

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 3397/2014

Reserved on 15.03.2019
Pronounced on: 29.03.2019

**Hon'ble Ms. Nita Chowdhury, Member (A)
Hon'ble Mr. S.N.Terdal, Member (J)**

Sh.Pawan Sharan,
S/o Sh. Tulsi Ram,
R/0 16-1, Police Colony,
Model Town-II, Delhi-110009
(Aged 29 years
Candidate towards Railway Recruitment)

... Applicant

(By Advocate: Mr. M.K.Bhardwaj)

VERSUS

1. Union of India,
Through its General Manager,
Northern Railway, Baroda House,
New Delhi.
2. Railway Recruitment Cell
Through its Assistant Personal Officer,
(Northern Railway), Lajpat Nagar-1,
New Delhi-24.

... Respondents

(By Advocate: Mr.S.M.Arif)

O R D E R

Hon'ble Mr. S.N. Terdal, Member (J):

We have heard Mr. M.K.Bhardwaj, counsel for applicant and Mr. S.M.Arif, counsel for respondents, perused the pleadings and all the documents produced by both the parties.

2. In this OA, the applicant has prayed for the following reliefs:

- (a) call for the records of the case and
- (b) declare that the applicant has been wrongly excluded from the consideration process and consequently denied appointment to post in Pay-Band-1 of Rs.5200-20200 with

Grade Pay Rs.1800/- pursuant to employment notice No.220-E/Open Mkt./RRC/2012.

- (c) direct the respondents to further consider and appoint him to the said post with all consequential benefits.
- (d) if need arise for grant of prayer (b) and (c) above, the respondents be directed to get the answersheet/OMR sheet of the applicant re-evaluated.
- (e) award costs of the proceedings and
- (f) pass any other order/direction which this Hon'ble Tribunal deem fit and proper in favour of the applicant and against the respondents in the facts and circumstances of the case."

3. The relevant facts of the case are that applicant applied in pursuance to Employment Notice No.220-E/Open Mkt./2012 dated 30.08.2012 published in Employment News dated 15-21 September, 2013, for Group 'D' post. He has undergone the entire recruitment selection process. The result of the said examination was declared on the website on 05.02.2014 but the applicant was not short listed. From the internal queries by resorting to some accepted scientific test checks on the answers pattern of the candidates and after further sending it to the most reputed institution, run by Govt. of India for statistical analysis which is based on algorithm system of checking by the expert body and on the basis of the report of the expert body, it was noticed that the applicant had resorted to unfair means by using blue tooth, microphone and high fidelity scanner and clandestine devices and on that basis, the competent authority decided to cancel the candidature of the applicant. The counsel for applicant vehemently and strenuously contended that as the applicant had successfully completed selection process and without giving any opportunity of hearing or Show Cause Notice (SCN) not appointing the applicant is arbitrary and discriminatory on the part of the respondents.

4. The respondents in their counter affidavit have submitted that several lakhs of candidates appeared in the examination and in the advertisement itself there is a specific notice directing the candidates not to resort to such unfair means and that those who are found using unfair means would be dealt with severely including the criminal action. In their counter affidavit they have elaborated the above facts:

“5. That Railway Recruitment Cell, Northern Railway has been entrusted with the responsibility to recruit candidates for the Group D posts where minimum educational qualification has been prescribed as only 10th pass without having any technical education. Hence number of aspirants exceed beyond one could foresee. It can be gauged from the following statistics:-

Recruitment year	Number of vacancies	Number of application received
2010	11439	1402406
2012	7368	1593796
2014	5679	1631131

Because of this huge difference between vacancies and number of aspirants, scope arises for mafia to en cash the scarcity and mint money by trapping innocent candidates in their trap. There is no dearth of IT equipments to induce these candidates in mass copying with promise to get employment by wrong methods. It is sincere endeavour of the respondents to keep the recruitment process just, fair and impartial. This menace, if not tackled while it is at nascent stage, will go out of proportion as anyone got selected by using unfair means would have multiplier effect on the recruitment process. From lakhs of candidates who took examination in different spells, the miscreants have been picked up by using scientific methods taking help of IT and apex institute of the Govt. of India. During the written examination candidates were given 100 questions with four proposed answers, where only one proposed choice was correct. To indicate the correct answer candidates had to darken a bubble of right choice. Therefore, possibility of some bunch of candidates striking the same answer for same question, including right /wrong /unattempt sitting in different classroom/ centers seems to be unacceptable unless it is guided by use of common source of unfair means. This derived scientific analysis indicates that number of candidates using these unfair means was on the increasing trend as the examination progress in the subsequent phases. Because of it Respondents have forbidden all the aspirants in Employment Notice that any candidate caught using unfair means would be dealt with severely and action as deemed fit, including criminal action, would be taken by RRC. Hence

Respondents were not precluded from taking action against such miscreants. Had the action taken not been restored to, applicant and other such candidates would have occupied the position of genuine, honest and laborious candidates and this would have disturbed the equilibrium. Thus action of Respondents has been justifiable and cannot be termed as arbitrary, illegal and discriminatory. Hence Respondents are not further required to prove the applicant's guilt to hilt. When the applicant had not desisted from using unfair means even after being forbidden through employment notice, the applicant does not deserve any sympathetic consideration or they do not deserve any leniency from the Hon'ble Tribunal as it would entice other such candidates to indulge in unnecessary litigation."

In support of the above extracted averments, the counsel for the respondents has relied upon the following judgments:

- (1) **Karnataka Public Service Commission and Ors. Etc. Vs. B.M.Vijaya Shankar and Ors** (JT 1992(4) 348-Supreme Court).
- (2) **Jeetendra Kumar Vs UOI** (OA No. 291/00359/2015-CAT-Jaipur Bench)
- (3) **Shyam Kumar Vs. UOI through General Manager (NR) and Ors.** (OA 3447/2015-Principal Bench)

The counsel for the respondents specifically brought to our notice the following observation made by the Hon'ble Supreme Court in the case of **Karnataka Public Service Commission and Ors. Etc. Vs. B.M.Vijaya Shankar and Ors** (JT 1992(4) 348).

“Does the rule of natural justice has no exception ? Is denial of opportunity of hearing, in every circumstance, arbitrary? The State of Karnataka and the Public Service Commission, through these appeals, seek answer to these questions. They are aggrieved by directions, issued by the Karnataka Administrative Tribunal, to get the answer books of candidates evaluated who in the competitive examinations conducted by the commission for the State Civil Service for categories 'A' and 'B' post, were guilty of writing their roll numbers not only on the front page of the answer books, in the space provided for it, but even at other places in disregard of instructions issued by the Commission. Basis for the direction was failure of the Commission to afford any opportunity to the candidates to explain their bonafide and innocence therefore it was arbitrary and it entailed grave

consequences for those who were aspirants for entering into public service.

Power and authority of the Commission to hold examinations, regulate its working and functioning take action against erring candidates guilty of misconduct are all provided for by the rules and instructions issued in exercise of power conferred by the Statutes. The claim of the candidates that they did not vest any right in the Commission to take such action was negatived by the tribunal. But it faulted in inferring that no penalty was provided for breach of instructions requiring a candidate not to write his roll number inside the answer book. Relevant clause (1) of the Instructions to Candidates is extracted below:

"Before commencing your answers please write your register number and other particulars in the space provided above. Do not write your name or register number or sign any where in the answer book or on any loose sheets, such as precis sheets, maps, graph papers, etc.'

It is not disputed and it was found, even by the tribunal that it was printed on the first page of every, answer book. Its observance was mandatory and its disregard was punishable is clear from instruction (xii) and (xiii) of General Instructions to the candidates which are extracted below:

"(xii) The candidates must abide by such instructions as may be specified on the cover of the answer book or any further instructions which may be given by the Supervisor/Invigilator of the Examination.

(xiii) If the candidates fail to do so or indulge in disorderly or improper conduct, they will render themselves liable to expulsion from examination and or such other punishment as the Commission may deem fit to impose."

Is the expression, 'such other punishment as the commission may deem fit to impose' vague and thus arbitrary? We do not think so. Read with clause (xii) it presents no difficulty. It provides action for breach of that which is, clearly, specified. It cannot be characterised as vague. And then any capricious exercise of power can always be assailed. More important than this is that provisions attempting to infuse discipline in competitive to be conducted by the Commission cannot be construed with same yardstick as a provision in penal statutes. Moreover the Commission did not impose any penalty on the candidates. Their examination was not cancelled nor they were debarred from taking any examination conducted by the Commission for that year or any year, in future. Their marks in papers, other than those in which they were found to have acted in disregard of

instructions were declared. The only action taken was that those answer books in which roll numbers had been written inside were not subjected to evaluation. In our opinion there was nothing, basically, wrong in it. The Commission did not treat it as misconduct. The action could not be termed as arbitrary. Nor it was abuse of power which could be corrected by judicial review

Such instructions are issued to ensure fairness in the examination. In the fast deteriorating standards of honesty and morality in the society the insistence by the Commission that no attempt should be made of identification of the candidate by writing his roll number anywhere is in the larger public interest. It is well known that the first page of the answer book on which roll number is written is removed and a fictitious code number is provided to rule out any effort of any approach to the examiner. Not that a candidate who has written his roll number would have approached the examiner. He may have committed a bonafide mistake. But that is not material. What was attempted to be achieved by the instruction was to minimise any possibility or chance of any abuse. Larger public interest demands of observance of instruction rather than its breach.....”.

5. In view of the facts and circumstances of the case narrated above and in view of the law laid down by the Hon'ble Supreme Court referred to by the counsel for respondents, we are of the view that there is no unreasonableness or discrimination meted out to the applicant, in cancelling the candidature of the applicant.

6. Accordingly, the OA is dismissed. No order as to costs.

(S.N.Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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