

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD**

Dated: This the 15 day of February 2017

PRESENT:

**HON'BLE DR. MURTAZA ALI, MEMBER - J
HON'BLE MR. O.P.S. MALIK, MEMBER - A**

Original Application No. 1050 OF 2007

Sunil Kumar Srivastava aged about 36 yers, Son of Shri A.P. Srivastava, r/o 207A New Railway Colony, Railgaon, Subedarganj, Allahabad.

..... Applicant

By Adv: Shri Sudama Ram

VERSUS

1. Union of India through the General Manager, N.C. Railway, Head Quarter, Allahabad.
2. F.A. & C.A.O. N.C. Railway, Headquarters Office, Allahabad.
3. Dy. F.A. & C.A.O./Genl. Admn. N.C. Railway, Headquarters Office, Allahabad.
4. Smt. Manorma, Confidential Assistant, in the office of FA & CAO N.C. Railway, Headquarters Office, Allahabad.
5. Virendra Kumar Chaurasiya, Confidential Assistant, in the office of Dy. FA & CAO/T, N.C. Railway, Headquarters Office, Allahabad.

..... Respondents

By Adv: Shri Anil Kumar
Shri R. Upadhyay
Shri P.K. Goyal

ORDER

BY HON'BLE DR. MURTAZA ALI, MEMBER – J

The applicant has filed this O.A. under section 19 of Administrative Tribunals Act, 1985 for quashing the notification dated 15.10.2007 (Annexure A-1) by which result of written test for P.S. –II was declared and also letter dated 31.10.2007 (Annexure A-1/A) by which respondent No.4 and 5 were appointed and letter dated 13.12.2007 (Annexure A-1/B) by which representation of applicant was disposed of.

2. The brief facts of the case are that the applicant was initially appointed in the respondents department as English Stenographer in the grade Rs.4000-6000 and he was promoted as Senior Stenographer in the grade Rs. 5000-8000 in the year 2004 and subsequently he was promoted as Confidential Assistant in grade Rs. 5500-9000 in January 2007. It is stated that in pursuance of notification dated 3.7.2007 for filling up three posts of P.S.-II in grade Rs.6500-10500, he appeared in the written examination on 18.7.2007, but he was not declared successful. It has been alleged that in violation of Railway Board Circular dated 30.8.2006, the Selection Committee

committed procedural irregularities in setting the question paper for written examination and no model answer key was prepared before evaluating the answer-sheets and respondent Nos. 4 and 5 have wrongly been declared successful in the written examination.

3. Per contra, in the reply filed on behalf of official respondents, it is stated that the applicant had appeared in the written examination held on 18.7.2007 but he never raised the issue of any procedural irregularities in conducting the said written examination till the result of said examination was declared. It is further stated that the question paper was set as per para 219 (c) of I.R.E.M. and no irregularity was committed in evaluating the answer-sheets. It is further stated that only two candidates qualified the written examination who were called for viva voce and later-on they have finally been selected but as the applicant could not get qualifying marks in the written examination he was not called for viva voce held on 30.10.2007.

4. In the reply filed on behalf of private respondent Nos. 4 and 5, it has been stated that the applicant could

not secure required qualifying marks in the written examination so he was not called for viva voce and the answering respondents have already been declared successful and joined on the post of PS-II on 31.10.2007. There is no violation of any statutory rules and applicant has no locus to challenge the process of selection after participating in the examination and declaration of result.

5. Heard Shri S. Ram counsel for the applicant and Shri Anil Kumar counsel for the respondent and perused the records.

6. Learned counsel for the applicant argued that as the objective type questions were not set according to Railway Board Circular dated 30.6.2006 and no model answer key was prepared before evaluating the answersheet, the result declared on the basis of written examination on 18.7.2006 and subsequent appointment of respondent Nos. 4 and 5 on the post of P.S – II be declared illegal. He relied on Railway Board Circulars dated 20.10.1999 and 30.8.2006.

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7. While defending the legality of appointment of respondent Nos. 4 and 5, learned counsel for official respondents argued that guidelines issued by the Railway Board in respect of conducting the examination had no binding effect and said guidelines were also not applicable to the selection of staff of Accounts Department in view of Circular dated 7.8.2003. He also relied on the judgment dated 12.7.2013 passed by this Bench in O.A. No. 949 of 2008 Kapil Deo Pandey Vs. U.O.I. and Ors.

8. Learned counsel for the applicant has drawn our attention to Note – (3) under Para 9 of Guidelines circulated vide Railway Board letter dated 20.10.1999, which states as under –

“Note (3) Proper and uniform evaluation of the answer sheets, especially for narrative type of answers should be ensured. In order to achieve this objective the officer evaluating the answer sheets before starting the evaluation should keep ready the correct answers for the questions, separately for the objective and narrative type and then evaluate the answer sheets with reference to these answers”.

9. We have also gone through Railway Board Circular dated 30.8.2006 (Annexure A-8), which states as under –

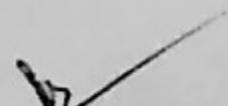
"As the Railways are aware in terms of para 219 (c) of IREM Vol. 1 1989 while the written test held as part of the selection for promotion to the highest grade selection post in the category includes objective type questions for about 50% (in the range of 45% - 55%) of the total marks for the written test, the one held for promotion to lower grade selection posts, the extent of objective type questions is limited to 25% (in the range of 20% - 30%) of the total marks for the written test.

2. *A demand has been raised in the forum of PNM –AIRF that the existing provision of setting up of 50% objective type questions in written tests held as part of selection for promotion to highest grade selection post in a category may be extended to selection posts in lower grades also.*

3. *The matter has been carefully considered by the Board and it has been decided that the existing provision of setting up of objective type questions to the extent of 50% of the total marks prescribed for written test held as part of selection for promotion to the highest grade selection post in a category should be extended to all selection posts in lower grades also.*

3.1 *The opportunity is also taken to clarify that objective type questions besides including the type of questions in the form of 'multiple choice', 'filling up the blanks', "tick 'true' or 'false'", "right" or "wrong", 'match the following' may include questions requiring one word/line answer, " 'yes' or 'no' ", naming, e.g. 5 States, Railways, posts grades, etc. This is to avoid unnecessary rigidity in framing the questions.*

4. *Accordingly, the Indian Railway Establishment Manual Vol.1, 1989 may be*



amended as per the following Advance Correction Slip".

10. In view of above circulars, it has been submitted that in all the selection process, about 50% of the total marks has to be given for objective type questions but the paper set for the said examination did not contain objective type questions to the extent of 50% of the total marks prescribed for the written test.
11. There is substance in the contentions raised on behalf of respondents that firstly, guidelines issued by the Railway Board are not binding and secondly, said guidelines are inapplicable to the selection made in the Account Department in view of circular dated 7.8.2003 (Annexure SCA-1).
12. In the case of Kapil Deo Pandey (supra), similar controversy was involved and in view of Note (3) under Para 9 of said Guidelines, it was contended that since no correct answer-sheets were prepared prior to evaluation of answer-sheets of the applicant, it should be presumed that the evaluation of answer-sheets of the applicant has not been done in a proper manner and therefore result,

declared without adopting the said procedure, was illegal. While relying on the judgments of Hon'ble Supreme Court in **Chief Commercial Manager and others Vs. G. Ratnam** reported in **2008 (1) All India Services Law Journal page 433** and **State Bank of Patiala Vs. S.K. Sharma** reported in **(1996) 3 SCC page 364**, this Tribunal has held that the guidelines for Personnel Officer and Members of Selection Board issued by the Departmental authorities are only for guidance in order to conduct the examination and selection process fairly and smoothly and without any prejudice to anyone. In view of absence of any malafide or prejudice or other ill-will, the selection process cannot be deemed faulty or invalid due to non-preparation of answer-sheets by the evaluating officer prior to the evaluation of the answer-sheets. The said view has also been upheld by Hon'ble Allahabad High Court vide judgment dated 28.3.2016 in Writ Petition No. 46505 of 2013 **Kapil Dev Pandey Vs. Union of India and others** and it has categorically been held that the guidelines dated 20.10.1999 are only guidelines given to the Personnel Officer for their own use and it has got no statutory force and does not have any binding affect. Thus, in view of above, we are of the considered opinion

that if there is any violation of guidelines issued for setting of question paper or evaluation of answer-sheet, the selection process cannot be declared as invalid as the said guidelines have got no statutory force.

13. Our attention has also been drawn on the amended para 219 (c) of I.R.E.M (Annexure SCA-1), which reads as under –

"219 (c) (i) In the written test held as part of the selection for promotion to the highest grade selection post in a category, objective type questions should be set for about 50% (in the range of 45% to 55%) of the total marks for the written test. In the written test held as part of the selection for promotion to other lower grade selection posts, objective type questions should be set to the extent of about 25% (in the range of 20% to 30%) of the total marks for the written test.

(ii) The provisions at (i) above will be applicable to selections in all departments except Accounts Department".

(Emphasis supplied)

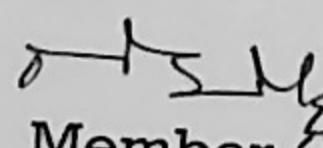
14. It is not disputed that the posts in question were of Accounts Department of the Railways and in view of amended Para 219 (c) (ii) of I.R.E.M, it was not required to follow guidelines issued in respect of setting of question paper which suggest 50% objective type questions out of total marks. The said guidelines may be followed in all the selections but it is not applicable to selections of Account Department. Thus, we are of the considered view that setting of question paper in accordance with the guidelines mentioned in Circular dated 7.8.2003 was not binding as they have got no statutory force and also it was not applicable to the selections of Accounts Department.

15. It is also an admitted fact that till the declaration of final result, the applicant did not challenge the setting up of question papers and only after declaration of final result and joining of respondent No. 4 and 5, the applicant started agitating the manner of setting up of papers and its evaluation which is not permissible in view of law laid down by the Hon'ble Supreme Court in the case of ***Sadananda Halo & Others Vs. Momtaz Ali Sheikh & Ors.*** reported in **2008 (4) SCC-619**. In the said case, it has been held that unsuccessful candidates after participating in the

selection process could not indulge in a roving enquiry by filing petition in the Court.

16. Considering the facts that the applicant did not challenge the setting up of question papers till he was declared unsuccessful, guidelines dated 20.10.1999 having no statutory force and the said guidelines are inapplicable to the selection made in the Accounts Department, we do not consider the selection of respondent No. 4 and 5 as illegal while they had already joined on promotional posts before filing of this O.A. Thus, O.A. is devoid of any merit and is liable to be dismissed.

17. Accordingly, O.A. is dismissed. No order as to costs.


Member (A)


Member (J)

Manish/-