

(10)

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 5th day of April 2007

Original Application No. 553 of 2006

Hon'ble Mr. Justice Khem Karan, Vice Chairman
Hon'ble Mr. P.K. Chatterji, Member (A)

1. Yashvir Singh, S/o Sri B.P. Singh, R/o Quarter No. 274-A, Railway Colony, Aligarh.
2. Satish Kumar Srivastava, S/o Sri S.P. Srivastava, R/o 865-A, Type-IV, Loco colony, Allahabad.

... Applicants

By Adv: Sri S.S. Sharma

V E R S U S

1. The Union of India through the General Manager, North Central Railway, Headquarters Office, ALLAHABAD.
2. The General Manager, North Central Railway, Headquarters Office, ALLAHABAD.
3. The Divisional Railway Manager, North Central Railway, DRM Office, ALLAHABAD.

... Respondents

By Adv: Sri A.K. Sinha

O R D E R

By Hon'ble Mr. P.K. Chatterji, Member (A)

The facts in this OA briefly stated are that the two applicants who are working in the pay scale of Junior Engineers Rs. 5500-9000 in Allahabad division of North Central Railway sat for the written examination for the post of Section Engineers in the pay scale of Rs. 6500-10500 on

mera

06.05.2006. The examination for which a notification was issued by the respondents was fixed on 11.03.2006 and supplementary written test on 18.03.2006. The written test, however, was postponed and subsequently held on 06.05.2006 and 13.05.2006 respectively.

2. It is stated by the applicants that they sat for the examination on 06.05.2006 at Allahabad under the supervision of Additional Divisional Railway Manager, Divisional Engineer (G) and Divisional Personnel Officer. At the beginning of the written test the officer incharge conducting the test is stated to have announced that candidates should attach the question paper with the answer book while submitting the same to the invigilator. The test was for 100 marks. On receiving the question paper the applicant found that the first six questions were descriptive while question No. 7 and 8 were objective type which was supposed to be answered by ticking the right choice. As there was no clear direction on the question paper as to how the objective type questions were to be answered the applicants asked for a clarification from one of the invigilators, as stated by the applicants. As the invigilator allegedly told them to attempt the answer on the question paper itself they did the same. On completing the answer the applicants came out of the hall after submitting the answer paper as

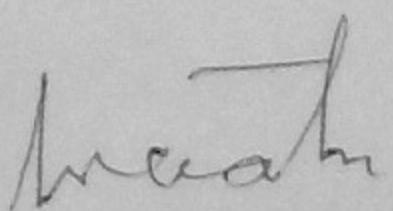
meath

(12)

well the question paper. However, just about two minutes before the completion of the three hours time the applicants came to know that the answers to the question 7 and 8 were actually to be given on the answer paper not on the question paper. They immediately asked the officer incharge but the invigilator did not allow them to make any changes at that time.

3. The applicants have attached the copy of the question paper with this OA. They have also attached a copy of the standard question paper pertaining to some other year. By attaching both the applicants have tried to convince the Tribunal that the question paper for the year under question was not properly prepared with clear cut direction for the candidates. The applicants alleged that they were confused by the lack of direction on the question paper and also by the misleading clarification given by the invigilator on the spot.

4. In the OA the applicants have also stated that this confusion arose for most of the candidates and except some of them most of the candidates' answered the objective type question in the question paper. It has also been alleged by the applicants that a mistake was also committed by the officer conducting the written test by declaring that the candidates should submit the question paper alongwith the

A handwritten signature, possibly 'Meath', is written in cursive ink at the bottom right of the page.

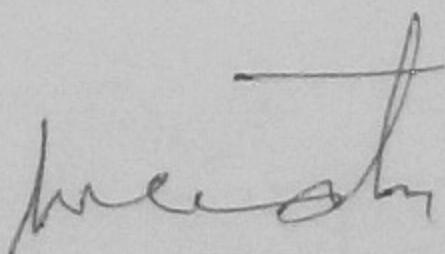
(13)

answer paper. This was in violation of clear direction of the Railway Board. In the said clarification the Railway Board had directed that in all written tests answer was to be written on the answer sheet and the candidates should take the question papers with them. Therefore, according to the applicant the confusion was also created by the first direction of the officer incharge of the examination hall. Having thus described the facts of the case the applicant has sought the following reliefs:

a. A direction upon the respondents that valuation/marking of the examination dated 06.05.2006 for promotion to the post of Section Engineer should be done in respect of the applicants on the question paper in connection with the objective type question No. 7 and 8.

b. A direction to cancel the written examination dated 6/30.5.2006 in case it was not possible to grant the first prayer as above.

5. The OA was take up on 22.05.2006 for admission while directing the issue of notice to the respondents the Tribunal also granted the prayer for interim relief as follows:

A handwritten signature in black ink, appearing to read "meesha".

(14)

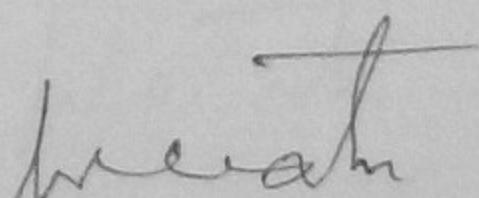
"The applicants have prayed for certain interim relief. As it is understood that as many as 80% of the candidates have committed the same error, in the interest of justice the respondents are directed not to detach the question paper from the answer sheet and they should provisionally evaluate the answer sheet alongwith the answer written on the question paper itself."

6. The applicant has also referred to the OA No. 1057/06 filed by 33 candidates of the same written test and have requested that the Tribunal should link the same OA alongwith this OA before disposing it off.

7. Learned counsel for the respondents have denied the allegations of the applicants by the following clarifications:

a. The applicants obtained the order for interim relief by misleading the Tribunal by saying that 80% of the candidates made the same error. This was a false statement and for this reason alone the OA deserves to be dismissed. They have further stated that there were 56 candidates for the examination. No one misunderstood the directions for the written test except the two applicants. It was only these two applicants who wrote the answer to question No. 7 and 8 on the question paper.

b. The respondent have also stated that the information given by the applicant in the OA



(15)

that OA No. 1057/06 also should be disposed together with this OA was not correct. OA 1057/06 was disposed of vide judgment dated 16.10.2006. In this judgment the Tribunal directed the respondents to decide the representation of the applicants treating the OA as a representation, within a period of six weeks. The representation made by the 33 applicant in OA 1057/06 was for declaring the result of the written test on the basis of the answer that they had written in the answer paper.

c. The applicants have not denied that there was a difference between the question paper of the examination under question and the standard question paper as attached by the applicant in the OA. However, they have also stated that this did not create any confusion in the mind of 54 other candidates. They also stated that clear directions were issued by the invigilators and the officer incharge at the commencement of the examination. If it was only the two applicants that misunderstood the instructions it was their own fault.

d. The respondents have further stated that the two directions of this Tribunal : one dated

meatn

16.10.2006 in connection with OA 1057/06 and the interim order passed by this Tribunal on this OA dated 22.05.2006 are contradictory. Therefore, the respondents are in a fix as to what they should do. Whether they should comply with the orders dated 16.10.2006 or comply with the interim order passed by the Tribunal dated 22.05.2006.

8. We have heard the arguments, gone through the pleadings and applied our mind. It is not denied by the respondents that there was some difference between the standard question papers and the question paper of the written test dated 06/13.05.2006. This together with the alleged instructions by the invigilator upon the candidates to submit their question papers alongwith the answer sheets apparently created the confusion in the mind of the applicant. We have however, taken note of the submission made by the respondents this did not create any confusion in the mind of the other 54 candidates. The respondents had stated that it would not be possible to comply with both the judgments i.e. The one issued on OA 1057/06 and the interim order dated 22.05.2006. In the interim order the respondents were directed that they should evaluate the answers given by the two applicants to question no. 7 & 8 on the question paper. It was

mech

also directed that the question paper should not be detached from the answer paper.

9. One point which has emerged quite clearly from the arguments is that the applicants made the mistake due to lack of understanding of the instructions. At the worst it was a bonafide mistake. There was no bad intention. When it is seen that 54 other candidates did not have any confusion it does not go to the credit of the applicants to say that misconstruing the instructions was no fault of theirs. We are of the view that it is not important to decide whether misunderstanding the instruction was solely the responsibility of the applicants, or the respondents also contributed to it by the inconsistencies of their actions. From the facts and circumstances of the case it however, is clear that it is a case of bonafide error. But even if it is not a malafide mistake it shows a lack of intelligence on the part of the applicants.

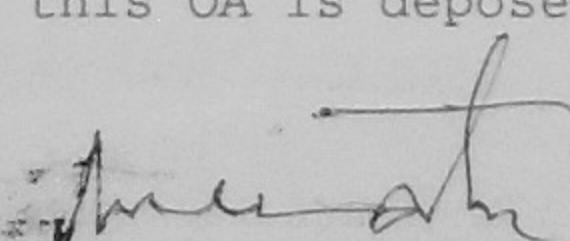
10. We are unable to understand why the respondents say that they are in a fix over the two orders of this Tribunal as stated above. They have of course stated that it is not possible to evaluate the answers written on the question paper as there is no provision for codifying the question papers. However, when the orders of this tribunal dated

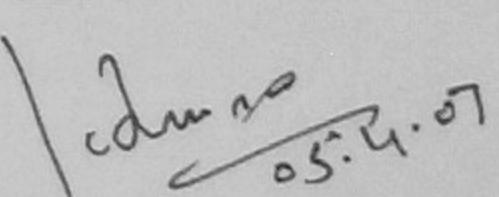
meek

(18)

22.05.2006 was issued it was also clearly stated that as regards the two applicants the respondents should not detach the question paper from the answer sheets. It is expected that the respondents have done the same. Therefore, it is feasible to make the evaluation of the answers to the question No. 7 and 8 given by the two applicants on their question papers. We, therefore, do not see any such contradiction between the two orders of the Tribunal, interim order dated 22.05.2006 on this OA and the order on OA 1057/06. As the mistake committed by the applicant is not a malafide mistake and it is not with any sinister and ulterior motive, we do not think that there is any insurmountable barrier to accommodate their prayer.

11. With these above consideration we dispose of this OA by the direction that the respondents will proceed to take necessary action to evaluate the answer of the two objective type questions given by the applicants in their respective question papers and add it to the marks on their answers to the other descriptive questions on the answer sheets. This would be done as an one time exception which should not be cited as a precedent. With this direction this OA is deposited of. No cost.


 Member (A)


 Vice-Chairman

/pc/