

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

Present : Hon'ble Mr. Justice A.K. Chatterjee, Vice-Chairman
Hon'ble Mr. M.S. Mukherjee, Administrative Member

(1) O.A. No. 365 of 1996

Arindam Choudhury & Ors. Applicants

-Vs-

Union of India & Ors. Respondents
(Railway Recruitment Board)

For applicants : Dr. Monotosh Mukherjee, counsel
Mr. A. Chakraborty, counsel
Mr. P.L. Bose, counsel

For respondents : Mr. M.M. Mullick, counsel (RRB)
Mr. P.K. Arora, (C.L.W.)
Mr. P. Chatterjee, counsel (S.E. Rly.)

(2) O.A. No. 740 of 1996

Miss Dipa Sikdar, aged about 28 years, d/o
Sri Chitta Ranjan Sikdar, residing at Vill:
Sabdulpur, P.O. Aranghata, Dist. Nadia -
Pin - 741501

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Applicant

-Vs-

1. Union of India, service through the
Assistant Secretary, Railway Recruitment
Board, 16, Strand Road, Calcutta ;

2. The Chairman, Railway Recruitment Board,
M.M. Building, 16, Strand Road, 4th Floor,
Calcutta ;

3. The General Manager, S.E. Railway, Garden
Reach, Calcutta-700 043 ;

4. The Chief Personnel Officer, S.E. Rly.,
Garden Reach, Calcutta-700 043 ;

5. The General Manager, Chittaranjan Loco-
motive Works, Chittaranjan, Burdwan ;

6. The Chief Personnel Officer, C.L.W.,
Chittaranjan, Burdwan.

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Respondents

For applicant : Dr. Monotosh Mukherjee, counsel
Mr. Anaresh Chakraborty, counsel
Mr. P.L. Bose, counsel

For respondents : Mr. M.M. Mullick, counsel (R.R.B.)
Mr. P.K. Arora, counsel (C.L.W.)
Ms. B. Ray, counsel (S.E. Railway)

(3) O.A. No. 386 of 1996

Miss Beas Bhowmick, aged about 28 years,
daughter of Late Durgesh Chandra Bhowmick,
residing at 14/7, Dakshinayan, P.O. Sodeput,
Dist. 24-Parganas(North) - Pin - 743178.

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Applicant

-Vs-

1. Union of India, service through the
Assistant Secretary, Railway Recruitment
Board, 16, Strand Road, Calcutta ;
2. The Chairman, Railway Recruitment Board,
M.M. Building, 16, Strand Road, 4th Floor,
Calcutta ;
3. The General Manager, South Eastern
Railway, Garden Reach, Calcutta-700 043 ;
4. The Chief Personnel Officer, S.E. Rly.,
Garden Reach, Calcutta - 700 043 ;
5. The General Manager, Chittaranjan Loco-
motive Works, Chittaranjan, Burdwan ;
6. The Chief Personnel Officer, C.L.W.,
Chittaranjan, Burdwan.

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Respondents

For applicant : Dr. Monotosh Mukherjee, counsel
Mr. A. Chakraborty, counsel
Mr. P.L. Bose, counsel

For respondents : Mr. M.M. Mullick, counsel (RRB)
Mr. P. Chatterjee, counsel (SE Rly.)
Mr. P.K. Arora, counsel (CLW)

Heard on : 9.6.97 & 27.6.1997 -

Order on : 10.9.1997

O R D E R

A.K. Chatterjee, VC

These three cases are taken up together for disposal by this common judgment because of identical grievance of all the petitioners and identical defence filed by the respondents. In fact, all the 180 petitioners, who have filed these three cases could very well make a single application.

2. Barring unnecessary detail, the petitioners' case is that in response to an advertisement appearing in a certain local English Daily published by the Railway Recruitment Board, Calcutta on 19.3.89 for recruitment of different categories of posts, such as

Office Clerk, Ticket Collector, Trains Clerk etc., they applied and appeared in a written test held on 12.9.89 along with many ~~other~~ others in different centres. The petitioners were asked to appear in an interview in batches, which, however, never took place and ultimately, they were asked by a letter dt.11.5.90 to sit again in another written test on the 3rd June, 1990. Reason for cancellation of the ~~1st~~ test was that the question papers had ^{perked} ~~licked~~ out and answers thereto in the form of small chits were distributed to large number of candidates, who had adopted unfair means. The cancellation was challenged by some of the candidates by making an application to this Bench being O.A. 558 of 1990, which was disposed of on 1.10.92 with the order that the Railway Recruitment Board shall issue notice to the petitioners of that case as also other persons similarly situated to have their say in regard to whether chits containing the solved answer were distributed in the centres where they took the examination and after considering the cause shown by them and hearing them or their representatives, take a decision as to whether the whole examination should be cancelled or not. It was further directed that if the cause shown by the candidates was found to be adequate, the authorities should call them for interview on the basis of marks already obtained by them and such exercise was to be completed within a specified period. However, no show-cause notice was issued within the specified period but much later notices were issued, which, according to the petitioners, was vague and not in accordance with the judgment delivered on 1.10.92. However, the petitioners replied to the notice without prejudice to ^{their} ~~the~~ rights and contentions and as the Railway Recruitment Board remained silent even after receipt of such reply by them, three other applications were filed in this Bench by the candidates including the petitioners being O.A. 1074/94, O.A. 1202/94 and O.A. 1203/94. These applications were disposed of

with a direction upon the Railway Recruitment Board to complete the process at their end within some further time as alleged therein. In the present applications, the petitioners contend that after the aforesaid direction in the said three OAs were given, the Railway Recruitment Board mechanically without application of mind and without assigning any reason and without giving further opportunity to the petitioners, cancelled the written examination held on 12.11.89 by publishing a notice to that effect in a local Vernacular Daily on 26.8.95. The petitioners pray for an order quashing the notice of cancellation which was published on 26.8.95 and for a direction upon the Railway Recruitment Board to call the petitioners, who have been successful in the written test to appear in an interview and other reliefs.

3. Replies under the signature of the Chairman of the Railway Recruitment Board have been filed on behalf of himself and Union of India separately in three cases. Their contention is that interview was first postponed on the advice of the Railway Board, which was followed by another communication to the effect that question papers had ^{been} ~~licked~~ out and solved answers in the form of small chits were distributed to a number of candidates ^{which} ~~who~~ suggested bulk of the list of candidates who had qualified in the written test. ^{which adopted unfair means} A second written test was accordingly ordered to be held on 3.6.90, which, however, could not take place because of an interim order passed in O.A. 558/90. The order ultimately passed by this Tribunal on 1.10.92 was duly complied with and show-cause notices were given to the candidates and the written examination was cancelled after considering the replies to the show-cause notices by the candidates after hearing them.

4. We have heard the Ld. Counsel for the parties and perused the records.

5. The main thrust of the arguments of Dr. Mukherjee, Ld. Counsel appearing for the petitioners was that in making the order

for cancellation of examination, the authorities did not pass any speaking order on the replies to the notices to show-cause by the candidates. This betrayed non-application of mind and denial of principle of natural justice to the petitioners. In this connection, several decisions were cited, both of the Hon'ble Supreme Court and of this Tribunal. The decisions are more or less on the same line and one of the decisions of the Supreme Court referred to by the Ld. Counsel for the petitioners is the case of Vasudeo Bishwanath Saraf vs. New Education Institute & Ors., AIR 1986 SC 2105. In that case, against a certain order of the School Tribunal, a Writ Petition was filed in the Hon'ble High Court at Bombay, which was rejected by recording a very brief order, stating in substance that the rejection was in view of the earlier rejection of Writ Petition as well as the application to file appeal to Supreme Court. In such circumstances, their Lordships of the Hon'ble Supreme Court had observed that it was imperative that the order must in a nutshell record the relevant reasons, which were taken into consideration in coming to the final conclusion and in disposing of the petition or the cause by making order, thereby enabling both the parties as well as superior court to know the mind of the court as well as reasons for its finding. Thus, their Lordships laid down that passing of the speaking order was absolutely imperative by writ courts to enable the superior courts as well as parties to know the reasons for the conclusion. Another decision referred to by the Ld. Counsel for the petitioners was in the case of Purusottam Das Parida vs. U.O.I. (1987) 2 ATC 893 disposed of by Cuttack Bench of this Tribunal on 24.12.86. In this case, it was laid down that it was a settled law that an order of quasi judicial nature must be a reasoned order and a speaking one. Therefore, strictly speaking, neither the decision of the Hon'ble Supreme Court nor the decision of this Tribunal referred to above, requires that an order by a body like the Railway Recruitment Board cancelling an examination should be a speaking one. Even in O.A. 558 of 1990, a direction was given to come to a decision whether the whole examination should be cancelled or not after considering the causes shown by the candidates and hearing them or the representatives but did not call upon the authorities to pass any speaking order. What is, however, more important is that in the instant case, before ~~the~~ the examination was cancelled by the order dated 20.8.1995, reason for

for decision was recorded elaborately by the Chairman of the Railway Recruitment Board extending to nearly 13 pages on 11.8.95. A copy of such decision was produced at the time of hearing and it was duly stated in the reply filed by the respondents that the Railway Recruitment Board was ready to produce the detailed finding of the Chairman if the Tribunal so required. Therefore, it cannot be said that no reason was recorded for the impugned decision or that the Railway Recruitment Board had deprived any superior authority to know the ground for cancellation of the examination. This decision considered in detail the points raised by the candidates in their show-cause and why such points were not considered to be sustainable by the Railway Recruitment Board. This document will disclose that as many as 24 points raised by the candidates were separately considered by the Railway Board and reason recorded in detail for rejecting the same. Even though it is strictly not within the scope of the present proceeding to scrutinise the grounds which weighed with the authorities in cancelling the examination unless the same are perverse, still we have for our satisfaction carefully perused these documents and we find no reason to interfere or to hold that the conclusion arrived at by the Chairman of the Railway Recruitment Board is not warranted by the reasons recorded by him. Therefore, there is no manner of doubt that the impugned order of cancellation of examination cannot be upset for want of a speaking order in support of it.

6. The Id.Counsel for the petitioners has then argued that the candidates were not furnished with copies of relevant documents, which deprived them of a reasonable opportunity to file an effective show-cause and thus, natural justice was denied

to them. In this regard also, the Ld.Counsel for the petitioners has referred to several authorities including a decision of the Hon'ble Supreme Court in State of Tamil Nadu vs. T.K.V. Perumal & Ors. (1996) 5 SCC 474 and a decision of this Bench of the Tribunal in S.P.Mukherjee vs. Union of India & Ors., 1987(3) S.L.R. 202. Both the cases related to supply of documents to delinquent official in departmental enquiry. Now in the instant case, the speaking order passed by the Chairman of the Railway Recruitment Board reveals that the candidates demanded answer sheets of hundreds of candidates and other documents, which appears to us to be not always relevant for showing cause. Such demand was probably made to compel the authorities to express their inability to supply the documents and thus prepare a ground for an order by this Tribunal in favour of the petitioners. It is on the record that all the candidates were, however, given opportunity to inspect the documents and also an opportunity of personal hearing by themselves or by their representatives. In such circumstances, it is impossible to hold that any reasonable opportunity was denied to the petitioners to show-cause for want of relevant documents. It is also pertinent to note in this connection that in O.A. Nos.1074/94, 1202/94 and 1203/94, similar grievance was ventilated and it was held by the Tribunal that the opportunity given to the candidates to inspect all relevant documents to enable them to show-cause was considered to be a reasonable opportunity to prepare their reply. Therefore, it is no longer open to the petitioners to canvass the same ground over again in the present applications.

7. The petitioners have urged that the language of the show-cause notice and attending circumstances were such that the authorities have already arrived at the conclusion and thus they

did not have an open mind to deal with the matter. The respondents have stated in the reply that the show-cause notice only intimated the candidates about suspicion on the part of the respondents. We are not impressed with this argument of the ~~case~~ of the petitioners because if really the respondents did not have an open mind but had already arrived at a conclusion as stated by the petitioners, then they were not expected to consider the grounds raised by the candidates in the reply to the show-cause notice or at the time of personal hearing and to record reasons for rejecting the grounds, although they were not obliged by any order of the Tribunal to pass such an elaborate order. In this connection, the Ld. Counsel for the petitioners has referred to certain decisions, such as Bhaskar Ch. Palai vs. Union of India & Ors. (1987) 2 A.T.C. 21 and Shankari Pd. Mukherjee vs. Union of India & Ors. 1987(3) S.L.R. 202, in both of which it was held in connection with domestic enquiry that mere suspicion cannot take the place of proof. These authorities are hardly of any assistance to the petitioners for more than one reason. In the first place, this being not a departmental enquiry, the authorities, strictly speaking, are not applicable and secondly, the decision recorded by the Chairman of the Railway Recruitment Board on 18.8.95 referred to above would clearly show that not merely suspicion but very positive materials were available, which prompted the Railway Recruitment Board to cancel the examination in which wide-spread mal-practices were adopted. We also do not find any merit in the petitioners' contention that there was no possibility of any mal-practices being adopted in the examination or that no unfair-means was adopted as no Invigilator had given any report in this regard. It is hard to imagine that the examination was conducted under circumstances precluding the possibility of adoption of

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unfair/~~means~~ or that a finding in this regard can be made simply on the ground that Invigilators did not make any report. The respondents have pointed out that it was quite possible that the Invigilators remained reticent for fear of reprisal by the candidates.

8. It is, however, possible that few of the candidates did not adopt unfair/~~means~~ but it is almost next to impossible to segregate them and in such situation, the cancellation of the entire examination can be the only reasonable conclusion. This does not, by any means violate the principle of natural justice as all of them are given a fresh opportunity to appear in the examination. It is pertinent to refer in this connection to the decision of the Supreme Court in Union of India & Ors. vs. Ananda Kr. Pandey & Ors., A.I.R. 1995 SC 388. This appeal was filed by Special Leave by the Union of India against a decision of this Bench in O.A. 966 of 1989, which had set aside the panel of selected candidates and ^{also the direction for} directed holding of fresh examination ^{given} ~~made~~ by the Railway Recruitment Board in similar circumstances as in the present case. In that case, the order of the Railway Recruitment Board was set aside by this Tribunal on the short ground that the panel of selected candidates having been prepared and published could not be cancelled without assigning any reason and affording an opportunity to the empanelled candidates. The Hon'ble Supreme Court observed that the Tribunal fell into patent error in interfering with the order of the appellants and to make sure that the deserving candidates are selected, ^{the} respondents have been asked to go through the process of written examination once again and there was no violation of the rules of natural justice in any manner. In the instant case also, as all the candidates have the option to appear in the examination once again, it cannot be successfully urged that there has been any violation of the principle of natural justice.