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UNION OF INDIA AND ORS.

v.

ANAND KUMAR PANDEY AND ORS.

JULY 18, 1994

B

[KULDIP SINGH AND S. MOHAN, JJ.]

C

Service Law—Selection—Written Test—Viva Voce—Penal—Complaint regarding use of unfair means at one of the Examination Centres—Enquiry—Cancellation of Selection of candidates at the centre concerned—Directions to sit in written examination afresh without affording opportunity—Validity of—Principles of Natural Justice—Applicability of.

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The respondents were included in a penal for non-technical posts in the Eastern Railway. The Penal was prepared by the Railway Recruitment Board on the basis of written examination and *viva voce* test. Subsequently the Railway Authorities received a complaint that the question paper was leaked and the answers were supplied to two candidates who were wards of railway employees and they further sold the pre-solved answers to the other candidates. Consequently large scale unfair means were adopted by candidates and there was mass copying at one of the Centres namely Katihar from where the respondents had sat for the written examination. After conducting an inquiry the Railway authorities held that it was not safe to make appointments based on such examination. Accordingly it directed that 35 empanelled candidates who appeared in exam from Katihar Centre be subjected to fresh examination but the marks obtained by them in the *viva voce* examination should be taken into account. The respondents challenged this order before Central Administrative Tribunal, Calcutta which quashed it on the ground that it was passed in violation of natural justice and directed the appellants to make the appointments on the basis of penal prepared. Against the decision of the Tribunal, Union of India preferred to appeal in this Court.

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Allowing the appeal, and setting aside the impugned judgment of the Tribunal, this Court

HELD : 1. The Tribunal was wholly unjustified in interfering with the order of the appellants calling upon the respondents to sit in the written examination again. In the facts and circumstances of this case on

fault can be found with the action of the railway authorities in calling upon only 35 empanelled candidates to take the examination afresh. A

[754-D, F-G]

2.1. The rules of natural justice cannot be put in a strait-jacket. Applicability of these rules depends upon the facts and circumstances relating to each particular given situation. [754-E] B

2.2. The purpose of a competitive examination is to select the most suitable candidates for appointment to public services. It is entirely different than an examination held by a college or university to award degrees to the candidates appearing at the examination. Even if a candidate is selected he may still be not appointed for a justifiable reason. In the present case the railway authorities have rightly refused to make appointments on the basis of the written examination wherein unfair means were adopted by the candidates. No candidate had been debarred or disqualified from taking the exam. To make sure that the deserving candidates are selected the respondents have been asked to go through the process of written examination once again. Therefore, there is no violation of the rules of natural justice in any manner. [754-G-H & 755-A] C D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4828 of 1994.

From the Judgment and order dated 20.12.91 of the Central Administrative Tribunal, Calcutta Bench in O.A. No.966 of 1989. E

Altaf Ahmed, Additional Solicitor General, A.S. Bhasme and V.K. Verma for the Appellants.

Tapas Ray and D.P. Mukherjee for the Respondents. F

The Judgment of the Court was delivered by

KULDIP SINGH, J. Special leave granted.

The Railway Recruitment Board, Patna held written examination followed by *viva voce* test for selection and recruitment to various posts of non-technical popular categories in the Eastern Railway. A panel of selected candidates was prepared and published. Meanwhile in an investigation, conducted on a complaint received by the railway authorities, it was found that unfair means were adopted by the candidates at Centre No. H

- A 115 (Katihar). The question for consideration before the Central Administrative Tribunal (Tribunal) was whether in such a situation the railway authorities could cancel the selection and empanelment of the candidates from centre No. 115 and direct them to sit in the written examination again? If so could it be done without complying with the rules of natural justice ? The Tribunal answered the questions in the negative and quashed the order of the railway authorities calling upon the candidates to sit in the written examination once over again. This appeal by way of special leave is against the judgment of the Tribunal.

- C The Railway Recruitment Board, Patna invited applications for selection and recruitment to various posts of non-technical popular categories in the Eastern Railway. The selection was to be made as a result of written examination and a *viva voce* test. A large number of candidates including the respondents appeared in the written test from various centres in the city of Katihar. All the respondents, in the appeal herein, sat for the written examination at centre No. 115 called "Darshan Shah Mahavidyalaya", Katihar. It is not disputed that the respondents qualified in the written examination as well as in the *viva voce* test and their names were included in the panel of selected candidates which was published on September 23, 1988. Meanwhile a complaint dated September 1, 1988 was received by the railway authorities wherein it was alleged that large-scale unfair means were adopted by the candidates such as leakage of question papers and mass copying at centre No. 115, Katihar.

- F Mr. Altaf Ahmed, learned Additional Solicitor General, appearing for the appellants has placed on record the copies of the complaint, Inquiry Reports and noting part of the file (confidential) for our consideration. Secretary (Vigilance), Railway Board directed an inquiry into the complaint through General Manager (Vigilance). Preliminary investigation report was sent to the Secretary on November 30, 1988. Finally the Deputy Director (Vigilance) held detailed inquiry into the allegations and sent his report dated July 19, 1989 to the Executive Director (Vigilance). The report was examined in detail at various levels in the Railway Ministry and finally a decisions was taken that 35 candidates of centre 115 be subjected to a fresh written examination. It was further decided that marks already obtained by them in the *viva voce* examination would be taken into account. It was further directed to complete the fresh examination within a period of one and a half month. The file shows that the decision was finally approved by the Minister in charge.

As mentioned above, the decision of the appellants directing the respondents to appear in a written examination once again was challenged by them before the Central Administrative Tribunal, Calcutta. The Tribunal by the impugned judgment dated December 20, 1991 set aside the order of the appellants and directed the appellants to make the appointments on the basis of the panel which was published on September 23, 1988. While issuing notice in the special leave petition this Court stayed the operation of the impugned judgment of the Tribunal.

The Tribunal set aside the order, directing the respondents to sit in the written examination again, on the short ground that a penal of selected candidates having been prepared published the same could not be cancelled without assigning any reason and without affording an opportunity to the empanelled candidates. We are of the view that in the facts and circumstances of this case the Tribunal fell into patent error in interfering with the order of the appellants.

The inquiry report and the noting on the file show that the railway authorities rightly came to the conclusion that there was large scale copying in centre No. 115 Katihar. The inquiry report reveals that overall pass percentage in the written examination for all the centres at Katihar was 0.6% whereas the pass percentage in two rooms at centre No. 115 alone was 45.4%. It would be useful to have a look at the following data relied upon by the railway authorities :

"S. No.	Location	Candidates	Passed Written	Pass %age
1.	Room 22 & Staff Room	44	20	45.4%
2.	D.S. College (excl'dg. Room 22/ staff room)	1155	15	1.3%
3.	Overall for Katihar (excl'dg room 22/ Staff Room of Ds College)	6618	40	0.6%"

General Manager (Vigilance) in para 4 of preliminary investigation dated January 19, 1989 addressed to Secretary (Vigilance) Railway Board has stated that S/Sri A.K. Pandey and A.K. Kamati named in the complained appeared in the written examination from the staff room and both of them have secured the highest marked in the centre and both of them have given identical "wrong and correct" answers. The wrong answers cannot be

- A identical unless the two candidates have copied from the same source. The main allegation in the complaint was that the paper was leaked beforehand and the answers were supplied to these two candidates who were the wards of the railway employees. It was further alleged in the complaint that these two candidates further sold the pre-solved answers to the other candidates in the centre. One of the complainant himself was a candidate and appeared from the same centre. Bibha Kumari another candidate filed a statement before the Inquiry Officer saying that she was a candidate in the selection and appeared in the written test from centre No. 115. She stated that examination started late and in the examination hall chits were being supplied to the particular candidates.

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- D The railway authorities, relying upon the material placed on the record by the inquiring agency came to the conclusion that it was not safe to make appointments based on the written examination wherein unfair means were adopted on a large scale. We see no ground to differ with the conclusions reached by the railway authorities. The Tribunal was wholly unjustified in interfering with the order of the appellants calling upon the respondents to sit in the written examination again.

- E This Court has repeatedly held that the rules of natural justice cannot be put in a strait-jacket. Applicability of these rules depends upon the facts and circumstances relating to each particular given situation. Out of the total candidates who appeared in the written test at the centre concerned only 35 candidates qualified the test. In that situation the action of the railway authorities in directing the 35 candidates of centre 115 to appear in a fresh written examination virtually amounts, to cancelling the result of the said centre. Although it would have been fair to call upon all the candidates who appeared from centre 115 to take the written examination again but in the facts and circumstances of this case no fault can be found with the action of the railway authorities in calling upon only 35 (empanelled candidates) to take the examination afresh. The purpose of a competitive examination is to select the most suitable candidates for appointment to public services. It is entirely different than an examination held by a college or university to award degrees to the candidates appearing at the examination. Even if a candidate is selected he may still be not appointed for a justifiable reason. In the present case the railway authorities have rightly refused to make appointments on the basis of the written examination wherein unfair means were adopted by the candidates.
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No candidate had been debarred or disqualified from taking the exam. To A
make sure that the deserving candidates are selected the respondents have
been asked to go through the process of written examination once again.
We are of the view that there is no violation of the rules of natural justice
in any manner in the facts and circumstances of this case.

We, therefore, allow the appeal, set aside the impugned judgment of B
the Tribunal and dismiss the application of the respondents filed before
the Central Administrative Tribunal, Calcutta. No costs.

T.N.A.

Appeal allowed.