



RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH  
ALLAHABAD**

**PRESENT:**

**HON'BLE MR. A.K.GAUR, MEMBER-J**

**HON'BLE MRS.MANJULIKA GAUTAM, MEMBER-A**

Allahabad this the <sup>8th</sup> day of <sup>May</sup> April, 2009

**Common Order in Original Application  
Nos. 899/06 and 415/2007**

**O.A.899/06:**

R.P.Sharma, S/o late Ganesh Prasad Sharma,,  
r/o House No. N-8/198, A-2B,  
Infront of Life Line Hospital,  
(Madhuban Lawn), Mevada Sunderpur, Varanasi.  
...Applicant.

(By Advocate : Sri S.K.Mishra)

**Versus**

1. Union of India through General Manager,  
North Eastern Railway, Gorakhpur.
2. The Divisional Railway Manager,  
N.E. Railway, Varanasi.
3. The Divisional Railway Manager (Personnel)  
N.E.Railway, Varanasi Division.
4. Chief Personnel Officer, Head Quarters,  
N.E. Railway, Gorakhpur ...Respondents.

(By Advocate : Mr.P.N.Rai & S.C.Mishra)

**O.A.No.415/07:**

Gyan Prakash Rai,, S/o Sri Radha Krishna Rai,  
T-31 -B Railway Colony, Mandua Deeh, Varanasi.  
...Applicant.

(By Advocate : Sri S.K.Mishra)

**Versus**

1. The Chairman, Railway Board,  
Rail Bhawan, New Delhi.
2. Union of India through General Manager,  
North Eastern Railway, Gorakhpur.
3. The Divisional Railway Manager,  
N.E. Railway, Varanasi.

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4. The Divisional Railway Manager (Personnel)  
N.E.Railway, Varanasi Division.
5. Chief Personnel Officer, Head Quarters,  
N.E. Railway, Gorakhpur ...Respondents.

(By Advocate : Mr.P.N.Rai)

### ORDER

#### HON'BLE MR. A.K.GAUR, MEMBER (J)

As the controversy involved in both the cases are similar and identical, the same are being disposed of by a common order/judgement. The case of Shri R.P. Sharma is taken as the leading case. By this O.A. the applicant sought the following main reliefs:

- i) To set aside the order dated 12.7.2006 passed by respondent No.4.
- ii) To set aside the order dated 11.8.2006 passed by respondent no.4.
- iii) To issue order or direction to the respondents to finalise the

selection process started from 5.7.2006 in which written examination held on 28.7.2006 result of which was declared on 3.10.2006. The grievance of the applicant is that without disclosing any reason the selection as well as its result has been cancelled by order dated 12.7.06 and now the respondents are going to hold another selection for which 1.9.2006 was fixed for written examination. According to the applicant he is one of the persons declared selected in the earlier test which was subsequently cancelled. This Tribunal while hearing the case on admission on 28.8.06, issued an interim direction that the examination as scheduled may take place but the result of selection will not be declared and acted upon until further orders. The said order is continuing till today.

2. The matter pertains to the selection of 3 posts of Chief Train Controllers from among the eligible Dy.Chief Controllers. Selection process comprises of 2 parts.

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4. The Divisional Railway Manager (Personnel)  
N.E.Railway, Varanasi Division.
5. Chief Personnel Officer, Head Quarters,  
N.E. Railway, Gorakhpur ... Respondents.

(By Advocate : Mr.P.N.Rai)

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A) Written Test---50 Marks

B) Evaluation of successful candidates is under the following heads:

- a) Seniority ---15 marks
- b) Personality leadership and Education---20 marks
- c) Service records and confidential reports---15marks.

3. Vide notification dated 5.7.05 there were three posts, 2 General and 1 S.T.. Against 2 posts of General category 6 eligible Dy. Chief Train Controllers were called for written test. No candidate from S.T. was available in the feeder cadre. According to the applicant, the examination was held as per scheduled on 28.7.005 without any obstruction or impediment. No complaint or objection of any kind was made by any of the examinees. It is also urged on behalf of the applicant that on 3.10.2005 the result on the said examination was declared. Three candidates were declared successful including the applicant on a complaint received from one Sri Udai Shankar Jaiswal, a failed candidate, the respondents vide order dated 12.7.06 cancelled not only the result of written examination but cancelled the entire selection process and issued fresh notification vide Notification dated 11.8.06. Aggrieved by the action of the respondents one Shri Gyan Prakash Rai filed O.A.415/07 and Sri R.P.Sharma filed O.A.899/06.



4. As per schedule, the respondents have conducted the written examination on 28.5.05. All the qualified and eligible persons have participated in the written examination without any demur or objection. Even after the examination was over, none of them have made any complaint about the question paper or any other irregularity in the conduct of the aforesaid written examination. The result of the examination was declared on 3.10.05 by the 4<sup>th</sup> respondent. The applicant was declared as successful along with other persons (AnnexureA-2). As per the procedure for holding the selection

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for promotion it was clearly mentioned that there will be no viva-voce test for the departmental selection except in the case of selection for promotion to the post in the categories which includes Assistant Physiotherapist, Telephone Operators and Teachers. A true copy of this circular is dated 7.8.03 which has been filed as Annexure A-3. A perusal of the Circular dated 7.8.03 would clearly indicate the prescribed procedure for promotion by selection in which no viva-voce test was to be held after holding written examination for selection on the post for which the applicant applied and participated. The qualified persons were to be selected on the basis of their seniority and subject to rejection of unfit. According to the applicants, they being Senior and having qualified in the Written test, were entitled for promotion to the post of Chief Train Controller, but as the respondents have delayed the empanelment even after declaration of results of written examination, the applicants have approached this Tribunal.



5. According to the applicants, the respondents as well as the Selection Committee deliberately and in collusion with one failed candidate delayed the completion of process of selection with a view to cause illegal harassment and financial loss to the applicants. Vide order dated 12.7.2006 the 4<sup>th</sup> respondent decided to cancel the entire selection process without disclosing any reason, which is illegal and contrary to the settled principle of law (Annexure A-8). Not only this, the respondents without intimating the earlier order dated 12.7.2006 to the successful candidates declared the new date of examination ie. 1.9.06 by issuing order dated 11.8.2006. It is alleged by the applicants and from the record it is evident that one Udai Shankar Jaiswal, Deputy Chief Controller, Varanasi, one of the participants in the selection, after being declared fail in written examination, had made a complaint dated 8.10.05 to the 3<sup>rd</sup> respondent stating therein that, the written examination was not held as per the prescribed standard, by the Railway

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Board. The question papers did not contain 50% objective type questions. It is alleged by the applicant that the aforesaid complaint was made after a lapse of about 81 days from the date of written examination and 5 days after the declaration of the results of the examination, wherein the complainant was declared failed. In the order dated 7.4.06 it is also alleged that the said complaint of Shri Jaiswal was taken in consideration by the respondents. The order dated 27.4.06 was passed in compliance with the directions issued on 3.3.2006 in O.A. No.197/2006 filed by Shri R.C. Srivastava Vs. Union of India (Annexure -5). According to the applicants, the impugned orders are illegal and unreasoned, contrary to the Rules and regulations and also against the letter of the Railway Board. Being a Model employer it is incumbent upon the respondents to act fairly by showing the reasons for cancellation. A copy of Railway Board's order dated 6.7.02 has filed as Annexure A-7 to the O.A.



6. It is also alleged by the applicant that the complainant Shri Udai Shankar Jaiswal also appeared in the previous selection of promotion in which the question paper was identical and similar as in the present selection, but he did not make any complaint against the said question paper. At this time he intentionally made complaint simply to frustrate the legitimate claim of the applicant. According to the applicant, the complainant should not have been permitted to raise his objection at such a belated stage, solely on the ground that he appeared at the examination without any demur/ protest and subsequently after having been found unsuccessful in the examination, he should not have been permitted to challenge the validity of selection on the ground of estoppel and acquiescence. The complaint of Mr. U.S.Jaiswal is also misconceived in as much as the guidelines was to provide objective type questions for about 50% of total marks of written examination question

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papers. It was not that the number of objective type questions should have been of 50% of total questions.

7. In the reply filed by the respondents it is submitted that Shri Udai Snkar Jaiswal also participated in the written examination and made representation to the Divisional Railway Manager with copies to the General Manager, Deputy General Manager and Executive Director (Vig.), Railway Board, New Delhi alleging therein that the question paper was not according to the standard. The Divisional Personnel Officer, Varanasi vide its order dated 11.7.06 cancelled the selection proceedings and directed to initiate selection process afresh. Accordingly, on 19.8.06 the written examination was conducted. It is also seen from the records that the result of the selection was directed not to be declared and acted upon vide order dated 28.8.06 of this Tribunal. In paragraph 5 of the reply it is seen that the result of written examination was received subsequently on 26.9.06, (which cannot be said the result of selection) was declared in which S/Shri Udai Shanker Jaiswal and Gyan Prakash Rai has been declared successful. In para 12 of the reply respondents have admitted that it is true that in the selection of Chief Train Examiner there is no viva-voce test but the facts remains that after publication of panel of the written examination the selection committee on the basis of seniority, personality, supervisory ability, educational qualification, service records and confidential report fixes 50 marks, while the written examination is also of 50 marks. According to respondents only 50% selection proceedings had been completed i.e. the result of only written examination has been declared and in compliance of the interim order of this Tribunal, all the selection proceedings have been kept in abeyance.



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8. In the supplementary counter reply filed by the respondents, they have mentioned the same pleas taken in the main reply. Nothing new has been added therein.

9. In the rejoinder filed by the applicant it is stated that when a candidate appears at the examination without any demur or protest and is subsequently found to be not successful in the examination, he cannot be permitted to challenge the selection on the principle of estoppel. In the instant case, the examination was held on 27.7.05 which was cancelled after declaration of results on 3.10.05 on the behest of one failed candidate namely, Shri Udai Shankar Jaiswal who made representation on 8.10.2005. According to the applicant, as per the Railway Board's Circular dated 3.7.2002 (Annexure A-7) It was obligatory for the respondents to record reasons for cancellation of any such selection/examination. In any view of the matter the cancellation of the order dated 12.7.06 passed by the respondents is violative of principles of natural justice and fair play.



10. We have heard Shri S.K.Mishra, learned counsel for the applicant and Shri P.N.Rai, learned counsel for the respondents. Shri Mishra learned counsel for the applicant argued that, unless and until a person has been selected in the examination he has no right to seek mandamus from the court. A failed candidate has no right to seek mandamus from the court of law. In this regard he placed reliance on the decision of Hon'ble Supreme Court rendered in Union of India Vs.T.K.Singh & Ors. 2004 SCC L&S 316 learned counsel for the applicant would further contend that a failed candidate has no right to file a complaint challenging that the question paper was not in accordance with the settled norms and that too after the selection was over.

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11. Mr.S. K. Mishra, learned counsel for the applicant submitted that the respondents were estopped from considering the complaint of Shri Udai Shankar Jaiswal, a failed candidate on the ground of principle of estoppel and acquiescence. In support of his plea, he has placed reliance on the decision of Hon'ble Supreme Court in the following cases.

2006 (6) SCC 359-- K.H. Siraj Vs. High Court of Kerala  
AIR 1986 (SC) 1043 - Om Prakash Shukla Vs. Akhilesh Kumar Shukla  
AIR 1976 (SC) 2428—Dr.G.Sarana Vs. Vice Chancellor, University of Lucknow and Ors.  
2006 (6) SCC 467—Sanjay Kumar Vs. Narinder Verma  
1998 (3) SCC 694—Union of India Vs. N Chandrasekharan & Ors.  
1995 (3) SCC 486—Madanlal Vs. State of Jammu & Kashmir  
AIR 1990 SC 1984—Maneka Gandhi Vs. S.M.Mukherjee

12. It has also been contended by the applicant that the respondents have committed serious illegality and violated the principles of natural justice and fair play by not recording any reason before cancellation of selection. Reliance has been placed on the decision of Apex Court reported in AIR 1990 SC 1984 Maneka Gandhi Vs. S.M.Mukherjee. The Hon'ble Supreme Court has clearly held that the rule of natural justice may be summarized as fairness. Originally there were only two principles of natural justice. (i) against bias (ii) right to be heard. Subsequently, the (iii) --requirement to give reasons has also been held to be mandatory.

13. We have also seen from the records that in the instant case examination was held on 28.5.05 and the same was cancelled after declaration of the result on 3.10.05 on the complaint of one failed candidate viz., Udai Shankar Jaiswal who made representation on 8.10.05. No reasons at all have been recorded by the competent authority before cancelling the selection. In our considered view, the Railway Board's Circular dated 3.7.2002 has completely been ignored by the respondents. Further the complainant in his representation did not pray for cancellation of the



examination held on 28.5.05. The respondents ignored the prayer of the complainant and decided to cancel the said examination for unknown reason. It is also seen from the records that there were objective type questions of only 15 marks out of 50% marks which itself is indicative of the fact that the rules have not been followed properly. We may also observe that the respondents deliberately cancelled the examination in order to provide wrongful benefit to the complainant in spite of the fact that there was no such prayer for cancellation of examination in his representation.

14. We have given our anxious thought to the pleas advanced by the parties' counsel and in our considered view, cancellation order dated 12.7.2006 being contrary to the settled law, being arbitrary and discriminatory, is liable to be quashed and set aside.



15. In view of our above observations both the O.As. are allowed. Orders dated 12.7.06 and 11.8.06 passed by the 4<sup>th</sup> respondent are quashed and set aside. We hereby direct the competent authority to finalise the selection process started vide Notification dated 5.7.2006 and the written examination which was held on 28.5.05 and the result declared on 3.10.06 and to consider the case of the applicants for grant of promotion to the post of Chief Train Controller with all consequential benefits.

16. O.A. is allowed accordingly. No costs.

**CERTIFIED TRUE COPY**  
Dated 18-5-09

अनुभाग अधिकारी (आदेश)  
Section Officer (Order)  
केन्द्रीय प्रशासनिक न्यायालय इलाहाबाद  
Central Administrative Tribunal  
Allahabad Bench Allahabad

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**CERTIFIED TRUE COPY**

Dated 18-5-09

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