

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 10.09.2001

OA No. 165/2001

1. Nar Singh s/o late Shri Ram r/o E/T/.128, Railway Loco Colony, Jaipur
2. Ajit Yadav s/o Shri Prabhati Lal r/o Hasanpura A, Opposite Hanuman Mandir, Jaipur.
3. Om Prakash Nayak s/o Shri Ram Gopal r/o Q.No.486/D, Railway Double Storey, Phulera.
4. Mangal Chand Malakar s/o Shri Narayan Lal r/o N.263, Near Haridev Joshi Colony, Phulera.
5. Madan Mohan s/o Ramesh Chand r/o 484 K, Railway Colony Double Storey, Phulera.
6. Surendra Kumar s/o Ramjilal r/o Plot No.10, Hailan Happy Colony, Phulera.
7. Shusheel Pancholi s/o Shri Nand Ram Pancholi r/o Q.No.338, Railway AEN Colony, Phulera.

..Applicants

Versus

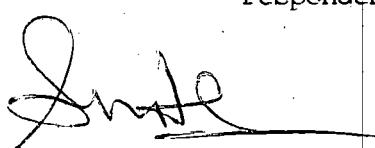
1. Union of India, through the General Manager, Western Railway, Churchgate, Mumbai.
2. D.R.M., Western Railway, Jaipur Division, Jaipur
3. Indra Kumar s/o Shri H.B.Sharma r/o Q.No.1/25, Railway Loco Colony, Jaipur
4. Tarun Sharma s/o Shri Chandra Kant Sharma, r/o Near Railway Institute, Phulera.

.. Respondents

Smt. Pankaj Sharma, counsel for the applicants

Mr. Hemant Gupta, proxy counsel to Mr. M.Rafiq, counsel for the respondents Nos. 1 and 2

Mr. M.S.Gurjar, proxy counsel to Mr. Prahlad Singh, counsel for respondent No.3.



CORAM:

Hon'ble Mr. S.K.Agarwal, Judicial Member

Hon'ble Mr. S.A.T.Rizvi, Administrative Member

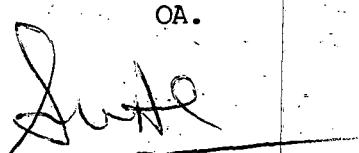
ORDER

Per Hon'ble Mr. S.K.AGARWAL, Judicial Member

In this Original Application filed under Section 19 of the Administrative Tribunals Act, 1985 applicants make following prayers:-

- i) to declare the written test held on 24.3.2001 as illegal and to direct the respondents to re-arrange the same in accordance with rules/regulations.
- ii) to declare the interview held on 27.3.2001 as illegal/invalid as the same was held without declaring the result of written test.
- iii) to declare the selection list dated 30.3.2001 as arbitrary, illegal and unconstitutional as the procedure adopted in selection was contrary to rules/regulations.

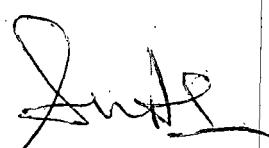
2. The facts of the case, as stated by the applicants, are that respondent No.2 invited applications to fill up the posts under Group 'D' of Scouts and Guide quota and in pursuance of a notification written test was held on 24.3.2001. Thereafter persons who have qualified the written test were interviewed on 27.3.2001 and a list of selected candidates was declared on 30.3.3001. It is stated that the procedure adopted in conducting the written test/interview was contrary to rules and without declaring the result of the written test interview was held. Therefore, it is stated that selection was unfair and the same was liable to be cancelled. Hence, applicants filed this OA.



3. Reply was filed. It is stated in the reply that applicants also filed Civil Suit alongwith stay application before the Additional Civil Judge (JD) Jaipur on 30.3.2001 and Temporary Injunction application was dismissed on 4.4.2001, but what happened to the Civil Suit has not been made clear in this OA. It is stated that applicants appeared in the written test and failed in the written examination. Therefore, they are now estopped to challenge the selection on the ground that procedure was contrary to rules/regulations. It is stated that authorities are the best judge and fully competent to adopt the procedure and once the applicants have passed through that procedure and took examination with the said procedure, it is not open to them to challenge the said examination. Moreover, the applicants willingly without any protest took the written examination with the said procedure and, therefore, they are estopped from challenging the same and, therefore, there is no illegality or invalidity or unconstitutionality in the procedure adopted and hence under Section 14 of the Act of 1985 the applicants have no right to challenge the same. It is further stated in the reply that no prejudice has been caused to the applicants by the said procedure of written examination. All the candidates appeared in the same examination and procedure for all the candidates was same including the applicants. All candidates have been treated equally and they have been subjected to the same test and the same procedure. Therefore, applicants have no case for interference by this Tribunal and the OA is devoid of any merit and is liable to be dismissed.

4. Heard the learned counsel for the parties and also perused the whole record.

5. The law on the subject has been the subject matter of laying down the law by the different Courts/Tribunals including



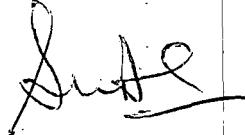
Hon'ble the Supreme Court of India. In University of Cochin v. N.S.Kanjoon Jamma and ors., AIR 1977 SC 2083 wherein it was held by Hon'ble Supreme Court that the petitioner who had taken part in the process of selection is estopped from challenging the criteria adopted by the respondent Bank.

6. In Unemployed Union of Kalkote v. State of J&K, 1998 (2) SCT 685, it was observed in para 19 as under:-

"All the petitioners took part in the selection process. They completed alongwith others; they were not high up in the merit list. If this be the position they cannot turn arround and contend that the process of selection is bad. Where a candidate takes part in the process of selection i.e. takes a chance of favourable decision in his favour, he cannot turn around and challenge the process of selection (See G.Sarana v. Lucknow University, AIR 1976 SC 2428). Justice M.M.Punchi (Now Chief Justice of Supreme Court of India) in Balbir Singh v. State of Punjab 1983 (1) SLR 109, observed that competing candidate who remain unsuccessful are estopped from challenging the process of selection. Another Division Bench of Punjab & Haryana High Court in Rajeshwar Singh v. State 1991 (1) SLR 680, reached the same conclusion. For this reason also the petitions ~~must~~ fail".

7. The same view was expressed in the recent decision reported in Union of India and Anr v. N.Chandrasekharan and ors., 1998 (3) SCC 694 as under:-

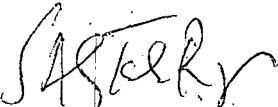
"It is not in dispute that all the candidates were made



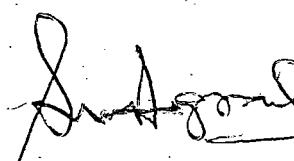
aware of the procedure for promotion before they sat for the written test and before they appeared before the Departmental Promotion Committee. Therefore, they cannot turn around and contend later when they found they were not selected by challenging that procedure and contending that the marks prescribed for interview and confidential reports are disproportionately high and the authorities cannot fix a minimum to be secured either at interview or in the assessment on confidential report."

8. In the instant case admittedly applicants appeared in the written examination without any protest and they failed. For all the applicants appeared in the written examination the same procedure have been adopted meaning thereby that all candidates appeared in the written examination were subjected to the same procedure and given the same treatment. Therefore, in view of the settled legal position and facts and circumstances of this case, applicants are estopped to challenge by contending that procedure adopted in the said examination/interview was contrary to rules. In our considered view, the applicants have no case for interference by this Tribunal and this OA is devoid of any merit and is liable to be dismissed.

9. We, therefore, dismiss this OA having no ~~with no~~ order as to costs.


(S.A.T.RIZVI)

Adm. Member


(S.K.AGARWAL)

Judl. Member