

Central Administrative Tribunal Lucknow Bench Lucknow

Original Application No.526/2005

This, the 3rd day of September, 2008

Hon'ble Mr. Shankar Raju, Member (J)
Hon'ble Smt. Veena Chhotray, Member (A)

1. Rajeev Kumar Srivastava aged about 36 years son of Shri Jai Shankar Srivastava, resident of II F-2, Badshah Nagar Colony, Lucknow.
2. Subhash Chandra Srivastava, aged about 53 years son of Sri Harish Chandra Lal resident of 39 A, Badshah Nagar Colony, Lucknow.
3. Pradeep Kumar Singh aged about 52 years son of Sri Vishwa Jeet Singh, resident of 83 G, Basharatpur, Gorakhpur.
4. Ajai Kumar Verma aged about 50 years son of late Sri Hridai Nath Verma, resident of 430 B, Railway Medical Colony, Gorakhpur.
5. Manoj Anand Singh aged about 38 years son of Sri Surendra Kishore Singh resident of 533 D, Bichhiya Railway Colony, Gorakhpur.
6. Dayashankar Jaiswal, aged about 38 years, s/o Shri Surendra Kishore Singh, R/o II F-2, Badshah Nagar Colony, Lucknow.
7. Vishnu Narain Srivastava, aged about 41 years, s/o late Shri Krishna Chandra Srivastava, r/o 441, Manas Enclave, Picnic Spot Road, Lucknow.
8. Ashok Kumar Mishra, aged about 40 years, S/o Shri Ram Tej Mishra, R/o 487-A, Railway Stadium Colony, Gorakhpur.

Applicants

By Advocate: Shri Parveen Kumar

Versus

Union of India through:

1. The General Manager, North Eastern Railway, Gorakhpur.
2. The DRM, North Eastern Railway, Lucknow.
3. The Additional DRM, North Eastern Railway, Lucknow.
4. The DRM (P), North Eastern Railway, Lucknow.
5. Shri Ashok Kumar Sinha, aged 36 years, S/o Shri H.N. Sinha, R/o T-27-B, Aish Bagh Railway Colony, Lucknow.

Respondents.

By Advocates: Shri V.K. Srivastava and Shri A. Moin)

ORDER

By Hon'ble Mr. Shankar Raju, Member (J)

Fresh notification dated 13.10.2005 and the applicants who are Deputy Chief Train Controller assail cancellation of the written examination for the post of Chief Train Controller. In pursuance of a

notification dated 26.6.2003 though the written test was scheduled was kept in abeyance and another notification was issued on 11.2.2005. However, the notification was cancelled. Another notification issued on 25.7.2005 was issued. The written test was scheduled for 13.8.2008 and supplementary on 20.8.2005. Applicant appeared in the written test of which result was declared on 19.9.2005 where all the applicants have qualified. No further process was to be undertaken. However, an order passed on 7.10.2005 cancelled the written examination and a fresh notification was issued on 13.10.2005 where the examination was to be held on 5.11.2005. On enquiry it was revealed that the written examination was cancelled at the behest of the Union. The representation was submitted against the written examination on 26.9.2005 and the ground of cancellation was that "Raj Bhasa" question paper though was in the syllabus but cancelled and an extra time of 40 minutes was given to the candidates and also objective questions were not set in the paper. However, applicant approached the Tribunal where the selection in pursuance of notification dated 13.10.2005 was made subject to the final outcome and also applicants were allowed without prejudice to the final outcome to participate in the written test.

2. Learned counsel of applicants contends that having participated and known the result the private respondents have been favoured by the respondents, as such written examination was cancelled. It is also stated that the process of selection cannot be interfered on the basis of vague allegations of unsuccessful candidates. It is also stated that as per RBE 95/2002 to avoid arbitrariness, reasons are to be assigned while canceling the selection. In this backdrop it is stated that the examination committee has taken a conscious decision to cancel the Raj Bhasa question and to grant additional time of 40 minutes in absence of any material to show that there was large scale discrepancies and illegalities in the selection at the behest of the Union. The Committee has reviewed its order and cancelled the examination of which result has

already been notified, which is not only illegal but also is arbitrary decision, violative of Articles 14 and 16 of the Constitution of India. Learned counsel of applicants has relied upon a plethora of decisions, including the decision of the Tribunal in **Shiv Narain v. Union of India**, OA No. 447/2004, decided on 8.12.2005.

3. On the other hand, official respondents vehemently opposed the contentions and stated that as the written examination on a complaint, were found, on crosschecking, genuine the examination was cancelled.

4. Learned counsel of private respondents though file preliminary objection of estoppel against the applicants, who participated in the re-notified examination and relying upon the decision of the Apex Court in **Om Prakash v. Akhilesh Kumar**, AIR 1986 SC 1043 and **State of U.P. v. Rajkumar Sharma**, (2006) 3 SCC 330, states that appointments made by mistake, on negative equality, one has no indefeasible right.

5. We have carefully considered the rival contentions of the parties and perused the material on record. In our considered view though the candidates who participated in the selection are precluded from challenging it, which is barred by the principle of estoppel, yet when the selection is found to have been conducted against the Rules, the plea of estoppel would not be available to the concerned. Moreover, in the selection when there is discrepancy in the process, corrective measures taken by the Examination Conducting Authorities, is a legal methodology as ruled by the Apex Court in **Pankaj Sharma v. State of J&K**, 2008 (4) SCC 273.

6. In the written examination held, the question regarding Raj Bhasa, which was not beyond the syllabus was cancelled abruptly as a result of which candidates were given extra 40 minutes time. Those who have attempted this question these 40 minutes have been consumed in re-writing another question and for those who have not attempted, they have ample time to improve upon their performance. Moreover, the objective type question as per the guidelines of Railways have not been

incorporated in the question paper. Accordingly, a grievance raised by private respondents though who participated in the examination when meticulously probed into by the Railway authorities, a conscious decision taken at the higher level to cancel the written examination has opened equal opportunity to the applicants to re-participate in the written examination. This is with a view to have fairness in the selection process without deprivation of an opportunity to participate. Accordingly, participation of the applicants in the subsequent process was right to participate in the selection has been protected. Merely qualifying in the written examination would not give them any indefeasible right to be appointed, as in the matter of selection when whole selection is cancelled the selectivity cannot be adopted to give relief to a few, as held by the Apex Court in ***Union of India v. J.P. Charian***, 2006 (1) SLJ SC 150. We have been told that after the fresh written examination a few of the applicants have qualified. Further process may be completed and in such an event, law shall take its own course.

7. Resultantly, we do not find any infirmity in the orders passed by the respondents. The OA is accordingly dismissed. No costs.

H. H. Ray
Member (A)

S. Ray
Member (J)

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