

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 866 of 2004

this the 22nd day of November 2005

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Judicial Member

Jayanth Sarkar & 2 Ors. ... Applicants
(By Advocate - Shri S. Paul)

V e r s u s

Union of India & 3 Ors. ... Respondents
(By Advocate - Shri M.N. Banerjee)

O R D E R

By Madan Mohan, Judicial Member -

By filing this Original Application the applicants
have claimed the following main reliefs :

- "(ii) to set aside the order dated 22/23rd September, 2004 rejecting the representation and the impugned action/selection held of Law Assistant, which runs contrary to the extent of rules and law,
- (iii) to command the respondents to treat the applicant No. 1 & 2 as Regular Law Assistant from the date of their appointment as adhoc Law Assistant,
- (iv) direct the respondents to regularize the applicants as Law Assistant,
- (v) treat the applicant No. 1 & 2 as Law Assistant from the date of their initial promotion as officiating LA with all consequential benefits."

2. The brief facts of the case are that the applicants are presently working in the respondents Department on their respective post. The applicants Nos. 1 and 2 are working as Officiating Law Assistants w.e.f. 26th June, 2003. The performance of the applicants were found to be satisfactory and at no point of time any adverse CR was ever communicated. The applicants were termed as officiating and therefore the term officiating should have been deleted and the applicants should have been treated as a regular appointee on the post of Law Assistant. In the similar



matter in OA No. 557/1991 the Calcutta Bench of the Tribunal vide order dated 17.4.2001 has directed to treat the Law Assistant as regular employee for the reasons stated in the judgment. The applicants also preferred representation to the zonal authorities on 20.10.2003. The applicants appeared in the written examination held on 14.3.2004 and did well. The applicants were expecting their success in view of the excellent performance. The result of the written examination was declared and the name of the applicants does not figured in the list of qualified candidates. The written examination was full of infirmities, such as the selection committee constituted by the department does not consist of any law graduates, the questions are asked from certain Acts, which have no regular application in the Railways such as Payment of Wages Act, Companies Act, Partnership Act, etc. and also the questions were asked out of syllabus. According to the rules an officer of the concerned Department who is also member of the selection Board should set the question paper. Where possible another officer of the concerned department who is also a member of the selection Board should be nominated to evaluate the answer books, ensuring however that the answer books are invariably evaluated by the member officer belonging to the Department for which the selection is held. The question paper was not set up by the person of concerned department nor the answers were evaluated by the officers of the concerned department. The question paper was set up by a person who had no knowledge about the requirement of legal Similarly placed Law Asstts. like Department. /the applicants preferred an OA No. 1484/1999 before the Calcutta Bench of the Tribunal and they were granted the reliefs. The applicants also preferred an OA No. 726/2004 before this Tribunal and it was decided at the admission stage itself on 3.9.2004 directing the respon-



dents to decide the representation of the applicants. The representation of the applicants was rejected by the respondents vide order dated 22/23.9.2004 (Annexure A-1). The selection was fully of irregularities, illegalities and infirmities. Apart from the reasons stated above the pre-promotional training for SC/ST candidates was not given. Feeling aggrieved with the action of the respondents, the applicants have filed the present Original Application.


3. Heard the learned counsel for the parties and carefully perused the pleadings and records.

4. It is argued on behalf of the applicants that the applicants have preferred the representations to the zonal authority on 20.10.2003 (Annexure A-5) requesting to treat them as Law Assistant in the regular capacity without compelling them to undergo the fresh selection. But it was not considered by the respondents. The applicants appeared in the written examination conducted by the respondents on 14.3.2004 and according to their performance they were expecting success in the said examination. Their names were not mentioned in the list of qualified candidates. The respondents have conducted the said written examination with many infirmities. He further argued that the applicants had come to know that none of the members of the selection committee were of the legal Department of the Railways, while it was a mandatory requirement under the rules. The applicants had filed an OA No. 726/2004 before this Tribunal and the Tribunal vide its order dated 3.9.2004 directed the respondents to consider and decide the representation of the applicants. This representation of the applicants was rejected by the impugned order dated 22/23.9.2004 (Annexure A-1). The respondents have not considered the points raised by the applicants in their



representation while deciding the same. Hence, the applicants are legally entitled for the reliefs claimed by them.

5. In reply the learned counsel for the respondents argued that a circular dated 28.10.2003 was issued calling the willing candidates for filling up the 5 posts of Law Assistant in the scale of Rs. 6500-10500/- against the departmental quota. 35 eligible candidates including the applicants were called to attend written examination to be held on 14.3.2004 and their names are appearing at serial No. 35, 12 and 19. The applicants have accepted the fact that they did well in the said written examination and were expecting their success in view of their excellent performance. The applicants should have raised the alleged irregularities or infirmities in setting question papers etc. before appearing in the aforesaid examination or soon after the written examination, whereas they have filed the present OA on 4.10.2004. The posts of Law Assistant to the extent of 66 2/3% are required to be filled up by departmental selection. The selection mentioned in the para 131 is that it of IREM 1989/should be held by a positive act of selection which consist of a written test and viva voce test. In every case the viva voce is a must in terms of Para 215 of Chapter II Section-B of IREM 1989 edition. The applicants could not qualify the written examination and thus according to the principles laid down by the Hon'ble Supreme Court now the applicants cannot question the validity of the examination conducted by the respondents after failing in the same. The post of Law Assistant is a non-gazetted post. Our attention is drawn towards para 218 (a) & (c) of the IREM by the respondents. The provisions of these paras are duly followed by the respondents. They also argued that there is no legal Department in the Railways and in the Railways



there is only Legal cell. The arguments of the applicants that the question paper prepared for the written examination was out of syllabus and the questions were irrelevant as these were asked from the Acts which are not applicable in the Railway administration, is also wrong. The question papers were set up according to the relevant provisions. The respondents have passed a speaking, reasoned and detailed order on 22/23.9.2004 (Annexure A-1) in compliance with the order of the Tribunal dated 726 of 2004 dated 3.9.2004. It is not correct to say that the applicants Nos. 1 & 2 are working as officiating Law Assistant. The applicants are not also working as Adhoc Law Assistant. Even the adhoc Law Assistants also cannot claim regularisation without going the positive act of selection process as per rules and law. There is no rule that selection committee for Law Assistant selection should include Law graduates. However, due care was taken while forming the committee to include 2 JA grade officers of the cadre controlling department one to set the question paper and the other to evaluate. The third member was a JAG officer of the Personnel Department. Even though as per rules the Personnel Officer can be one grade lower, considering the sensitive nature of the selection, it was ensured that the Personnel Branch Officer is a senior JA grade officer. Though the selection committee members do not have a formal law degree, their professional experience of Railway working, including dealing with court cases and various laws, and training at Railway Staff College where legal papers are a part of the curriculum, ensured that the selection committee members were fully competent to conduct the selection. The syllabus was circulated to enable the candidates to prepare for the examination. Circulation of syllabus does not mean that questions will be asked from each and every aspect of the syllabus. As long as questions asked broadly confirm to the syllabus circulated, examinees



cannot contend that the questions should have been represented to a particular section of the syllabus. The respondents have neither committed any illegality or irregularity in their action. Hence, the OA deserves to be dismissed.

6. After hearing the learned counsel for the parties and on careful perusal of the pleadings and records, we find that the applicants have mentioned in paragraph 4.6 of their OA that they have appeared in the written examination which was held on 14.3.2004 and they did well and were expecting for success in view of their excellent performance. But when the result of the written examination was declared their names did not figure in the list of qualified candidates, as they could not qualify in the written examination. Hence, now they cannot raise the irregularities or infirmities in the written examination after failing in the same. We have perused the judgment of the Hon'ble Supreme Court in the case of Union of India & Anr. Vs. N. Chandrasekharan & Ors., (1998) 3 SCC 694. In this judgment the Hon'ble Supreme Court has held that "Selection procedure made known to the candidate before selection - Unsuccessful candidate, held on facts, not entitled to challenge it afterwards". We have also perused paragraphs 218 (a) & (c) of the IREM which supports the contentions of the respondents. As per reply of the respondents in the Railway administration there is no legal Department but there is a legal cell. The argument advanced on behalf of the respondents that there is no rule that selection committee for Law Assistant should include law and graduates, however, they have taken due care while forming the committee to include 2 JA grade officers of the cadre controlling Department, one to set the question paper and the other to evaluate and the third member was a JAG officer of the Personnel Department, seems to be legal and justified. The argument advanced on behalf of the applicants that the



questions were set out of syllabus, seems to be not legally correct as the questions can be asked from various Acts and there is no bar that such type of questions cannot be asked. The applicants should have raised the objections against the said written examination soon after the written examination was conducted. But they appeared in the said examination and after failing in the examination had approached the Tribunal raising the irregularities and infirmities in the said written examination.

7. Considering all the facts and circumstances of the case, we are of the considered view that the applicants have failed to prove their case and this Original Application is liable to be dismissed as having no merits. Accordingly, the same is dismissed. No costs.

8. The Registry is directed to supply the copy of memo of parties to the concerned parties while issuing the certified copies of this order.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

"SA"

पृष्ठान्कन सं ओ/न्या.....जबलपुर, दि.....
पतिलिपि अर्पित:-

- (1) सचिव, उच्च न्यायालय दार एसेलेशन, जबलपुर
- (2) आवेदक श्री/श्रीमती/पु.....के काउंसल
- (3) प्रत्यर्थी श्री/श्रीमती/पु.....के काउंसल
- (4) बंधुपत्न, केप्रा. जबलपुर.....
सूचना एवं आवेदक के.....

उप रजिस्ट्रार

Filed
29.11.5