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(113)

Central Administrative Tribunal, Allahabad  
Circuit Bench at Lucknow.

Registration O.A. No.406 of 1986

Ram Kumar ..... Applicant

Versus

Union of India & Others ..... Opposite Parties

Connected with

Registration O.A. No.407 of 1986

Bhagwati Shanker ..... Applicant

Versus

Union of India & Others ..... Opposite Parties

Connected with

Registration O.A. No.452 of 1986

Shitla Prasad ..... Applicant

Versus

Union of India & Others ..... Opposite Parties

Connected with

Registration O.A. No.456 of 1986

Devi Bux Singh ..... Applicant

Versus

Union of India & Others ..... Opposite Parties

Connected with

Registration O.A. No.457 of 1986

Navmi Lal Kanavjia .... Applicant

Versus

Union of India & Others ..... Opposite Parties

Connected with

Registration O.A. No.458 of 1986

Bechan Lal ..... Applicant

Versus

Union of India & Others ..... Opposite Parties.

Hon. Justice Kamleshwar Nath, V.C.

Hon. Ajay Johri, A.M.

(By Hon. Justice Kamleshwar Nath, VC)

These six applications under Section 19 of the Administrative Tribunals Act, 1985 involved ~~a~~ common questions of law and facts and therefore are decided by a single judgement.

2. The applicants Ram Kumar, Shitla Prasad, Navmi Lal Kanavjia, Bechan Lal, Bhagwati Shanker and Devi Bux Singh are class IV employees and appeared for a selection examination to the post of Ticket Collector in the grade Rs. 260 - 400, a class III post. They were not successful and therefore they challenged the Selection Examination by means of these applications and sought for a direction to quash the entire selection result contained in Annexure-3 to the application. They also sought a declaration that they are duly selected candidates.

3. There are two main grounds on which the relief is sought : Firstly, on the procedure laid down by the Railway Board the applicants must have obtained more than 60% marks and therefore could not be declared failed. The Committee entrusted for the Selection was not properly constituted because it did not have any Officer from the Personnel Branch.

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(A/S)

4. Affidavit , Counter Affidavit and Rejoinder have been exchanged. At the time of hearing, the learned counsel for the applicant, Shri Surya Kant did not make appearance. The case was taken up twice before lunch and now we have taken it up for delivery of the judgement after <sup>lunch</sup> interval. We have gone through the case and have heard Shri Lalji Sinha, learned counsel for the opposite parties.

5. The case of the opposite parties is that the evaluation of the Answer Books and other tests had been done in accordance with the prescribed procedure and in fact none of the applicants secured even the qualifying marks either in the written/Viva Voce <sup>or</sup> ~~and~~ in the aggregate. The points regarding qualifying marks have been raised only in the application of Ram Kumar and not in any other application. It is ~~the~~ admitted case of the parties that the minimum qualifying marks are ~~being~~ <sup>are</sup> two sets. The first set consists of written and viva voce (called "professional ability") test in which the minimum qualifying marks are 30/50 with ~~the~~ relaxation to 25/50 in the case of the Scheduled Caste/Scheduled Tribe candidates. In addition there was personality, seniority and service record test ~~and~~ <sup>coupled with</sup> ~~in that~~ written and viva voce tests, the minimum qualifying marks in the aggregate were 60/100 with the relaxation to 55/100 <sup>for</sup> ~~upon~~ the Scheduled Caste/Scheduled Tribe candidates.

6. The applicants Ram Kumar, Shitla Prasad, Bhagwati Shanker and Devi Bux Singh, who are candidates of general category secured respectively 28, 15, 25 and 26

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out of 50 in respect of written and viva voce test and also 58, 45, 53 and 56 in the aggregate. Navmi Lal Kanavjia and Bechan Lal who belong to Scheduled Caste category secured 24 and 23 marks respectively in the written and viva voce tests as also 54 marks each in the aggregate. There can be absolutely no doubt that the marks secured by all the applicants are below the minimum qualifying marks both in the written/viva voce and in the aggregate. There is nothing to show that the procedure laid down by the Railway Board, so far as these tests are concerned, <sup>was</sup> ~~were~~ not followed.


7. In respect of the constitution of the Selection Board, it is admitted that it had to be <sup>of</sup> not less than three persons. There is no controversy about the participation of the Divisional Mechanical Engineer and Divisional Commercial Superintendent as two out of the three men. The controversy is confined to the third man. According to the applicant, the third Member was not an officer of the Personnel Department. According to the opposite parties the third member was the Executive Assistant to the Divisional Railway Manager nominated by him vide order dated 16.12.85 to function as a Personnel Officer. The record has been produced before us which contains the order dated 16.12.85 of the Divisional Railway Manager in which Shri S. Dharman executive assistant to the Divisional Railway Manager, has been required to function as Personnel Officer.

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9. The learned counsel for the Opposite Parties has also relied upon the case of Om Prakash Shukla Vs. Akhilesh Kumar Shukla 1986 (Supp) S.C.C. 285 para 24 to show that when a candidate appeared for an examination without protest he may not be entitled to get a relief in the particular facts of the case. There is also an earlier decision of the Supreme Court in the case of G.Sharna Vs. University of Lucknow 1976 SC 2425 to show that if a candidate does not object to and participate<sup>he</sup> in an interview, <sup>u</sup> is stopped from challenging the recommendation of the Selection Board.

10. On <sup>a consideration</sup> ~~the circumstances~~ <sup>all</sup> of the matters, we are of the opinion, that there is no merit in these applications and they are dismissed. There <sup>shall be</sup> ~~are~~ no orders as to costs.

  
Member (A)

  
Vice Chairman

Dated the 20th March, 1989.

RKM

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(A19)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

CIRCUIT BENCH

LUCKNOW

C.M. Application No. 84 of 1989

In

O.A. No. 406 of 86

Ram Kumar

Applicant

versus

Union of India and others

Respondents.

Hon. Mr. Justice K. Nath, V.C.

Hon. Mr. K. Obayya, A.M.

(Hon. Mr. Justice K. Nath, V.C.)

We have heard Shri K.P. Srivastava for the applicant in support of Civil Misc. Application No. 84/89 whereby a decision of this Tribunal in O.A. 406 of 86 rendered on 20th May/1989 of this Tribunal is sought to be set aside on the basis that the said decision was ex parte, in consequence of applicant's lawyer's inability to be present for reasons stated in the accompanying affidavit.

2. The learned counsel for the applicant refers to section 22(3) (h) of the Administrative Tribunals Act, 1985 and contends that the judgment dated 20.3.89 amounts to dismissal for default and therefore, is liable to be set aside and the case restored because there were sufficient reasons for the inability of the learned counsel for the applicant to appear when O.A.

was called for hearing.

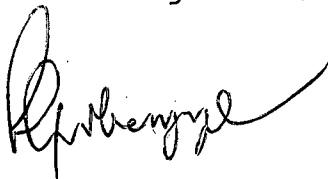
3. We, however, find that the decision dated 20.3.89 is not a dismissal in default but is a decision on the merits of the case. The judgment sets out in para 4 that counter affidavit and rejoinder had been exchanged; that the applicant's counsel did not make appearance; that the case had been called a coupled of times before lunch and again after lunch for judgment and that the Bench had gone through the case ~~of~~ and heard Shri Lalji Sinha, learned counsel for the respondents. Paras 5 to 9 of the judgment consider the merits of the case as appearing in the applicant's Original Application and ultimately held that there was no merit in the application and therefore, they were dismissed, ~~but~~ There can be no doubt, therefore, that the judgment was not a decision in default of the applicant but was on merits.

4. A decision on merits in the event of default of the applicant is permissible under Rule 15 of the Central Administrative Tribunal (Procedure) Rules, 1987. Sub-rule (1) clearly says that in such an event "the Tribunal may in its discretion either dismiss the application for default or hear and decide it on merits". There can be no doubt therefore, that the Bench was competent to and did hear and dispose of the case on merits.

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5. Sub rule 2 of Rule 15 ~~which~~ provides for an order to set aside the dismissal of application for default of appearance of the applicant. The proviso thereto, however, says that "where the case was disposed of on merits, the decision shall not be re-opened except by way of review." It is clear therefore, that the only remedy available to the applicant was to make application for Review. The present application, is therefore, not maintainable. The application is dismissed. It will, however, be open to the applicants to file a review application subject to the question of limitation and other procedural rights which the respondents may have.

A.M:



Lucknow Dt. 28.6.91



28/6/91

Shakeel