

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH: CALCUTTA

Original Application No. 509/97

Date of decision: 21-12-2004

Hon'ble Mr. Mukesh Kumar Gupta, Judicial Member.

Hon'ble Mr. M.K. Misra, Administrative Member.

Sri Prosenjit Sarkar, S/o Sri Shantiram Sarkar aged about 31 years residing at Vill & PO Kulingram, Dist. Burdwan 713 166

: Applicant.

Mr. P.C. Das : Counsel for the applicant.

versus

1. Union of India service through the General Manager, Eastern Railway, 17 N.S. Road, Fairlie Place Calcutta 700 001
2. The Chairman, Railway Recruitment Board, 16 Strand Road, M M Building, Calcutta - 700 004
3. General Manager, Chittaranjan, Locomotive Works, P.O. Chittranjan, Dist. Burdwan
4. General Manager, South Eastern Railway, P.O. Garden Reach, Calcutta 43

: respondents.

Mr. B.K. Gupta: Counsel for the respondents 1, 3 & 4

Mr. R.K. De : Counsel for respondent No. 2


ORDER

Mr. Mukesh Kumar Gupta, Judicial Member.

By the present application, challenge has been made to communication dated 11.08.95, passed by the Chairman Railway Recruitment Board, Calcutta, cancelling the non-technical popular category examination held in the year 1989, with a direction to respondents to call the applicant for viva voce examination forthwith.

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2. The admitted facts of the case are that the Railway Recruitment Board (RRB for short) Calcutta, issued an employment Notice No.1/89 for recruitment to the posts of non-technical popular category. The applicant being eligible applied for the said post. The selection was based on written test as well as viva voce examination. The applicant was found successful in the written test and was to appear in the interview, which was slated to be held in February 1990, but the same was postponed. Vide communication dated 01.05.90 the candidates, who appeared in the written examination earlier i.e. on 12.11.89, were advised to appear in the second written test on 03.06.90. This action was challenged by some of the selected candidates. The said O.A was disposed of on 01.10.92, with a direction to respondents to grant personal hearing to the applicants therein and also to similarly situated persons and hear them before taking any decision as to whether the whole examination to be cancelled or not for adoption of unfair means by unspecified persons. Pursuant to the said judgement, a show cause notice dated 07.09.93 was issued to the applicant. The applicant appeared for the personal hearing. The said notice was once again challenged by some other persons by filing O.A. No. 1203/94. The said O.A was dismissed vide order dated 15.06.95 and the Chairman, RRB, Calcutta, was directed to complete the process within one month. Ultimately, the impugned order 11.08.95 was issued cancelling the entire examination which is impugned in the present O.A.



3. The applicant's grievance is that since he was successful in the written test held on 12.11.89, he was called for the viva voce test, which was postponed and the entire selection had been cancelled after 6 years, without any justification which is illegal, arbitrary and in violation of the directions issued by this Tribunal in the aforementioned O.As. It was further contended that this Tribunal vide order and judgement dated 15.06.95 in O.A. No. 1203/94, directed the respondents to complete the process and not to cancel the entire examination. The applicant was a genuine candidate and therefore he cannot be made to suffer.

4. The respondents disputed the said contentions and stated that certain elements had managed to leak out the question paper and distributed solved answers in the form small chits, to a number of candidates. The number of candidates called for the interview was 2.5 times of the number of vacancies. But in the circumstances it was necessary to call 7.5 times candidates for interview to broaden the spectrum of interview. But before calling the persons for interview it was decided to conduct a second written test. It was also held that all the candidates who appeared in the second written test i.e. 7.5. time of the number of vacancies, were to be treated as qualified for the interview irrespective of the marks obtained by them in the re-test. The show cause notice was challenged by filing O.A. No. 558/90, which was disposed of on 01.10.92 by giving direction to the respondents to afford an opportunity of hearing. In the meanwhile another O.A. No. 1203/94 was also filed by the same ^{candidate which} was dismissed 15.06.95 f with a direction to the RRB Calcutta to finalise the process within a period of one month.

5. After the said judgement the competent authority taking into consideration all aspects of the matters and after providing personal hearing cancelled the non technical popular category examination held in 1989. Reliance was placed on the judgement of the Apex Court in Union of India vs. M/s Ananda Kumar Pandey and others (AIR 1995 SC 388) and contended that ^{when} ~~of~~ the selection process was vitiated by unfair means, the authorities were justified in the cancelling the test and to hold a fresh test. Since no candidate had been debarred or disqualified, there was no question of violation of principles of natural justice. Reliance was also placed on the Apex Court decision in Union Territory of Chandigarh vs. Dilbag Singh & ors (1993 SCC (L&S) 144) wherein it was held as under:

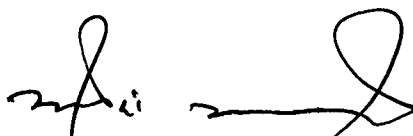
" that when a select list is cancelled the selectees are not entitled to an opportunity of hearing before cancellation as even though they have a legitimate expectation but they have no indefeasible right to be appointed in absence of any rule to that effect but the decision/action must be non arbitrary and bonafide. .. "

6. We heard both sides and perused the pleadings and bestowed our careful consideration to the entire matter as well as the law noticed herein above. We are of the considered view that there was no illegality or arbitrariness in cancelling the entire examination, particularly when allegation of large scale malpractice were made in holding the said examination. It is not the case of the applicant that he was debarred from appearing for the second time, which was scheduled to be held subsequently. This Tribunal vide its judgement and order dated 15.06.95, dismissed O.A. No. 1203/94, whereby the challenge was made to the show cause notice. As noticed herein above, the respondents

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were directed to complete the process at their end. There was no restriction imposed by this Tribunal to cancel the said examination. The applicant in our considered view had no legal and infeasible right to appointment as no junior to him in the said selection and examination was ever appointed. Such being the case, we do not find any merit in this application and the same is accordingly dismissed. No costs.


(M.K. Misra)
Administrative Member


(Mukesh Kumar Gupta)
Judicial Member.

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