

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH
LUCKNOW

ORIGINAL APPLICATION NO: 116/2005

THIS THE ¹⁹ DAY OF MARCH 2007.

HON'BLE MR. A. K. SINGH, MEMBER (A)
HON'BLE MR. M. KANTHAAIAH, MEMBER (J)

1. Sunil Kumar aged about 40 years,
S/o Phool Chandra,
R/o MD-I/444 LDA Colony,
Kanpur Road, Lucknow.
2. Anand Swaroop Srivastava, aged about 28 years,
S/o late sri D.L. Srivastava,
R/o I-49 Fateh Ali Talab,
Jail Road, Lucknow.
3. Anurag Mishra, aged about 27 years,
S/o Sri Suresh Chandra Mishra,
R/o 42-B, Jondhwal,
Teliarganj, Allahabad.

Applicants.

By Advocate Shri R.K. Upadhyay

Versus

1. Union of India through Geeral Manager,
Baroda House,
New Delhi.
2. Divisional Railway Manager,
Northern Railway,
Hazratganj, Lucknow.
3. Senior Divisional Electrical Engineer,
Northern Railway,
Hazratganj, Lucknow.

1/4 Senior Divisional Personnel Officer,

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Northern Railway,
Hazratganj, Lucknow.

Respondents.

By Advocate Shri S. Verma.

Order

By Hon'ble Mr. A. K. Singh, Member(A)

The O.A. bearing No. 116/2005 has been filed by the applicants Shri Sunil Kumar, Anand Swaroop Srivastava and Anurag Mishra (address given in the O.A.) against inaction on the part of Respondent No. 2, 3 and 4 in holding interview for promotion on the post of AC Fitter/Coaching under 25% Qualified Staff Quota.

2. The applicant No. 2 and 3 are working as Helper Khalasi under Section Engineer, Train Lighting, Charbagh Northern Railway, Lucknow while petitioner No. 1 Sunil Kumar is working as Helper Khalasi in AC Fitter/Coaching. A notification was issued for 'promotion by selection' on the post of AC Fitter Coaching under 25% Qualified Staff Quota. There were in all six vacancies in the cadre of AC Fitter/Coach. Out of which four vacancies were in the 'General' category while two others were reserved for 'Scheduled Tribe' candidates. As promotions, in question,

were to be given on the basis of Selection, a written test was conducted and the results were declared on 5.11.2003. All the three applicants were declared successful at the written test. According to applicants, some disgruntled elements who failed to clear the test filed complaints before the higher authorities alleging that

- (i) The syllabus for the written test was not notified and the same was not provided to candidates before their appearance at aforesaid written test.
- (ii) The question paper ought to have been printed in both Hindi and English languages but the same was printed only in Hindi language.
- (iii) The question paper should have been in two parts instead of four.

Railway Employees Trade Union lent support to these complaints as a result of which the interviews, which were scheduled to be held on 13.11.2003, were postponed indefinitely. The entire selection process was ultimately cancelled on 20.1.2005. The applicants submit that it is a well-settled law that in case the candidates appeared at a selection test and failed he cannot turn around and challenge the process of selection. He also submits that there is no syllabus prescribed for the aforesaid test. Hence the question

of publishing and notifying the same to the examinees, does not arise. In the second place, the applicants submit that the impugned order of cancellation of the written test is absolutely non-speaking. In the third place, they also submit that the minimum qualification required for the post of AC Fitter was Junior High School as provided in the notification itself. Obviously the question paper was of the same level. The complainants, never made any such complaint before the test. It is settled law that an unsuccessful candidates cannot challenge the validity of selection process. The principle of estoppel by conduct is therefore, clearly applicable to this case. In view of the same, the applicant submits that the impugned order of cancellation of the written test is not maintainable in law and deserves to be quashed and set aside. The applicants pray for the following reliefs in the O.A.

(i) To issue an order or direction quashing the order of the respondents, dated 20.1.2004 canceling the written test.

(ii) To issue suitable order or direction to the respondents to hold viva voce test of the applicants in pursuance of the result of the written test announced on 5.11.2003. The written examination were held on 18.10.2003 for the post of AC Fitter/Coaching.

(iii) To issue any other order or direction, which this Hon'ble Tribunal deems fit and proper in the circumstances of the case and (iv) to allow the cost of this petition.

3. The respondents, on their part, have contested the O.A. They submit that a notification was issued for 'promotion by selection' against 25% Qualified Staff Quota and in all 6 vacancies, 4 belonging to General category and 2 to Scheduled Tribe were notified for being filled up by promotion on the basis of selection. On the basis of this notification issued on 23.7.2003, 40 applications, in all, were received from the staff and 35 candidates were found eligible for selection. The name of one more eligible candidate was also subsequently added to the list bringing the total number to 36. Written tests were conducted on 18.10.2003. On conclusion of the same, only 3 candidates out of 36 were declared successful. Accordingly, they were called for viva voce test scheduled to be held on 13.11.2003.

All the three applicants were declared successful in the written test. In the meantime, some of the candidates who had failed at the written test sent a complaint-dated 6.11.2003 to higher authorities pointing out certain irregularities in the

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process of written test in question. These alleged irregularities are already noted on pre page.

4. The competent authority, on the basis of these allegations cancelled the written test held on 18.10.2003 vide order-dated 20.1.2004. The competent authority also directed that the selection process to the post of AC Fitter/ Coaching Grade (C) should be initiated a fresh. Since the original application was pending for decision before this Tribunal, the process of selection could not be initiated. In view of this, they submit that there is no inaction on the part of respondents. On the basis of the above, respondents pray for dismissal of the O.A. as devoid of any merit.

5. The applicants as well as respondents were heard through their respective counsels on 26.2.2007. Shri R.K. Upadhyay appeared on behalf of the applicants while Shri S. Verma appeared on behalf of respondents. In their oral submissions, the learned counsel reiterated their submissions as above.

6. We have given our anxious considerations to the submissions made by learned counsels on both sides and

have also perused the records of the case. We find that the order of cancellation of the written test dated 21.1.2004 as seen from the records does not record any reason for cancellation of the written test by the competent authority. No investigations in the matter were also conducted. There appears to be a complete non-application of mind on the part of the respondents in canceling the process of selection by way of written test of the candidates.

7. In the case of *Menka Gandhi Versus Union of India [AIR (1978) SC 597]* the Apex Court held that “*no government can act arbitrary as arbitrariness is violative of Article 14 of the Constitution of India.*” In the case of *S.G. Jai Singhani Vs. Union of India [AIR 1967 SC 1427]* the Apex Court had held the same view and had observed that “*absence of arbitrary power is the first essential of the rule of law upon which our constitutional system is based. Necessarily therefore, the same cannot be lost sight of.*” In the case of *State of Punjab vs. Dilbagh Singh 2004 (1) SCC 547*, the Apex Court held that “*the giving of reasons is one of the fundamental of a good administration.*”

8. In view of these establish principles of law, we hold that that a non speaking administrative decision or order is no order at all in the eye of law. The impugned order of cancellation of the written test, is consequently not maintainable in law.

9. In the second place we find that the impugned order of respondents dated 21.1.2004 cancelling the written test, is most possibly based on the following three allegations made by the unsuccessful candidates.

- (i) The syllabus was not notified.
- (ii) The question papers were only in Hindi.
- (iii) Question paper was in four parts instead of 2.

These grounds are not clearly mentioned in the order of cancellation-dated 21.1.2004 but are incorporated in Counter-reply of the respondents. In the case of ***Mohinder Singh Gill and another versus Chief Election Commissioner New Delhi AIR (1978) SC 851*** the Apex Court has held as under:

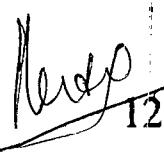
“ The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in shape of affidavit or other wise. Otherwise, an order bad, in the beginning, may by the time it comes to court on account of a challenge gets validated by additional grounds later brought about.”

10. Even on a preliminary examination of the irregularities alleged we do not find sufficient justificatin for the cancellation of the selection process. If the question papers were in Hindi, it was more advantageous to the candidates as they are working in Hindi belt and also reside there. The fact that the question paper did not carry an English version can hardly cause any prejudice to the interests of the failed candidates. It has also been brought to our notice that no syllabus was officially prescribed for the written test. Hence the question of notifying the same does not arise. Like wise, it is immaterial whether the question paper is in two or four parts as long as the same is not above the prescribed standard. Hence the very basis of cancellation of the written test by the respondents does not appeal to reason. In the case of *All India SC/ST Employees Association versus Arthur Jeen (2001) 6 SCC 380*, the Apex Court held that "*those candidates who had participated in the interviews could not challenge the selection before the Tribunal.*" In the case of *Om Prakash versus Akhilesh Kumar* reported in *AIR 1986 SC 1043*, the Apex Court has reiterated same view in Para 7-1 of their judgment in which the apex court observed that
.....hence ,the respondents entertained representations from the candidates who have appeared in the written test

and failed at the same Canceling the selection process on that basis was not correct in law and therefore cannot be sustained." It is also our considered view that the entire selection process could not be cancelled on the basis of minor technicalities. In the case of *Asha Kaul versus State of Jammu and Kashmir JT (1993) SC 688*, the Apex court held that the "*selection cannot be cancelled arbitrarily and on flimsy grounds. In other words, the decision to cancel the selection process could be taken after due inquiry.*"

11. In the case of *Union of India Versus P.U. Rajes Puthuvalnikatha (2003) SCC L&S 1048*, the Apex Court held has under:

"... considering the conditions or either side in the light of materials brought on record, including the report of the special committee, there appears to be no scope for any legitimate grievance against the decision rendered by the Hon'ble High Court....." There seems to be no serious grievance of any malpractice, as such, in the process of written examination alone either by the candidates, or by those who conducted them. The competent authority, misdirected itself in taking an extreme and unreasonable decision of canceling the entire selections, wholly unwarranted and un necessary even on factual situation, found too, and totally in excess of the nature and gravity of what was at stake, thereby virtually rendering such decision to be irrational."


12. Last of all we also find that there is no fault on the part of the applicants in this case. It is a trite law that no one

should be permitted to encash his own mistake or lapse and no one should be made to suffer for no fault of his. *In the case of Nirmal Chandra Battacharyajee vs. Union of India [1991] (suppl) (2) SCC 363* it has been held that “*the mistake or delay on the part of the department should not be permitted to recoil on the appellants.*” In the case of Bhoop Vs. Matadin Bhardwaj [1991] 2 SCC 128 the apex court held that “*a party cannot be made to suffer for no fault of his own.*” In the case of *Rekha Mukherji Vs. Ashis Kumar Das (2005) 3 SCC 427*, the apex court has further held that “*a party cannot take advantage of ones own mistake. The case of the applicant has to tested on the touch stone of the above mentioned principles.*”

13. Thus we find that the decision of the respondents to cancel the written test after commencement of the selection process was arbitrary and on flimsy grounds. In the case of *M.S. Grawal Vs. Deep Chand Sood [2001] 8 SCC 1611*, the Apex Court held that “*the ends of justice cannot be thwarted by mere technicalities. Law courts will lose their efficiency, if they cannot possibly respond to the needs of the society --technicalities there might be many, but the justice oriented approach ought not be thwarted on the*

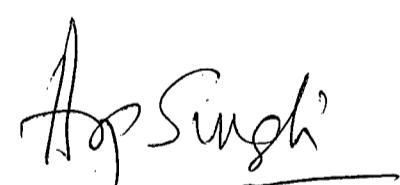
basis of such technicalities since, technicality cannot and ought not to out weight the course of justice."

14. On the basis of the above, we hold that the impugned order of cancellation of written test dated 21.1.2004 of the respondents is bad in law and consequently deserves to be quashed and set aside. We order accordingly. The respondents are directed to complete the selection process already initiated and take further steps to fill up the vacancies notified by holding interview tests as provided under rules.

15. In consequence O.A. 116 of 2005 is allowed.

Parties to bear their own cost.


(M. Kanthaiah)
Member (J)


(A.K. Singh)
Member (A)