

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. NO. 247/96

with

O.A. NO. 1426/95

THIS THE 8th DAY OF APRIL, 2005

HON'BLE MRS. MEERA CHHIBBER, MEMBER (JUDL.)
HON'BLE MR. K.V. PRAHALADAN, MEMBER (ADMN.)

O.A. 247/96

Sri Pravat Kumar Das,
S/o D.C. Das,
Vill. Kalachara PO Chanditala,
Distt. Hoogly, Pin -712702.

(a candidate being Roll No. 21706314 appeared
in the written test of NTPC examination under
Railway Recruitment Board/Calcutta's Employment
Notice No. En-1/1989-Category No.(s) NTPC (UR)
in Scale Rs. 950-1500/- (RP) and was successful in
written examination).

... Applicant.

(By Advocate Mr. S.R. Roy)

Versus

1. Union of India represented by General
Manager, Eastern Railway, 17, Netaji
Subhas Road, Calcutta-700001.

2. Chairman, Railway Recruitment Board, Calcutta
Mackinon Mackenji Building, 4th Floor,
16, Strand Road, Calcutta-700001.

... Respondents.

(By Advocate Mr. M.K. Bandopadhyay)



O.A. 1426/95

1. Shri Yubaraj Mukherjee
S/o Sri S.P. Mukherjee,
a candidate for NTPC Post under Employment
Notice No. 1 of 1989, advertised by RRB/Calcutta,
Roll No. 11701518, residing at 23, Pudda Pukur Road,
Calcutta-700 020.
2. Shri Tarit Kumar Roy,
S/o Sundar Gopal Roy,
a candidate for NTPC Post under Employment
Notice No. 1 of 1989, advertised by RRB/Calcutta,
Roll No. 17700360, residing at Village-Juinthia, PO.
Sindhurtapa, Via-Ahmedpur, Distt-Birbhoom (W.B.).
3. Shri Ujjal Kumar Mukherjee,
S/o Muktipada Mukherjee,
a candidate for NTPC Post under Employment
Notice No. 1 of 1989, advertised by RRB/Calcutta,
Roll No. 17700740, residing at Village-Bansra,
PO-Magigram, Distt-Birbhoom (W.B.)
Pin-731129.
4. Shri Sunil Kumar Das,
S/o Satyanarayan Das,
a candidate for NTPC Post under Employment
Notice No. 1 of 1989, advertised by RRB/Calcutta,
Roll No. 17700232, residing at Vill-Kankra Kanda,
PO-Murulidanga, Distt-Birbhoom (W.B.) Pin-731101.
5. Shri Dilip Kumar Das,
S/o Manik Chandra Das,
a candidate for NTPC Post under Employment
Notice No. 1 of 1989, advertised by RRB/Calcutta,
Roll No. 24719097, residing at Village-Tilpara,
PO-Suri, Distt. Birbhoom, Pin-731101.



6. Shri Janardan Das,
 S/o Satyanarayan Das,
 a candidate for NTPC Post under Employment
 Notice No. 1 of 1989, advertised by RRB/Calcutta,
 Roll No. 17700081, residing at Village-Kankra Kanda,
 PO-Murulidanga, Distt.Birbhoom, Pin-731216.

7. Shri Narayan Chandra Mondal,
 S/o Ananda Gopal Mondal,
 a candidate for NTPC Post under Employment
 Notice No. 1 of 1989, advertised by RRB/Calcutta,
 Roll No. 24718912, residing at Village Majharipara,
 PO Sandhigorabazar,
 Distt.-Birbhoom (W.B.).

8. Shri Dulal Chatteraj,
 S/o Mahadev Chatteraj,
 a candidate for NTPC Post under Employment
 Notice No. 1 of 1989, advertised by RRB/Calcutta,
 Roll No. 24719350, residing at Village Tilpara,
 PO Suri, Distt.-Birbhoom, Pin-731101.

9. Shri Ajoy Kumar Adhikari,
 S/o Bagala Kanta Adhikari,
 a candidate for NTPC Post under Employment
 Notice No. 1 of 1989, advertised by RRB/Calcutta,
 Roll No. 13708412, residing at C/o, Gurusadhan
 Bhattacharjee, D.N. Chatterjee Road, Agarpara,
 P.O. Kamrhati, Distt-24, Parganas (North),
 Pin-700 058.

10. Shri Sanjoy Banerjee,
 S/o M.L. Banerjee,
 Vill & PO – Bakoha,
 Distt – Hooghly,
 Pin-712304,
 a candidate for NTPC Post under Employment
 Notice No. 1 of 1989, advertised by RRB/Calcutta,
 Roll No. 21700658.

... Applicants.

(By Advocates Mr. N.K. Roy, Mr. S.R. Roy)

Versus



1. Union of India through General Manager, Eastern Railway, 17, Netaji Subhas Road, Calcutta-700001.
2. Chairman, Railway Recruitment Board, Calcutta Mackinon Mackenji Building, 4th Floor, Calcutta-700001. ... Respondents.

(By Advocate Mr. R.K. De)

ORDER

Hon'ble Mrs. Meera Chhibber, Member (Judl.).

Both these O.As involve same question of law. The relief sought is also same, therefore, they are being disposed of by a common order.

2. The brief facts, as alleged are as follows:
3. Employment Notice 1/89 was published by Railway Recruitment Board (RRB) for recruitment to the posts of Non Technical Popular Category. All the applicants applied, appeared in the written test and qualified in same as their roll nos. had appeared in the result. Therefore, they were to be called for interview but interviews were not held and they were advised to appear in the written examination again. Some of the persons who had qualified in written test filed O.A. 558/90. Initially, stay was granted but finally the same was disposed of by giving the following directions:

"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".

4. Pursuant to the above directions, Show Cause Notices were issued to the candidates. Their replies were taken into consideration and they were given personal



hearing as well but the competent authority decided to cancel the examination in entirety vide order dated 11.8.1995.

5. It is this order which has been challenged by the applicants before us. Counsel for the applicants submitted that the authorities had already made up their mind against the applicants inasmuch as they had already accused the candidates of indulging in cheating. Moreover, there is no evidence on record to suggest that there was any cheating or malpractice adopted during the examination. The applicants were not even given all the documents so issuance of Show Cause Notice was merely a formality. Respondents tried to justify the stand and produced the note whereby Chairman, RRB had taken the decision to cancel the examination. Counsel for the respondents also relied on judgment dated 16.2.1998 passed in O.A. No. 216/96 and submitted that since identical matter has already been dismissed by the Tribunal, both the cases are covered by the said judgment. Therefore, these O.As may be dismissed.

6. We have heard all the counsel and perused the pleadings. Perusal of the judgment in O.A. No. 216/96 shows that it was exactly the same grievance raised by qualified candidates therein who had sought the same relief viz., to quash the cancellation of examination and a direction to the respondents to issue call letters to the applicants for interviews on the basis of marks obtained by them in written examination.

7. The Tribunal relied on another judgment given in identical case titled as Arindam Chaudhary & Ors. Vs. UOI & Ors. (O.A. Nos. 365/96, 740/96 and 386/96) wherein cancellation of examination order was upheld yet the Tribunal again looked into the reasoning given by Chairman, RRB and was satisfied that since large number of

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candidates had indulged in malpractice, therefore, there is no illegality in the orders passed by RRB.

8. In order to satisfy ourselves, we also looked into the confidential note and find that all the points raised by candidates were taken into consideration by the Chairman, RRB and it was only after considering all the points that decision was taken to cancel the examination because out of total 567, 464 candidates were found to have given the same incorrect answers for a group of 27 questions which itself shows that answers were copied from a common source. In such matters, it was natural to draw a reasonable inference that large number of candidates had indulged in copying. It was, therefore, held that from the various instances illustrated in the note, it could easily be concluded that unfair means were adopted as answers were written from a common source. In these circumstances, if the examination was not cancelled, it would have given a chance to undeserving and unmerited candidates to find their way to Govt. posts which would have been detrimental to the overall interest of the administration and society as a whole for those who reap the fruits of dishonesty cannot be expected to be devoted workers. People with weak moral fibre cannot be allowed to occupy posts where they will represent the administration of a public utility administration like Railways and where they will have enough scope to misuse their position and harass public. It was keeping in view these points that the Chairman, RRB decided to cancel the entire examination.

9. From the reasoning given by the Chairman, two things emerge out clearly that such a large number of candidates had indulged in copying that it was difficult to separate the grains from the chaff and decision was taken keeping in view the larger interest of society as compared to an individual with an object to have clean and competitive

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examination where the most deserving best candidates could be selected. We cannot find any illegality in such a view but would rather agree with the view taken by Chairman, RRB. After all, the very purpose of holding examination is to eliminate those who are not able to compete with the merited candidates and to select the best for public employment. If unfair means are noticed and given a go bye, it would amount to encouraging impurity at the threshold of entry into public service which can never be in the interest of society as that impurity would spread like cancer. Therefore, it was necessary to remove the entire affected area at the threshold itself without allowing it to spread. In these circumstances, we do not find any illegality in the order of cancellation issued by the Chairman, RRB.

10. At this juncture, it would be relevant to quote few judgments of Hon'ble Supreme Court on this subject. In the case of Union of India & Ors. Vs. Anand Kumar Pandey, reported in 1994 (5) SCC 663, advertisement was given for recruitment to the various posts of Non Technical Popular Categories in Eastern Railways. Some candidates were selected but due to large scale copying, examination was cancelled and candidates were asked to appear again in written examination which was challenged. Hon'ble Supreme Court held as follows:

"The rules of natural justice cannot be put in a strait-jacket. Applicability of these rules depends upon the facts and circumstances relating to each particular given situation. The purpose of a competitive examination is to select the most suitable candidates for appointment to public services. It is entirely different from an examination held by a college or university to award degrees to the candidates appearing at the examination. Even if a candidate is selected he may still be not appointed for a justifiable reason. In the present case the railway authorities have rightly refused to make appointments on the basis of the written examination wherein unfair means were adopted by the candidates. No candidate had been debarred or disqualified from taking the examination. To make sure that the deserving candidates are selected, the respondents have been asked to go

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through the process of written examination once again. Hence there is no violation of the rules of natural justice in any manner in the facts and circumstances of this case".

Similarly, in the case of Union of India & Ors. Vs. Tarun K. Singh & Ors. (2002 (3) Administrative Total Judgments 185) wherein for recruitment of RPF Constables, selections were cancelled due to large scale malpractices, it was held as follows:

"...the process of selection which stands vitiated by adoption of large scale malpractice to a public office, cannot be permitted to be sustained by Court of Law. That apart, an individual applicant for any particular post does not get a right to be enforced by a Mandamus unless and until he is selected in the process of selection and gets the letter of appointment".

In yet another case (Union of India and Ors. Vs. O. Chakradhar, 2002 (3) SCC 146) where not only candidate was selected but given appointment also but he was terminated as entire selection was cancelled, on the ground of illegalities, it was held by Hon'ble Supreme Court as follows:

"....If the mischief played is so widespread and all-pervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefited of wrongfully deprived of their selection, it will neither be possible nor necessary to issue individual show-cause notices to each selectee..."

11. From the above judgments, it is clear that a tainted selection cannot be allowed to stand and in such cases it is not even necessary to issue show cause notice to individual candidates because it is not due to the misconduct of an individual but mass copying is noticed where it was not possible to pin down the individuals. Therefore, it was rightly decided by the RRB to cancel the entire examination. In these circumstances, it was not necessary to show the documents to each individual yet respondents not only issued show cause notice but gave them liberty to inspect the documents and also gave them personal hearing as well. Therefore, the contention of applicants has to be rejected.



12. Applicants have only challenged the order of cancellation but since we are satisfied with the reasoning given by Chairman, RRB for canceling the examination, other arguments are not relevant because no individual has been debarred from appearing in fresh examination.

13. In view of the above discussion, we find no merit in both the O.As. The same are accordingly dismissed. No order as to costs.

14. Copy of this order be kept in both the files.

bwd/su/ds

(K.V. PRAHALADAN)
MEMBER (ADMN.)

D 8/4/05

(SMT. MEERA CHHIBBER)
MEMBER (JUDL.)

'SRD'