

(26)

Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. 212 of 1991

Date of Decision :

TxNNox

Mr. K. Satyanarayana and 23 others

Petitioner.

Ms. P. Sarada

Advocate for the
petitioner (s)

Versus

The Chief Engineer (Electrical), S.C.Rly, Respondent.

Secunderabad and 3 others

Mr. N. V. Ramana, SC for Railways

Advocate for the
Respondent (s)

CORAM :

THE HON'BLE MR. J. Narasimha Murthy, Member (Judl.)

THE HON'BLE MR. R. Balasubramanian, Member (Admn.)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?
5. Remarks of Vice Chairman on columns 1, 2, 4
(To be submitted to Hon'ble Vice Chairman where he is not on the Bench)

HJNM
M(J)

HRBS
M(A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.212 of 1991

DATE OF JUDGMENT: 30-4-91

BETWEEN:

1. Mr. Kammela Satyanarayana
2. Mr. S.Ramakrishna
3. Mr. Thomas Abraham
4. Mr. V.P.Johney
5. Mr. S.K.Ameer John,
6. Mr. S.A.K.Jeelani
7. Mr. D.Nagi Reddy
8. Mr. J.Devacomorian
9. Mr. K.H.S.Satyanarayana
10. Mr. P.Krishna Murthy
11. Mr. G.Krishna Mohan
12. Mr. Patan Khader Vali
13. Mr. K.Srinivasa Kumar
14. Mr. N.Rama Murthy
15. Mr. ~~ss~~ P.Vijaya Bhaskar
16. Mr. Yesupadam, V
17. Mr. T.Venkateswara Rao
18. Mr. G.Sudarshan Kumar
19. Mr. K.Srinivas
20. Mr. K.Punnalal
21. Mr. Bandi Chiranjeeva Rao
22. Mr. K.Srinivasa Rao
23. Mr. A.Nageswara Rao
24. Mr. P.Ananda Paul

Applicants

AND

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- 1. The Chief Engineer (Electrical)
South Central Railway,
Secunderabad.
- 2. The Divisional Railway Manager,
S.C.Railway,
Vijayawada.
- 3. The Senior Divisional Electrical
Engineer (Maintenance),
S.C.Railway,
Vijayawada.
- 4. The Sr. Divisional Personnel Officer,
S.C.Railway,
Vijayawada.

.. Respondents

✓ COUNSEL FOR THE APPLICANTS: Kum. P.Sarada representing
Mr. P.Krishna Reddy.

✓ COUNSEL FOR THE RESPONDENTS: Mr. N.V.Ramana, SC for Railways

CORAM:

Hon'ble Shri J.Narasimha Murthy, Member (Judl.)

Hon'ble Shri R.Balasubramanian, Member (Admn.)

JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE
SHRI J.NARASIMHA MURTHY, MEMBER (JUDL.)

This is a petition filed by the petitioners for a relief to declare the results of the viva-voce examination held on 16.11.1990 and to direct the respondents to hold selection to fill up the posts of Artisan in the pay scale of Rs.950-1500 (RSRP) against 25% L.D.C.E. quota from serving

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~~skilled~~ semi-skilled and unskilled employees. The facts are briefly as follows:-

All the applicants are working in the Electrical (G.S) Department of Vijayawada Division of South Central Railway as Semi-skilled/unskilled Khalasi-Helpers/Khalasis. All are eligible for being appointed as Artisans in the pay scale of Rs.950-1500 (RSRP). According to Railway Board instructions, the posts of Artisan are filled up, 50% by way of promotion from among employees in the department, 25% from among serving employees through L.D.C.E., and 25% from open market. The applicants are eligible for promotion against 25% L.D.C.E.Quota ~~as per examination~~ since they are in-service candidates and they passed S.S.C. examination. The Senior Divisional Personnel Officer issued a notification calling for applications and intimating the date of written examination for filling up the posts of Artisan against 25% L.D.C.E.Quota enclosing the syllabus for the test. In addition, a list of 81 names who were eligible to appear for examination was also given. The written examination was held on 11.8.1990. A list of all the eligible candidates who have passed in the examination and found suitable to attend the viva-voce was published on 25.10.1990 and the applicants were included in the list. The total number of vacancies to be filled up against L.D.C.E. quota is 27, but only 25 persons have passed the written examination. The viva-voce test was held on 16.11.1990 but so far the results were not published.

2. In the meanwhile, on 5.12.1990, the 2nd applicant while he was working in Vijayawada Station at about 2.15 p.m. was called by his foreman and he was directed to meet the Assistant Engineer (Electrical) who in turn directed him to



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meet some officials who were waiting for him in old retiring rooms of Vijayawada Railway Station. When the 2nd applicant went there, he was served with a question paper which he answered on 11.8.1990 in the written examination, and he was asked to answer again. Under those circumstances, after five months, it is difficult for him to remember all the answers and to write the examination again satisfactorily. Inspite of the same, he answered the papers well. On the same day, the Applicant No.23 was also asked to write the similar examination. On 6.12.1990, five of the applicants and between 6.12.1990 and 16.12.1990, two of the applicants were made to re-write the examination. In addition to directing those applicants to write the examinations again, the vigilance officials have put some questions to the applicants most probably to extract information from the applicants whether they have given any amount as bribe to the departmental employees and in turn whether the departmental officials leaked the written examination papers. As no such thing had taken place, the applicants denied the same. Since the results were not published even after three months thereafter, the applicants sent a notice to the respondents to publish the results. So far the results were not published. Surprisingly, the 4th respondent issued the impugned order dated 1.3.1991 cancelling the entire selection process. The applicants reliably learnt that the respondents are going to hold fresh selections to fill up the posts of Artisans for which the selections were already held. Hence, the order of the 4th respondent in No.B/P.565/II/OL/Vol.II, dated 1.3.1991 is liable to be set-aside.

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3. The respondents filed a counter with the following contentions:-

All the applicants are working in the Electrical G.S. Department, Vijayawada Division, South Central Railway as Semi skilled/un-skilled Khalasi Helpers/Khalasis. According to the avenue provided for Electrical Fitters category in scale Rs.950-1500 (RSRP), 25% of the vacancies are to be filled under Limited Departmental Competitive Examination Quota (L.D.C.E. Quota), by a process of selection from among the serving semi-skilled and unskilled categories of Electrical Maintenance (General Service) staff, who possess the requisite qualification. The selection under this LDCE quota consists of a written and viva-voce examination. To fill up 27 vacancies, a notification was issued on 1.3.1990 calling eligible volunteers for the selection. 81 volunteers applied for this selection out of which 79 appeared for the written test. An employee has to secure a minimum of 50% marks in the written test to come up for consideration of viva-voce. Out of 79 employees, only 25 employees secured 50% or more marks and they were called for viva-voce on 16/17.11.1990. In the meanwhile several written complaints have been received by the Vigilance Branch of South Central Railway during November 1990 alleging that the question paper was leaked-out for monetary consideration and thus undue advantage was gained by some of the candidates. The qualification of the candidates who were called for written test is Xth Class/ITI. It was alleged that because of the leakage of the question paper, junior most candidates have passed the written test due to malpractice and seniors failed. The Vigilance organisation investigated into the matter and



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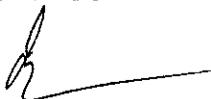
verified the question paper, answer papers and the key of answers given by the officer who set the question paper. The enquiries revealed that the question paper was leaked out to some of the candidates and most of the passed candidates had written answers in a similar way without any correction and they appear to be thoroughly bookish and mugged-up. A few sets of answer papers with Roll Nos. 21 and 27; 42 and 47; 44, 52, 75, 35 & 37, tally with each other. These candidates were sitting in different rooms, but their answers are found tally to a great extent with the 'key' of the answer given by the officer who set the question paper. This also goes to show that not only the question paper was leaked out but answers were also supplied to the candidates in advance.

4. Since undue advantage was secured by some of the passed candidates due to leakage of question paper, the vigilance branch had recommended cancellation of selection and to hold fresh selection without involving the officer who set this question paper. Hence, the Divisional Railway Manager, S.C.Railway, Vijayawada who is the competent authority had taken a decision to cancel the selection which was communicated vide office letter dated 2/1-3-1991. By cancelling the selection, the applicants are not in a disadvantageous position as they will be again given opportunity to appear for the examination. As the results of the viva-voce are not yet published, the applicants have no right to claim promotion. No notice is necessary for cancelling the proceedings already taken place. Nothing precludes the competent authority to cancel the proceedings at any stage of selection, when certain defects/irregularities are noticed. For the above reasons, the application is liable to be dismissed.



5. Ms. P. Sarada, learned junior Advocate to ~~presenting~~ Shri P. Krishna Reddy argued on behalf of the applicants. Shri N.V. Ramana, learned Standing Counsel for the Railways argued on behalf of the respondents. Shri Ramana also produced the relevant records before the Court. We perused the records. In this case, a test was conducted on 5.3.1990 for recruitment to the category of Electrical Fitters against 25% L.D.C.E. quota. After the examinations are over, a list of eligible candidates who passed in the written examination and found suitable to attend viva-voce test was published on 25.10.1990. The list comprises of 25 names including all the applicants and one Mr. Venugopal. Total number of posts to be filled is 27, and 25 persons have passed the written examination. Viva-voce test was held on 16.7.1990 but the results were not published. There were a number of representations received that there was a whole-sale copying in the examination and the question papers as well as the answers ~~were~~ that were prepared by the examiner are leaked-out and the vigilance department took up the investigation and they also tested certain persons and those persons could not write the examination paper again properly. So, the respondents after going through the matter thoroughly, took up a decision to cancel the examination conducted on 5.3.1990. Aggrieved by the cancellation, this petition was filed.

6. Examination dates were given, syllabus was also given and qualifications were prescribed for appointment to the posts. Categorically, a particular section of people who are not diploma holders have passed the written test due to malpractice and all the diploma holders failed in the written test. The vigilance department verified the question paper and answer



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papers and the answers ~~were~~ given by the officer who set the paper. Enquiries of the vigilance branch revealed that the question paper was leaked out to some of the candidates. On verification of the answer papers it was revealed that almost all the candidates who passed in the written examination had written answers in a similar way without any corrections and they appear to be thoroughly bookish and mugged-up. Few sets of answer papers tally with each other, word by word, and they are, Roll Nos. 21, 27, 42, 57 and 35, 37, 44, 52 and 75. These candidates were sitting in different rooms but their answers were found tallying ^{with} each other. Many of the answer papers also tallying to the great extent with the key of the answers given by the officer who set the question paper. By this evidence, it is evident that not only the question paper but also answers were supplied to the candidates in advance. The candidates are not working at one place but they are working at different places. They wrote examination at different rooms but their answers in the narrative portion of the papers are in similar fashion. The question and answer papers are leaked out. It is not possible to write similar stereotyped answers by the candidates. The Divisional Railway Manager, South Central Railway, Vijayawada has taken a decision to cancel the selection and hold fresh examination and the same was communication through a letter dated 1.3.1991. Cancellation of the selection was done by the competent authority after exhaustively examining all aspects and after confirming that the question paper was leaked out and key answers were also leaked out to certain section of the people. The examiners who corrected the papers also expressed that the



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answers are stereo-typed. When the candidates were tested by the investigation officers, two person who wrote the examination were asked to write the answers again. They have very badly done in the re-test. The diagrams drawn by two of the candidates were very bad when compared to the original test.

7. The Assistant Divisional Railway Manager had nominated DEE/TRD/BZA (Mr. Ramachandra Rao) to set the question paper. Subsequently on 14.6.1990 nomination of the officer to set the question paper was changed by the ADRM under his initial without date. According to the alteration, DEE/M (Mr. Sarma) was nominated to set the paper and DEE/TRD/BZA (Mr. Ramachandra Rao) was nominated to evaluate the answer papers. No reasons were recorded by the ADRM for changing the nominations. As per the information of the vigilance department, Shri Sarma, DEE/M collected key file from the personnel branch and approached the ADRM and got the nomination changed in his favour to set the question paper. It is also in the record that the change in the nomination was recorded on 12.1.1991. No valid reasons were given for changing the nomination. Mr. Sarma, Examiner, also expressed his opinion that the answers and the wordings in the narrative portion could be same being technical paper which cannot be accepted since answers in the narrative portion ~~and~~ can surely be written in different manner by the candidates. The questions are not such that answers and wordings should be same. Answers and wordings need not be the same since this is not Mathematics. It is also found that the answer papers of the passed candidates are written in similar way and further tally with the key given by Shri Sarma. It is clear that Mr. Sarma has not only leaked out the question paper but also had given some guidelines

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to the candidates on the lines of key of the answers given by him. The fact that Mr. Sarma approached the ADRM and got the nomination changed in his favour to set the question paper lends the support to the allegation made in the complaints.

8. By noticing similar stereotyped answers from various candidates who wrote the examination in different rooms, it clearly throws a doubt that not only the question paper was supplied to a particular section of the people but also 'key' answers were leaked out to them. In the examination it was also noticed that only SSC and ITI candidates passed the test whereas diploma holders did not pass the test. That was another significant thing in the examination. There is a change of examiner and in the beginning one examiner was set up for this purpose and after that the name of Mr. Sarma was nominated in the examiner's list to prepare the question paper and the key answers. Why and with whose instance the examiner was changed? Reasons were not given. It is also evident that the very examiner admitted that stereotyped answers ~~can be~~ written. All these things put together clearly throws a doubt that there was some mal-practice took place in the examination and that mal-practice is, leakage of papers and the leakage of a key answers to a particular section of people who appeared for the examination. So, it is evident that there is leakage of paper and also key answers. On perusing the answer papers also, it clearly creates a doubt that for three questions, the answers were also equal.

9. The learned counsel for the applicants relied on a decision of the High Court of Andhra Pradesh in W.P. No. 2293 of 1988 (S. Kistaiah and others Vs. The Divisional Superintendent, South Central Railway, Secunderabad). The facts and circumstances

To

1. The Chief Engineer (Electrical)
South Central Railway, Secunderabad.
2. The Divisional Railway Manager, S.C.Rly, Vijayawada.
3. The Senior Divisional Electrical Engineer (Maintenance)
S.C.Rly, Vijayawada.
4. The Sr. Divisional Personnel Officer, S.C.Rly, Vijayawada.
5. One copy to Mr.P.Krishna Reddy, Advocate, CAT.Hyd.
6. One copy to Mr.N.V.Ramana, SC for Rlys, CAT.Hyd.
7. One copy to Hon'ble Mr.J.Narasimha Murty, Member (J)CAT.Hyd.
8. One spare copy.

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are different from the facts and circumstances of this case because in the instant case a list of successful candidates of the written examination was published and result of the oral test was not published. In the instant case, the investigating officers clearly placed answers which were written in a stereotyped manner by certain candidates and it creates a clear doubt that malpractice was took place in the examination and on account of that, the department found based on the investigation report that malpractice was took place in the examination and they have cancelled the examination. The evidence is very clear on the face of it. Whereas in the Judgment cited by the learned counsel for the applicants above, no such clear proof was forthcoming. So, the Department after going through all the aspects, correctly cancelled the examination and they are bent upon ~~xx~~ conducting another examination. So, we feel that the contention of the respondents is quite correct and fraud that was committed in conducting the examination and selecting the candidates ~~xx~~ is proved by the vigilance department regarding the malpractice. There is no need to interfere with the order of the respondents on trivial technical grounds. So, we feel that there are no merits in this petition and the petition is accordingly dismissed. No order as to costs.

N.S

(J. NARASIMHA MURTHY)
Member (Judl.)

R. Balasubramanian
(R. BALASUBRAMANIAN)
Member (Admn.)

Dated: 30. 4. 91

Deputy Registrar (Judl.)