

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH : PATNA

O.A. No. 454/2005.

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Date of order : 18.7.2008.

C O R A M

Hon'ble Mr. Shankar Prasad, Member (A)
Hon'ble Ms. Sadhna Srivastava Member (J)

- 1 Shri Sunil Kumar, son of Late R.K. Mahto, resident of Qr. No. 1395 B, Manas Nagar Colony, Mugalsarai (U.P.)
- 2 Shri Nand Gopal Vishwakarma, son of Sri Kaloo Ram, resident of Flat No. 101A, Sanjawa Sasmatam Apartment, Ara Garden, Patna.
- 3 Shri Rash Bihari Prasad Sinha, son of Late Baldeo Prasad, resident of Railway Qr. No. 549 A, Gaya Colony, Mugalsarai (U.P.).
- 4 Shri Santosh Nath Srivastava, son of Late Srinath Saran Srivastava, resident of Giriraj Apartment, Flat No. 24, Block-A, North S.K. Puri, Vivekanand Marg, Patna-13.
- 5 Shri Naresh Kumar Sinha, son of Shri Mohan Lall, resident of Neora Colony, Railway Qr. No. 463, D.P.O.- Khagaul, District- Patna.

..... **Applicant**

By Advocate : Shri G. Bose

Versus

- 1 Union of India through the Chairman, Railway Board, Rail Bhawan, New Delhi.
- 2 The General Manager, E.C. Railway, Hazipur.
- 3 The Chief Personnel Officer, E.C. Railway, Hazipur.
- 4 The FA & CAO, E.C. Railway, Hazipur.
- 5 The Dy. Chief Accounts Officer, Hazipur.
- 6 Shri P.K.Thakur, S/o not known.
- 7 Shri B.M.Choudhary, S/o not known

8 Shri Devendra Kumar Sinha, S/o not known.
9 Shri Amod Kumar Trivedi, S/o not known.
10 Shri Mrityunjay, S/o not known.
11 Shri S.M. Hussain, all through the FA & CAO, E.C. Railway,
Hazipur.

..... Respondents.

By Advocate : Shri Mukund Jee

O R D E R

SHANKAR PRASAD, MEMBER [A] :-

Aggrieved by the result of the written test published by the respondents in which they have failed the applicants have preferred the present OA. They seeks the following reliefs :

- “8.1 That the impugned order as set forth in Annexure A-1 dated 15.7.05, passed by respondent no. 4 be set aside.
- 8.2 That the respondents may be directed to hold a fresh test as per law by calling the senior persons first for the above promotion.
- 8.3 That the respondents may be directed to impart promotional coaching to those, who apply for it though he being UR.
- 8.4 That further process be made in the matter including holding of viva-voce till the decision of the case.
- 8.5 That the cost of the litigation may be awarded.
- 8.6 That any other relief or reliefs may be awarded in favour of the applicants to which they are fond entitled to.

2(a) The facts lie in a narrow compass. The department had prepared an integrated seniority list for promotion to Group B posts. The name of these applicants appear at sl. no. 2,3,7,14 and 21 of the said list (only the list and not the forwarding letter circulating the list is on record). These applicants were also granted ad-hoc promotion in Group B vide order dated 28.10.04.

The order reads : 

“ On the basis of seniority, General Manager has approved ad-hoc promotion to following Sr. SO(A)s / Sr.TTAs in Group B Gazetted scale of Rs. 7,500-12,000. Since their promotion is purely on ad-hoc basis, they will be liable to be reverted whenever administration finds it fit to take such decision”.

(b) The respondents issued a letter dated 17.5.05 for forming a panel of AFAs (Group-B) in grade of 7,500-12,000 against 70% vacancies for the year 2005-07. The relevant part of this letter reads :

“ In terms of Railway Board's letter number E(GP)2002/I/18 dated 12.01.04, competent authority has accorded approval to form a panel of Financial Advisers in (Group B) grade 7,500-12,000 Rs (RP) for filing up 70% of vacancies of 2005-07”.

The staff in Annexure “A” & Annexure “B” should submit their willingness/un-willingness to appear in the written examination to their respective controlling officer who in tern should inform the same to Sr. AFA/Adm./ECR/HJP by 07.06.2005 in D.O. Cover through special messenger. In case no response is receipt from any candidate within the target date, it would be treated as un-willingness on the part of the candidate to appear in the subject selection. The willingness/un-willingness is to be obtained from the candidates as per proforma given in Annexure “C”. Willing candidates should apply in form as per annexure-”D” mentioning the medium of language (Hindi/English) for writing answer and the application forms duly forwarded by the respective controlling officer should reach Sr. AFA/ADM./E.C.Railway/Hajipur by 07.06.2005.

The written test will be “without Books”

Pre selection coaching classes for SC&ST candidates will be held from 13.06.05 to 24.06.05 in office building near T.D.M. Office/Hajipur. They should send their willingness by 07.06.2005 to Sr. AFA/Admn./ECR/HJP. Any SC/ST candidate not willing to attend pre-selection coaching classes will have to give un-willingness in writing. The venue, duration and other detailed particulars of the pre selection coaching classes will be intimated later on.

In terms of Railway Board's letter number E(GP)/88/2/111 dated 20.08.1991, the written test will be for 150 marks and the qualifying marks A

will be 90. the viva-voce test will be for 50 marks (25 marks for viva-voce and 25 marks for record of service). The qualifying marks for viva-voce test will be 30 including at least 15 marks from the record of service.

As per Railway Board's instructions for the Accounts Department contained in Railway Board's letter number E(GP)74/2/44 dated 08.05.1991, the professional ability will be judged on the basis of written test only, unless the qualifying marks obtained in the written test, candidates will not be called for viva-voce test.

(c) The result of the written test have been declared by letter dated 15.07.05 in which the applicants have failed. This order is the subject matter of challenge. Juniors to the applicants have succeeded in this written test.

3. The case of the applicants in brief is that they had repeatedly requested the respondents to send them for pre- selection training but they were never sent. When they went for the written test they found that persons much more than the vacancies had been called for selection. No objective type questions were set as required under rule 219 © of IREM Vol.I CAO E Railway circular of 8.3.99 permits them to consult official books. Railway Board has also issued instructions dated 15.06.04. The applicants had been taken a back in the method of conduct of the examination. They submitted a representation immediately after the examination without deciding the said representation, the result has been declared.

3 Rejoinder is filed. It is stated therein that the Tribunal had on 25.07.05 observed that selection shall be subject to out come of OA. The ^{& important} question is as to whether there is fairness in approach and whether for want of it, the selection may be quashed. These applicants have no grievance against the private respondents, who though junior to them have been promoted. They have not been given pre-promotional training. The answering respondents have stated that pre-promotional training is ⁴.

necessary only for SC/ST candidates. This position is not correct as it will be a fresh case of discrimination. Attention is drawn to Eastern railway notification dated 30.03.05 where even UR candidates have been sent for training. The representation was sent by UPC as the administration did not receive the same.

4 The respondents in their reply have stated that the applicants have failed to obtain the qualifying marks. Respondents have to select the best candidates for Group B post. Ad-hoc promotion were allowed only as per the exigencies of the situation. Pre-promotional training is mandatory only for SC/ST as per railway Board instruction of 1993. The eligibility of candidates was decided as per rules. Para 204.2 of IREM refers. The administration did not receive the representation. Instead of handing over the representation under clear receipt, they have chosen to send it by UPC.

5 We have heard the learned counsels.

6 The submissions made in this representation dated 04.07.05 are as under :-

- (a) Our cases were required to be considered as we are senior most. Employees much more ~~than Juniors~~, the vacancy were called.
- (b) None of UR candidates were sent for training.
- (c) Questions set in the examination were in subjective form.
- (d) We have been denied assistance of Railway code books.

7 Chapter II A of IREM contains provisions regarding promotion to Group B. Chapter II B contains provisions regarding promotions within Group C. Para 219 falls in Chapter II B. Para 204-2 provides for zone of consideration which is three times the vacancies. Eligibility criteria is also laid down. The list is of 66 persons with 12 persons in extended list. The plea of applicants on this count is unacceptable.

8(a) The learned counsel for the applicants have raised the plea that not sending them for training has prejudiced their case. We find that circular dated 25.07.1991 provided as under :-

The salient feature of the Board's instruction are indicate below :-

- (1) Pre-promotional coaching class of all candidates is mandatory.
- (2) Model questions are to be prepared by the departments concerned based on the past examinations till the model question bank is circulated by the Railway Board.
- (3) The tenure of coaching classes, venue and mode of coaching are to be decided and arranged by the PHODs.
- (4) No selection/LDCE can be held till these pre-requisites are fulfilled.

(b) The subsequent letter dated 20.10.1993 reads :-

On representation from Railways, the instructions contained in Board's letter of even number dated 5.3.91 have been reviewed.

With a view to expedite Group 'B' selections, it has been decided that pre-selection coaching classes for Group 'B' selections should no longer be treated mandatory except for SC/ST candidates.

(c) (i) In terms of Railway Board's letter No. E(GP)/91/2/10 dated 20.10.93, pre-selection coaching classes for selection are mandatory for the SC & ST candidates only. Candidates of the general community may also attend the pre-selection coaching classes. They should send their willingness by 18.04.05 to CAO/Admn/E.Railway/Kolkata.

(ii) As per Railway Board's instructions for the Accounts Department contained in Board's letter No. E/(G)74/2/44 dated 8.5.91, the Professional Ability will be judged on the basis of written test only. Unless the qualifying marks are obtained in the written test candidates will not be called for viva-voce test.

(iii) A model question papers will be sent for handing over to the willing eligible candidates under their clear signature in support of acknowledgement of receipt of the same. The model questions are only for guidance purpose and the actual question need not necessarily be asked from the model questions.

9 It is crystal clear that though training was mandatory as per letter dated 5.3.91. A revised policy has been introduced in 1993. Even the Eastern Railway letter takes note of this policy. This policy is not ^{letter of Accounts Department, E.Rly, dated 20/03/95, Annex 1/1} ~~As per~~.

specifically challenged. It is contended that such a policy will discriminate SC/ST candidates from general category candidates. Such a policy exists in case of Group 'C' employee. The constitutional philosophy provides for special measures for advancement of members belonging to SC/ST. This contention has to be rejected.

10 The applicant has not brought on record any circular of Ministry of Railways to show that they can carry books. The instructions issued by Eastern Railway cannot assist the applicant in such a ~~circular~~ ^{directive}. The notice was categorical that examination will be without books. The applicants appear to have participated without protest.

11 A contention has also been raised about non supply of model paper. The annexure to 5.3.91 shows that model questions are for guidance at training centres. The Eastern Railway letter of 30.03.05 goes beyond this by indicating that model question paper be given to all. It also indicate that they are only for guidance.

12 Para 2 to 2.2 of Railway Board's circular dated 15.06.04 reads :-

The matter has been reviewed by the Board.

Instructions regarding setting of question papers already exist under para 204.2 of the IREM, which provides that the question papers set up for written test should have a practical basis i.e. it should be designed to test the ability of candidates to tackle the practical problems they are likely to face rather than their theoretical knowledge. Board desires that the above instructions may be adhered to and the question papers for the written test for the Group 'B' selections should be set strictly in accordance with the aforesaid provisions.

Board has also decided that the candidates who take the written examination for selections/LDCE for promotion to Group 'B' may be allowed to take the question papers with them. This would help the prospective of candidates in becoming familiar with the general pattern of the question papers. A.

13 It has been contended that questions were not in accordance with this policy. Neither a copy of question paper is enclosed nor a request made for production of same. In absence of same this issue cannot be examine.

14 The learned counsel for the applicant has placed reliance on the decision of Hon'ble Delhi High Court in Uday Shankar Sinha Vs. Shiping Corporation of India & Another 2001(2) AISLJ 391. The Delhi High Court having regard to the decisions cited therein held that the entire selection can be cancelled in case of gross irregularities but dismissed the writ petition in the circumstances of the case.

15 The Apex Court in University of Cochin Vs. N.S. Kanjoonjmma AIR 1997 SC 2083 held as under :-

It is not in dispute that Rules 14 to 17-A having specifically been adopted by the aforesaid Resolutions of the Syndicate and approved by the University, the power of the University to adopt the Rules has not been challenged. The aforesaid Resolutions do indicate that the University has properly made Rules 14 to 17-A applicable in relation to the recruitment of non-teaching staff to the University in certain posts viz., Class I, Class III and Class IV. In furtherance thereof, the Vice-Chancellor was authorized by the Syndicate to advertise the posts and constitute a Selection Committee for recruitment of the candidates. In furtherance thereof, a Committee was constituted. Advertisement came to be made. It is seen that when the general rules have been made applicable there is no necessity by the University to made a special reservation rule for special recruitment. Therefore, the non-mention of the special recruitment in the Resolution is of little consequence. As seen, the Syndicate adopted the Rules in relation to the non-teaching staff of the University. As a consequence, the advertisement came to be made for special recruitment of the Scheduled Casts and Scheduled Tribes to the posts reserved for them. In fact, the first respondent also had applied for and sought selection but remained unsuccessful. Having participated in the selection, she is estopped to challenge the correctness of the procedure. That apart, we have already held that procedure was correctly followed and, therefore, the omission to mention in the advertisement that it was a special recruitment is of no ¶.

consequence. The further finding of the High Court relates to proviso I to Rule 4 which provides that when duly qualified candidates are available, the appointment shall be made to them. In other words, if duly qualified candidates are not available, then advertisement could be made for selection. That rule is applicable to the general recruitment. But with reference to the special recruitment of the candidates belonging to the Schedules Castes and Scheduled Tribes, Rules 14 to 17-A stand attracted. In addition, as seen earlier, the advertisement came to be made as early as on April 22, 1982 by which time the Resolution of the Syndicate was not adopted, the same having been adopted on March 7, 1982. So, Rule 4 is to the special recruitment advertise on October 1, 1981. Therefore, the later Resolution applying Rule 4 has no retrospective effect. It is contended by the learned counsel for the respondent no.1 that respondent 3 and 4 have left the jobs and so there is no need to disturb the appointment of the first respondent. As they are said to be on foreign service, they are entitled to join back on their posts. Thus considered, the High Court was clearly in error in allowing the writ petition.

16 The Apex Court in C.P.Tiwary Vs. Shakuntala Shukla & Ors. 2002(3) AISLJ 88(SC) has held :-

It is to be noticed at this juncture that while the doctrine of estoppel by conduct may not have any application but that does not bar a contention as regards the right to challenge an appointment upon due participation at the interview/selection. It is a remedy which stands barred and it is in this perspective in Om Prakash Shukla (Om Prakash Shukla V. Akhilesh Kumar Shukla & Ors. 1986 Supp. SCC 285=1986 (3) SLJ 235 (SC) a Three judge Bench of this Court laid down in no uncertain terms that when a candidate appears at the examination without protest and subsequently found to be not successful in the examination, question of entertaining a petition challenging the said examination would not arise.

Subsequently, the decision in Om Prakash stands followed by a later decision of this Court in Madan Lal & Ors v. State of J & K & Ors., 1995 (3) SCC 486=1995(2) SLJ 161 9SC), wherein this Court stated as below :-

Before dealing with this contention, we must keep in view the silent fact that the petitioners as well as the contesting successful candidates being respondents concerned herein, were all found eligible in the light of marks obtained in the written test to be eligible to be called for oral interview. Up to this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the Members concerned of the commission who interviewed the petitioners as well as the contesting A.

respondents concerned. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves selected to have emerged successful as a result of their combined performance both at written test and oral interview, they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In the case of Om Prakash Shukla v. Akhilesh Kumar Shukla (1986 Supp SCC 285) it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination be filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.

Therefore, the result of the interview test on merits cannot be successfully challenged by a candidate who takes a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful. It is also to be kept in view that in this petition we cannot sit as a court of appeal and try to reassess the relative merits of the candidates concerned who had been assessed at the oral interviews nor can the petitioners successfully urge before us that they were given less marks though their performance was better. It is for the Interview Committee which amongst others consisted of a sitting High Court Judge to Judge the relative merits of the candidates who were orally interviewed, in the light of the guidelines laid down by the relevant rules governing such interviews. Therefore, the assessment on merits as made by such an expert committee cannot be brought in challenge only on the ground that the assessment was not proper or justified as that would be the function of an appellate body and we are certainly not acting as a court of appeal over the assessment made by such an expert committee.

There is thus no doubt that while question of any estoppel by conduct would not arise in the contextual facts but the law seem to be well settled that in the event a candidate appears at the interview and participates therein, only because the result of the interview is not 'palatable' to him, he cannot turn round and subsequently contend that the process of interview was unfair or there was some lacuna in the process.

17 The Apex Court in G.N. Nayak Vs. Goa University 2002 (2) AISLJ 308(SC) has held:-

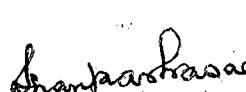
According to the respondent No.5, the amendment of the qualifications for the post of Professor of Marine Science was illegal. It was contended that under Statute 8, it is the Executive Council which has to prescribe the qualifications after considering the recommendations of the Academic Council. According to the respondent No. 5 the qualifications which were prescribed in the 1995 advertisement and hand-out issued to the applicants in connection therewith had not been prescribed by the Executive Council nor recommended by the Academic Council. Whether this is so or not, this is not a grievance which could have been raised by the respondent No.5. He knew that there was change in the eligibility criteria for the post yet he applied for the post and appeared at the interview without protest. He cannot be allowed to now contend that the eligibility criteria were wrongly framed.

18 Considering the facts of this case we find that the applicant participating in the examination without protesting about the condition of without books. The plea is raised subsequently. The contention based on calling excess people for selection or for not sending them to training has no legs to stand upon. The judgment cited by the applicants does not apply to the facts of the case. The decision of Apex Court apply.

19 The OA is fit to be dismissed and is dismissed. No costs.


[Sadhna Srivastava]
Member [Judicial]

pkl/


[Shankar Prasad]
Member [Administrative]