IREM as well as notification dated 26.08.2002 provide that the question on official language would be



optional and whereas the same were made compulsory goes to the root of the matter and we have no hesitation to observe that it vitiates the entire examination and, therefore, the whole examination should be held afresh inspite of only First paper. Needless to mention here that on perusal of record we find that in the Paper-I 276 candidates appeared whereas in the Paper-II only 259 candidates appeared. The reasons are obvious that after Paper-I all those who did not appear lost hope for selection because of performance in paper-I. A candidate proceeds to give the second paper on the assessment of his performance in the First paper. In the present case it is only the Paper -I which was not as per rules. In our view had it been paper-II, situation would have been different. Therefore, the entire examination is liable to be quashed.

14. In the facts and circumstances and our aforesaid discussions O.A. No.425/03 fails and is accordingly dismissed. O.A. No.113/03 succeeds. The order dated 03.02.2003 and 05.02.2003 are quashed. The examination in regard to paper-II is also set aside. The respondents are directed to hold the entire written examination (Paper-I & Paper-II) afresh in pursuance to the notification dated 26.08.2002. **Interim order dated 27.02.03 merges with this order.**

15. There will be no order as to costs.


Member-J


Member-A

/Neelam/