

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW

Original Application No. 269 of 1992

## Versus

Connected with

Original Application No. 281 of 1991

Bhagwan Sahai & Others . . . . . Applicants

## Versus

Hon'ble Mr. Justice U.C.Srivastava, V.C.

Hon'ble Mr. K. Obayya, Member (A)

( By Hon'ble Mr. Justice U.C.Srivastava, VC)

These two cases are being heard and disposed of together, although the reliefs claimed are not identical but the questions for decision between the parties practically who came from same department rotating round the selection test.

2. In O.A. No. 281 of 91, the applicants have prayed for quashing of letter of D.R.M. dated 19.6.91 and for restraining the respondents from holding any selection to the post of Welfare Inspectors (which were ex-cadre posts) without declaring the result of the applicant and appointing selected persons with retrospective effect with all the consequential benefits on the said post and cancelling the adhoc appointments and order for promotions to senior most eligible employees. In O.A. No. 269 of 1992, the relief claimed is that the written test held on 26.4.92 and the result announced on 1.6.92 be quashed and the respondents

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be directed to hold a fresh selection without including the name of the respondent no. 4 and other candidates subsequently added in the list of 119 candidates and be further directed to hold a fresh selection on the basis of list of 113 candidates found eligible to appear in the written test by adding the name of the applicant no. 1, who was left to be included in the list.

3. The examination for the post of Welfare Inspector in the grade of 1400-2300/- was initiated in the month of November 1987, but the written test took place on 2.12.89 and the viva voce took place on 11.3.90. Vide letter dated 19.6.91, the same was cancelled on the grounds of alleged several procedural irregularities. While in the other case, three applicants have challenged the subsequent examination which has taken place on 2.4.92 as well as the order by which 9 candidates were declared <sup>successful</sup> subsequently in the written test for the said post of Welfare Inspector and the date of viva voce test was fixed on 16.6.92. In view of the interim order passed by the court, the result has not been declared. These applicants, who were already employed in the Railway Administration, were eligible for the post of Welfare Inspector. The applications for the same were invited in the month of November, 1987 and those, who were found eligible were directed to appear in the test as indicated above. The applicants who are graduates, post-graduates and non-graduates, qualified in the same. Although, the viva-voce test took place on 11.3.90, but the result was withheld and in the mean time 4 persons on

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ad hoc and temporary basis were appointed against the vacancies for which the selection process had started. Even though, they were not within the field of eligibility and had not faced selection or interview and they were juniors to the applicants and ~~ever~~ were less qualified. Subsequently, the process of fresh selection started, then the impugned letter was sent telling all concerned that the earlier selection has been cancelled.

4. The respondents in their reply have stated that in the notification issued in 1987, it was made clear that the eligible volunteers, who-so-ever had applied in response to the notification, were promoted to the next higher grade in between November, 1987 to 18.9.89, were to be restrained from appearing in the written test. The written test which was scheduled for 14.10.87 was postponed and subsequently notification dated 25.10.89 was issued fixing the date of written test. In the said notification also, the said clause was inserted, whereby the staff promoted in higher grade till 25.10.89, were further restrained to appear in the written test. The Union protested against it and apart from this pointed out certain other minor irregularities. It was thereafter a decision was taken and according to the Railway Administration all the eligible volunteers, who had applied in response to the notification dt. Nov. '87, were not called as per relevant clause in the said notification and that's why a decision was taken to initiate a fresh process of selection. The welfare Inspector examination is taken by the Divisional Railway Manager, but the cadre controlling

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officer is senior divisional personnel Manager and whenever need arises for making adhoc arrangement, the Divisional as well Extra Divisional Officer make their own arrangement separately on the basis of local seniority and as the applicants belongs to Extra Divisional Office, that's why for making local adhoc arrangement in the office of Divisional Railway Manager, they were not to be considered, in view of the facts that the posts of Welfare Inspector which were vacant in Divisional Railway Manager's office, were to be filled on adhoc basis amongst the senior most willing staff of personnel Branch of Divisional Railway Managers' office. These promotions were to be made on the basis of seniority and willingness of separate seniority of the division. The adhoc arrangement were made on the basis of local seniority in the office concerned and these promotions were made with the clear stipulation that their promotions were purely adhoc and they are not entitled to any claim for their regular absorption and are to be replaced by the regularly selected staffs, whenever the same is available.

5. In the other application, it has been stated that in the said examination of 1987, the respondent no. 5 V.P. Mishra was declared to have failed and the respondent no. 4 Kirti Prakash Mishra was not working in the capacity of Lucknow division and was appointed in the South Eastern Railway, Calcutta and had no occasion for being considered on the said selection was appointed w.e.f 23.7.87. He is son-in-law one V.K. Mishra, the Divisional Secretary of Northern Railway Mens' Union, while the respondent no. 5 who was not having failed in the written

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test and was having not <sup>been</sup> called in the viva-voce test, was the very near relative of Sri J.P. Chaubey, the General Secretary of All India Railway Mens Union leaders, the earlier selection was cancelled in order to serve their ends and that's why the letter was written for holding a fresh selection, and the earlier selection could not have been cancelled and in any case the same could not have been cancelled in entirety and this fresh selection only took place at the interest of Union leaders for malafide intention and selfish ends. The subsequent notification dated 19.6.91 only Ministerial staff namely clerks, senior clerks and artisan staff in group C grade 950-1500/1200-1800 and 1200-2040/-, who fulfilled the qualifications mentioned therein; on 1.6.91 <sup>were</sup> ~~were~~ made eligible for being considered for the post of Welfare Inspectors. This date was deliberately fixed as the respondent no. 4 on that date on transfer from south Eastern Railway Calcutta joined the Lucknow Division. Even though, he was not eligible because, the requisite conditions were not fulfilled by him nor any occasion to apply for the same.

6. Applicant no. 1 by the local arrangement vide order dated 24.10.88 was appointed to officiate as Welfare Inspector and was even awarded cash awards for his service. On 26.10.91, he applied for regularisation for the said post as he had completed three years and although his application was also forwarded and vide common notice dated 6.12.90, the applicant no. 2 and 3 were appointed to officiate as Welfare Inspectors on adhoc basis against the existing vacancies on Lucknow division and ever since, they have been working as such, but even then the respondent no. 4 who was appointed to officiate as Welfare Inspector

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on adhoc basis though, he was declared failed. The claim of these applicants is that they are entitled for regularisation. It has been stated by them that a letter was issued on 15.10.91 issuing the list of 113 candidates found eligible to appear in the written test, which was to be held on 10.11.91. The name of the respondent no. 4 was not included therein and on that date, no written examination took place and it was postponed for 17.11.91 and on that date it was also postponed till 15.11.91. This was deliberately done to include the name of the respondent no. 4 because by that time he had joined the Lucknow Division on transfer from South Eastern Railway, Calcutta. On 2.4.92, a letter was issued alongwith the list of 119 candidates and this time it included the name of aforesaid respondent no.4 and 5 others names without any justification how these names were added and in the said list, the name of two persons who were included in the list of 113 candidates were deleted and in their place, the name of two others persons were substituted, against which a protest was made and followed by representation which was not disposed of. The examination took place and as a result of the written test, nine persons including the respondent no. 4 and 5 were declared to have passed in the said test and they were directed to ~~appear~~ have appear in the viva-voce test. The applicants were declared to failed in the said test.

7. The respondents no. 4 and 5 have opposed the application filed by the applicants and have charged that they were misleading the tribunal and concealing the facts and thereby obtaining the interim order. After they have failed making a wrong statement that they have made representation. It is absolutely incorrect. They have tried to justify the selection of respondent no. 4 and 5 and have stated that when the second time notification was issued, one clause in the conditions of eligibility was left inadvertently as in the avenue chart, the said

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clause was included. The respondent no. 4 had been a representing in the Indian Railway in High Board Diving and he had been the National Champion in 1957, 1960 and 1970 and he had got various knowledge of various disciplines in sports. XXXXXXXXXXXXXXXXX He was being utilised as Welfare Assistant(Sports) and represented for inclusion of his name ~~as~~ he fulfilling all the requisite condition of eligibility for the post of Welfare Inspector by virtue of his utilization as Welfare Assistant(Sports) which was also one of the qualifications. The prescribed eligibility has been given by the respondents as under :-

for Welfare Assistant  
(Sports)

Administrative and  
Technical Staff

1. Having knowledge in Sports	1. Staff in grade Rs.050-150/- (A.M.C) having 7 years with graduation.
2. Recommendation of Army General Secretary Railway Sports Association.	2. Staff in Cr. Rs.1200-2040/- (A.M.C) having 5 years service in the grade.
3. Vacancies lies in parent cadre.	3. Staff having Diploma in Industrial Welfare or personnel Management or social studies or industrial relation having 1 years service irrespective of the grade.
4. Can also apply for the post of W.I Grade Rs. 1400-2340 (A.P.S).	

So far as the respondent no. 5 is concerned; it has been stated that he was next senior most <sup>among</sup> willing senior clerks in the grade of 1200-2040/- in the personnel Branch Seniority unit of divisional Railway Manager office and as such he was promoted on adhoc basis although he was declared/failed in the earlier selection, his promotion as Welfare Inspector on adhoc basis in exigencies of service was absolutely correct and could not be said to be a result

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of favouritism. The applicants according to the respondents were not senior most willing persons from amongst the integrated seniority lists of various seniority units of different offices, rather they were considered and picked from only two different seniority units namely the seniority unit of Sr. clerks of personnel branch of Divisional Railway Manager office and the seniority unit of senior clerk of Dy. controllers of stores Alambagh's office. The names of the applicants were inserted because on representation they were found eligible, though earlier their names was not included. On substantive post, the respondent no. 4 was a senior clerk and he was never appointed to be posted as a welfare Assistant(sports) though he was sportsman being swimmer and he was never paid salary of Welfare Assistant(sports). It is to be noted that the respondent no. 4 and 5 have not given any reply and have rather refused to accept the notice in C.A. No. 281(Bhagwan Bahai), while they have submitted their reply in other application(C.A. No. 269 of 1991).

3. It is evident that the letter by the Union Secretary was the motivating factor for cancelling the selection followed by fulfilment of their expectations may it by coincidence. Even when selection process was on during which adhoc appointments could not have been made were made those who failed to enter through front door, got back door entry and door for others for the posts for which selection was held which at that stage was not open for them or would not have been selected and appointed because of lack of eligibility were opened. It was contended that the terms of notice or advertisement published twice were deviated even without any corrigendum and principles under which selection was made and could have been were in this manner were given a go by ~~and exempted~~

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which could not be ground for setting aside the selection were forcibly brought in existence or hunted out for favouring those who otherwise were or could not have been selected; At the most there could have been supplementary examination and one post could have been carved out from the posts for which selection was held. It was pointed out that so far non-specification of seats for scheduled Caste is concerned that was wholly immaterial or could at best be an irregularity not affecting selection at all. As a matter of fact, number of <sup>Scheduled caste</sup> candidates appeared and 4 were said to have passed in the examination.

9. The non-inclusion of clause not once but twice which is said to be an error in fact was not error and as a matter of fact the seniors who were regularly promoted were not required to appear in examination and if any thing remained the same was to done by regularising them without requiring them to appear in examination and at best there could have been a supplementary examination for these volunteers even if it was required, though it was not. The non inclusion of question on Raj Bhasha which subject was optional having  $3\frac{1}{2}$  marks only was no ground and as a matter of fact questions were put in regard to it in viva-voce and in subsequent selection too, there was only one question in respect of it. ~~xx~~ Even what the respondents say is assumed to be correct as against true facts, it was no ground for setting aside the entire selection. Instead of creating more posts according to applicant such a course was adopted. One who was allowed to appear towards spots quota having failed in it could not have been

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appointed on ~~an~~ that ground on adhoc basis defeating rules of selection, principles of equity and justice and good conscience. No corrigendum to the said advertisements were issued when the examination took place and unless corrigendum is not issued the terms of advertisement are not given go bye as was held in the case of Dr. Vinay Ram Pal Vs. State of Jammu and Kashmir . Others ~~1984~~

(1) SCC page 160 , in the case of N.K. Devin Katti and another Vs. Karnataka Public Service Commission 1990 SCC, it was observed that when the selection process is initiated by issuing the advertisement and by inviting the application, selection normally should be regulated by rule or order prevailing in the advertisement expressly states that the selection shall be made in accordance with the existing rule or order and subsequent amendment, existing the rules or order will not affect the pending selection process unless contrary intention is expressly or impliedly indicated when amended rule or order make it expressly clear that the pending selection would not be governed by the amendment. There is no question of applying the rule or order to the pending selection."

10. In the instant case not even one, but in two advertisement, a particular clause was allegedly not inserted. Obviously, it must not have been done after due deliberation. The Union letter made them to hunt out same thing and that is why the same was done. Even then no cancellation of selection as a whole was called for.

In Anamika Mishra Vs. U.P. Public Service Commission A.I.R. 1990 S.C. page 461. It was observed that " some candidate

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who performed better for written examination was omitted from the call for interview, while others ineligible not only called but also got selected as a result of the improper feeding in the computer. In such circumstances, the cancellation of entire examination was unjustified and the cancellation of recruitment for holding fresh interview on the basis of some written examination would have sufficed.

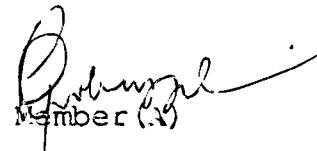
11. In the instant case, the cancellation of examination that is selection test was not at all called for. At the most supplementary examination for those who were really left out because of non application of mind incapability to understand those who were holding and conducting selection the relevant rules could have been taken or more posts could have been created for the time being till formal regularisation was not done for recreation of post in sports quota, all eligible persons were to be given opportunity and considered fairly and justly. Similarly, the matter of appointment of Sri G.K. Mishra who did not face any such examination was also no ground to cancel the selection. His name could have been interpolated to the extent permissible and he could have been given only a limited benefit and state to the extent directed by Tribunal which did not pass any blanket order or declared any permanent status or position for him. The second selection so held cancelling the first one will thus not take legal shape and status and cannot be recognised. It is a result of misuse of authority in violation of law and principles of natural justice. All the adhoc appointments so made at least are time gap arrangements and cannot confer any right on the so called appointees or entitle them to any other benefit except as to salary.

12. Accordingly, this application is allowed and the order dated 1.6.92 cancelling the selection is

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set aside with the result that the second selection automatically falls down and the posts which have been filled by adhoc appointees, will be filled from amongst regular selectees, say within three months from the date of communication of this order. It will be open for the respondents to create more posts or withhold one or two posts and to hold supplementary test and make any appointment for any quota which they are duty bound in a fair manner. No order as to costs.

  
Member (A)

  
Vice-Chairman

Lucknow Dated: 16-4-1993  
(RKA)