

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

OA 216 OF 1996

Present : Hon'ble Mr. Justice S. N. Mallick, Vice-Chairman
Hon'ble Mr. S. Dasgupta, Member (A)

1. Pradip Kumar Chattopadhyay
2. Pradip Kumar Jaiswal
3. Smt. Ratna Basu
4. Haradhan Sur
5. Nirjhar Chakraborty
6. Himansu Debnath
7. Sunil Debnath
8. Abhijit Mukhopadhyay
9. Gouranga Chakraborty
10. Bhaskar Ghosh
11. Ujjwal Mukherjee
12. Syed Julkar Nayen

..... applicants

VS

1. Union of India through
the Chairman, Railway Recruitment
Board, 16, Strand Road, Calcutta-1
2. The Chairman,
Railway Recruitment Board,
Mackion Mackenzie Building,
16, Strand Road, Calcutta-1
3. The General Manager,
S.E.Railway, Gardenreach, Cal-43
4. The General Manager,
C.L.W. Chittaranjan, Burdwan

..... respondents

For the petitioners : Mr. B. Mukherjee, Counsel

For the respondents : Mr. M.M. Mallick, Counsel
Nos. 1 & 2

For respondent No. 4 : Mr. P.K. Arora, Counsel

For respondent No. 3 : Mrs. B. Ray, Counsel

Heard on : 21.1.98 & 5.2.98

Order on : 16.2.98

O R D E R

S. Dasgupta, A.M.I.

This original application was filed jointly by 12
applicants challenging the decision taken by the Chairman,
Railway Recruitment Board - respondent No. 2 in this case
- cancelling the examination for recruitment to the

Non-Technical Popular Category (NTPC for short) posts in which the applicants had participated. They have sought quashing of the letters dt. 11.8.95 by which the said decision was communicated to them individually and also a notice in this regard published in a local newspaper on 26.8.95. They have further prayed that the respondents be directed to issue call letters to them to appear in the interview test on the basis of the marks obtained by them in the written examination and thereafter to finally select them for the NTPC posts.

2. The admitted position in this case is that in response to an employment notice No. 1/89 published in a local newspaper by respondent No. 2, the applicants had submitted their applications. They appeared in the written test and were declared successful. They were informed that they would be called for interview on certain specified dates. The interview, however, did not take place and on the contrary, they were advised to appear in a second written examination. Some of the persons, who had also qualified in the written test, filed a petition before this Tribunal challenging the holding of second written test. The Tribunal initially granted a stay order on holding of such second written test and thereafter finally disposed of this OA bearing No. 558/90 (Smt. Tandra Das & Ors -vs- UOI & Ors) with a direction to the respondents to issue notice to the applicants in that OA as well as persons similarly situated to have their say as to whether chits containing solved answers were distributed in the examination centres and after considering their replies and hearing them or their representatives, to take a decision as to whether the entire examination should be cancelled or not for adoption of unfair means by unspecified persons who appeared in the test. Thereafter, a number of applications were filed of which no

18.

details are required to be stated here. it would be sufficient to note that after some delay, the respondents issued show cause notice to the applicants as well as similarly placed persons in compliance with the direction of the Tribunal. The applicants gave replies to the show cause notice and after some delay, the respondent No. 2 decided to cancel the examination in entirety, and this decision was communicated to the applicants by the impugned letters dt. 11.8.95 and also through a notice published in the local newspaper.

3. The impugned decision of the respondent No. 2 has been assailed by the applicants mainly on the ground that the language of the show cause notices issued to them makes it clear that the conclusion alleged to have been drawn against them is basically erroneous, whimsical and arbitrary and it appears to be an exercise to hold them guilty of an offence not committed even remotely by them. They have further stated that along with the show cause notice, copies of relevant documents were not furnished to them causing serious prejudice to the applicants. A further plea taken by them is that there was no complaint and/or allegation against the applicants from the invigilators of the examination halls and therefore the allegations against them are concocted and are not based on any material on record. It has also been alleged that the respondent No. 2 did not assign any reason whatsoever as to how he came to the conclusion that the causes shown by the applicants in response to the notice served on them were not adequate.

4. Various respondents have filed separate replies. A detailed reply has been filed by the respondent No. 2 under whose auspices the selection examination was being held. It has been brought about therein that after the written test was complete and the Railway Recruitment Board had published

18

a list of 576 candidates including the present applicants having qualified in the written test, it was decided to postpone the interview on receipt of communication from the Ministry of Railways directing postponement of the interview. This was followed by a further communication from the Railway Ministry in April 1990 indicating that certain persons had managed to leak out the question papers and distributed solved answer sheets in the form of small chits to a large number of candidates and these candidates had taken advantage of copying answers to the questions from these chits. It was also mentioned that a bulk of the candidates who had qualified in the written test belonged to this category of persons who had adopted unfair means. Thereafter, a decision was taken to hold a second written test. However, the same could not be held because a stay order was passed by the Tribunal on the basis of application filed by some of the candidates which was finally decided with a direction to the respondents to issue show cause notices to the candidates who had qualified in the written test and to take further action regarding cancellation or otherwise of the examination on the basis of the explanation submitted by them. The notices were issued and after considering the replies furnished by the candidates, final decision was taken to cancel the examination altogether.

5. The applicants have filed a rejoinder affidavit which contains, by and large, a reiteration of the contentions raised in the OA.

6. We heard the learned counsel for both the parties and perused the records carefully.

7. The learned counsel for the respondents during the course of argument, pointed out that in a similar matter in OA No. 365/96, 740/96 and 386/96 (Arindam Choudhury & Ors -vs- UOI & Ors), a bench of this Tribunal by its order dt.



10.9.97 had upheld the decision taken by the respondent No. 2 in cancelling the examination. He also made available a copy of the aforesaid order for our perusal.

8. We have carefully perused the aforesaid order. It is clear that the facts in the aforesaid bunch of OAs are in pari materia with the facts of the case before us. Thus, the decision in the case of Arindam Choudhury etc. is wholly applicable to the case before us. We have noticed from this decision that the Tribunal had perused the decision of the Railway Recruitment Board along with detailed reasons therefor and came to the conclusion that there was no manner of doubt that the impugned order of cancellation of the examination could not be upset for want of a speaking order in support of it.

9. In order to satisfy ourselves whether the reasons recorded for arriving at the decision to cancel the examination are cogent or not, we directed the learned counsel for the respondents to produce the original records for our scrutiny. We had seen therefrom that the respondent No. 2 had recorded detailed reasons for arriving at the conclusion that the entire examination has to be cancelled. We, therefore, find no reason to disagree with the conclusion arrived at by a coordinate bench in the case of Arindam Choudhury etc.

10. The learned counsel for the applicants had argued that the aforesaid decision of the Tribunal comes in conflict with the decisions in other cases. Therefore, the decision in Arindam Choudhury's case cannot be followed by us and that it would be appropriate to refer to the matter to a larger bench for resolving the conflict. He had referred to the decision of the Jodhpur Bench of the Tribunal in the case Devi Singh & Ors -vs- UOI & Ors (1991(2) ATJ 458) and also the decision dt. 31.12.92 rendered by the Calcutta Bench of

WL

the Tribunal in OA 484 of 1988 (Swapan Mondal & Ors -vs- UOI & Ors), a copy of the latter decision was made available as annexure to the rejoinder affidavit.

11. In the case of Devi Singh, the selection proceedings for promotion of Class IV employees to the post of Clerks were cancelled after holding of written test and viva-voce test on the ground of discrepancies at various stages and the selection having not been held in an impartial and fair manner. The Tribunal inter alia held on facts of the case that where irregularities had been committed relating to particular candidates, the proper course would be to take action against those candidates and not cancel the entire selection proceedings.

12. In the case before us, we have seen that the authorities found that unfair means were adopted ~~on~~ a large scale and the same was not confined to a few candidates only. This was, therefore, not a case where grains could have been separated from the chaff as was in the case of Devi Singh. Thus the principles of law laid down in Devi Singh case cannot be applied to the case before us.

13. In the case of Swapan Mondal, marks given to the applicants were reduced by reviewing their answer scripts when it came to the notice that they had committed some malpractice in the answer scripts. The Tribunal noticed, on the basis of facts of the case, that it was covered by decision of the Calcutta Bench of the Tribunal in another case viz. OA 327/89 (Dipankar Bhattacharya -vs- UOI) and also OA 100/89 (Narayan Chandra Singha & Anr -vs- UOI) in which cases, the action taken by the respondents in re-examining the answer scripts on the ground of alleged malpractice was set aside and accordingly allowed the application and directed the respondents to consider the applicants for interview test on the basis of marks obtained

\ /
w

by them prior to re-evaluation.

14. It would appear from the facts stated above that the case of Swapan Mondal is wholly different from the case before us on facts and therefore the said decision cannot be applied to the case before us.

15. In view of the foregoing, this application fails and the same is dismissed, leaving the parties to bear their own costs.



(S. DASGUPTA)

MEMBER(A)



(S.N. MALLICK)

VICE CHAIRMAN