
(2000) 11 AHC CK 0109
In the Allahabad High Court
Case No : C.M.W.P. No. 31168 of 2000

Union of India and another	Vs	APPELLANT
Vinod Kumar Mani Tripathi and others		RESPONDENT

Date of Decision : 28-11-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 1 AWC 395 : (2001) 1 UPLBEC 397

Hon'ble Judges : R.K. Dash, J; Palok Basu, J

Bench : Division Bench

Advocate : A.K. Gaur, for the Appellant; J.J. Munir, J.N. Sharma, T.P. Singh, U.N. Sharma and Senior Counsel, for the Respondent

Final Decision : Allowed

Judgement

R. K. Dash, J.—These two writ petitions arise out of a common judgment and order passed by Central Administrative Tribunal, Allahabad Bench. Allahabad in Original Application Nos. 180 of 1998 and 750 of 1999. Since, common questions of law and fact are involved in both these writ petitions, they were heard analogously and are disposed of by this judgment.

2. Railway Recruitment Board (for short "the Board") Northern Railway, Allahabad issued advertisement vide Employment Notice No. 3/96-97 inviting applications from eligible candidates for selection of different categories of posts numbering 18 of which category No. 4 relates to Section Engineer (P.Way). There were in total seven posts of which three relate to general category, three to O.B.C. and one to Schedule Caste. Respondent Nos. 1 to 5 being Engineers applied to the said posts and appeared in the written test conducted by the Board. After merit list of 23 candidates was prepared, notice was published in the newspaper informing successful candidates to appear for viva voce test. The roll number of respondent No. 1, Vinod Kumar Mani Tripathi being not there in the select list, he moved the Central Administrative Tribunal, Allahabad, respondent No. 6 challenging the whole process of selection by filing Original Application No.

180 of 1998. His case in nutshell was that he had secured 106 marks out of full mark 120 but surprisingly, he was not declared to have been selected whereas candidates having secured 103 and 105 marks were selected and called for viva voce test. To the application, he attached a statement indicating the roll number of the candidates and the marks secured by them in the written test. He made serious allegations against the Board and its officials in conducting the selection alleging that there were a lot of bungling done at the behest of Sri S. P. Saroj, Ex-Chairman of the Board and one Nipendra Singh (respondent Nos. 2 and 3 in the Original Application) for their personal gain. According to him, they changed the original copies of the answer sheets and got the marks awarded in order to show favour to those candidates of their choice. It was further alleged that Sri S. P. Saroj and Nipendra Singh were very close to each other and the latter parted with his Maruti Car to Sri Saroj as long as he was holding the office of the Chairman. Money power played a vital role in the entire selection process and those who could grease their hands become successful to get their names included in the merit list, but as he did not succumb to such illegal demand, his name was omitted though he had secured good marks. It was specifically alleged that with the money earned, Sri Nipendra Singh constructed a house fitted with four A.Cs. in Judges Colony, Stanley Road, Allahabad, besides he purchased property at Nagpur City on payment of Rs. 15 lakhs. Since the whole selection process was vitiated, inasmuch as, the selection was made on "give and take" basis by S. P. Saroj and Nipendra Singh, in order to weed out corruption in the highest level a roving enquiry should be conducted by the C.B.I. While making all these allegations, he prayed that the Board and its functionaries be directed to permit him to appear in the viva voce for the post of Section Engineer as he had secured marks more than those whose names were published in the select-list and in the event, he was found successful further direction be given to appoint him on the said post.

3. Having entertained the Original Application of Vinod Kumar Mani Tripathi, the Tribunal passed the interim order that the viva voce test may be held, but the result shall not be declared till the next date. Pursuant to the said order, the candidates whose names found place in the merit list appeared in the vice voce test but the result was not declared. Subsequently, the aforesaid interim order was modified to the extent that the result of the interview be declared and till disposal of the case, one post be kept reserved so that in case the application was allowed, the vacant post would be made available to Sri Tripathi. Even thereafter when the Chairman of the Board did not declare the result, four successful candidates (respondent Nos. 2 to 5) applied for being impleaded as parties and prayed for a direction to the Chairman to declare the result. Initially Chairman, took the stand that selection process was fair and applied to the Tribunal to allow him to declare the result of the interview. But after Sri P. K. Gupta joined as Chairman, the matter took altogether a different turn. He moved the Tribunal for permission to cancel the selection since such a decision was taken by the authorities of the Railway Board. This led the respondent Nos. 2 to

5 to file a separate Original Application No. 750 of 1999. They asserted that there being no acceptable material that there were serious lapses or illegalities committed by the Recruiting Agency in the process of selection, the entire select list should not be cancelled and, therefore, the decision taken by the authorities, to cancel the selection was illegal and unsustainable in law. If at all the authorities were of the opinion that the secrecy could not be maintained, in other words, the marks secured by the candidates in the written test could be made known to the public blame must go to the Board but for that, successful candidates should not suffer. They also challenged the decision of Chairman for holding fresh interview pursuant to the direction of Government of India, Ministry of Railways.

The Board through its Chairman Gurnam Singh Rekhi filed return urging that in the matter of selection it is the usual procedure to scrutinise the application forms of the candidates at two stages one, before the written examination and the other before the viva voce, so that any discrepancy/deficiency may not go unnoticed. In the case on hand, the application forms of Sri Vinod Kumar Mani Tripathi and some others were cancelled at the second stage of scrutiny since the same were not properly filled-in in terms and conditions specified in the employment notice. Therefore, no bias or ill will could be imputed to the Board or its functionaries for taking such a decision. He asserted that with due fairness, interview was conducted by a panel of seven members and there was no ground warranting interference in the matter of selection by the Tribunal. He, however, urged that in view of leakage of the answer sheets, direction should be issued for necessary investigation as to how the copies of confidential report pertaining to evaluation of answer-sheets could reach the hand of Sri Tripathi.

4. Sri Vinod Kumar Mani Tripathi in his rejoinder-affidavit asserted that once his application was accepted and he was allowed to sit in the written test, his candidature should not have been rejected when he was found to have qualified having secured 106 marks out of full mark of 120. He reiterated the stand taken in his original application that fraud and perjury was committed by the Board in the process of selection, therefore, the documents pertaining to the recruitment in question should be made public so that its manner of functioning in the matter of selection could be judged. Sri P. K. Gupta, who subsequently joined as Chairman of the Board suspected the fairness in the process of written examination for the reason that no secrecy was maintained in the matter of awarding marks and copy of the mark-sheet could reach the hand of one of the candidates. So, he made sample investigation of the answer papers of top four candidates of the merit-list and to his utter surprise found that signatures of the invigilator were forged when compared to remaining answer-sheets. That apart, those four answer-sheets were thicker, yellowish and the stamp placed on the backside thereon had different colour of ink, font and style as compared to the batch. Moreover, question No. 120 which was a descriptive type and was required to be written in four or five lines was not attempted at all by those four candidates presumably being apprehensive that their handwriting may be

detected. Taking all these circumstances into account, the whole process of selection of twelve categories of posts were cancelled.

5. In view of the pleadings of parties, the following issues came up before the Tribunal for consideration :

(1) Whether cancellation of candidature of Sri Vinod Kumar Mani Tripathi was legal and proper?

(2) Whether cancellation of the process of selection of category No. 4 in question on the basis of the enquiry/ investigation by Sri P. K. Gupta was justified?

6. As regards issue No. 1. admittedly Sri Tripathi was one of the candidates and he appeared in the written examination conducted by the Board. He was, however, not called to appear viva voce test since according to the Board, during second stage of scrutiny, his application form was found to have not been properly filled in, inasmuch as, employment notice number and the nature of post as well as the category thereof were not indicated in the application form. This being the only ground of rejection of his application, the Tribunal held that in view of the fact that other informations furnished in the application being sufficient to identify his candidature, it was wrong on the part of the Board to reject the application on technical grounds. The Tribunal further held that such technicality should not have weighed with the mind of the Board once admit card was issued and permission was accorded to sit in the examination. So instead of rejecting the application, proper course would have been to ask Sri Tripathi to supply the omission appearing thereon. These findings of the Tribunal, in our opinion requires interference of this Court in exercise of writ jurisdiction.

7. Sri Tripathi while challenging the rejection of his application by the Board made serious allegation questioning the fairness of selection alleging that corruption and favouritism played vital role in the process of selection. This created suspicion in the mind of the Chairman Sri Gupta who succeeded Sri Rekhi that there may be some truth in the allegation since copy of the mark-sheet which was a part of the confidential record reached the hands of Sri Tripathi. So, in order to ascertain whether the selection process was fair and proper. Sri Gupta made an enquiry, in course of which he picked up the answer-sheets of top four candidates of the merit list and to his utter surprise, found the signatures of the invigilator to be forged as compared to the remaining answer-sheets. He noticed the signature to be "unsure" and on hesitant line not in flowing manner. Besides, the answer-sheets were thicker, yellowish and different from the batch and stamps appearing on the back of the booklets were also found to be different in colour, ink and style. Over and above, on going through the answer papers, he found that descriptive question No. 20, was not attended to by those four candidates for fear of their handwriting being identified at the time of evaluation. On these findings, Sri Gupta was prima facie satisfied that the examination was not fair and the candidates resorted to evil-practice for being selected. This led him to take a decision to cancel the examination and

consequent selection. But since the matter was sub-judice in the Tribunal, permission was sought before giving effect to the decision. With regard to the decision of the Chairman to cancel the examination for the reasons as aforesaid, the Tribunal in paragraph 15 of the judgment held that before taking such extreme steps, he should have tried to bring on record the direct evidence. Inasmuch as. he should have summoned and examined the invigilator to ascertain whether the signatures appearing on the answer-sheets are real or forged. Besides, he should have also ascertained from the invigilator and obtained an explanation regarding change of texture and colour of the answer-sheets and the stamps appearing on the back thereof. So, without holding any such fact-finding enquiry, he should not have cancelled the examination on the basis of personal observation and opinion. Having held thus, the Tribunal directed the Board to allow Sri Tripathi to appear in the viva voce test and to declare the final result of the selection for the posts of Section Engineer (P. Way).

8. Sri A. K. Gaur learned counsel appearing for the petitioner Board though challenged the findings of the Tribunal recorded on both the issues, he however, laid stress on the correctness of the findings and ultimate conclusion arrived at on the issue No. 2. He emphatically urged that no malice or illwill can be attributed to the Chairman of the Board for taking a decision to cancel the examination in question. His decision being administrative one. the correctness thereof cannot be judged with same rigour as applied to judicial decision when challenged in the higher Court. He submitted that the findings of the Chairman are based on sound reasonings and unless and until those are shown to have suffered from unreasonableness and lack of good faith judicial interference is uncalled for and in that view of the matter the decision of the Tribunal upsetting those findings is unsustainable in law.

9. Per contra, learned counsel appearing for respondent Nos. 2 to 5 submitted that the then Chairman Sri G. S. Rekhi having admitted in the Application No. 1443 of 1998 filed before the Tribunal that the selection process held by the Board was fair and impartial his successor Sri Gupta could not have gone back to such admission and held otherwise saying that irregularities and forgeries were committed in the selection process. Referring to the judgment of the Supreme Court in the case of Asha Kaul (Mrs) and Another Vs. State of Jammu and Kashmir and Others, it was contended that in view of the settled proposition of law that selection cannot be cancelled arbitrarily and on flimsy ground, in other words, decision to cancel can be taken only after due enquiry, and in the present case there being no enquiry whatsoever, the findings of the learned Tribunal in not giving approval to the decision of the Chairman of the Board cancelling the examination cannot be faulted with. Elaborating the submission it was urged that there was no tangible evidence that the candidates who came out successful in the written test had adopted any unfair and illegal means and merely because one of the successful candidates obtained the copy of the mark-sheet, the same cannot be a ground to cancel the examination. It was lastly, contended that the respondents are Engineering Graduates and being hopeful to get into public

employment appeared in the interview and for no fault of theirs and without giving them any opportunity of hearing, the Board took an ex-parte decision to cancel the examination and if this decision is approved their future would be marred since they being over-aged cannot appear in any examination for entering into public employment.

10. Counsel appearing for respondent No. 2 supported the arguments advanced by other respondents.

11. Before advertng to the contentions raised at the Bar, at the outset it is necessary to have a glimpse on the law with regard to scope and ambit of judicial review of the administrative decision of the executive. Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made. Judicial review is entirely different from an ordinary appeal. There is a note of caution for exercise of power of judicial review by Lord Scarman in *Nottinghamshire County Council v. Secretary of State for the Environment*. 1986 AC 240, in the following words :

"Judicial review "is a great weapon in the hands" of the Judges ; but the Judges must observe the constitutional limits set by our Parliamentary system upon the exercise of this beneficent power."

12. The grounds on which an administrative action can be brought within the purview of judicial review are classified as under :

(i) Illegality,

(ii) Irrationality, namely, unreasonableness,

(iii) Procedural impropriety.

By "Irrational" means "Wednesbury unreasonableness". It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standard that no sensible person who had applied his mind to the question to be decided could have arrived at. (See *Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn.* (1948) 1 KB 223. Therefore, judicial review is permissible where the Court finds that no authority acting reasonably could have reached such administrative decision. Sir William Wade in his book *Administrative Law* (Seventh Edition at page 339) sapiently observed that :

"the doctrine that the powers must be exercised reasonably has to be reconciled with no less important doctrine that the Court must not usurp the discretion of the public authority which Parliament appointed to take the decision. Within the bounds of legal reasonableness is the area in which the deciding authority has genuinely free discretion. If it passes those bounds, it acts ultra vires. The Court must, therefore, resist the temptation to draw the bounds too tightly, merely, according to its own opinionif the decision is within the confines of reasonableness. It is no part of the Court's function to look further into its merits."

13. The concept of reasonableness in administrative action has been elaborately dealt with by the Supreme Court in the case of G.B. Mahajan and others Vs. The Jalgaon Municipal Council and others,

14. In the celebrated judgment in the case of Tata Cellular Vs. Union of India, , the Hon"ble Supreme Court having made reference to a catena of judicial pronouncements on the question of judicial interference in the administrative decision observed that since the Court does not sit in appeal over such decision but merely reviews the manner in which it was made, the Court must exercise utmost restraint while exercising the power of review, else it would be guilty of usurping power. Therefore, if the authority takes a decision on the basis of some materials which a reasonable person could have taken in that case judicial review is not permissible. On the other hand, if the decision is based on no legitimate reasons and is actuated by bad faith, then judicial interference would be the proper remedy to undo the wrong.

15. Keeping the aforesaid legal principles in mind, it is now to be judged whether the ultimate conclusion of Sri Gupta. Chairman of the Board to cancel the examination suffers from unreasonableness and whether the decision taken by the Tribunal in not putting its seal of approval thereon requires interference of this Court in exercise of writ jurisdiction under Article 226 of the Constitution. We are conscious of legal position about the jurisdiction of High Court in the matter of interference in the orders of the Tribunal. It needs no emphasis that jurisdiction is supervisory and not appellate. Article 226 is not intended to enable the High Court to convert itself into the Court of appeal and examine the correctness of the decision of Tribunal. But on a perusal of the order of the Tribunal if the High Court comes to a conclusion that the Tribunal has committed a manifest error or that on the available material, it is not possible for a reasonable man to come to a conclusion arrived at by the Tribunal or that the Tribunal has ignored to take into consideration certain relevant materials or has taken into consideration such materials which is not admissible, then the High Court would be justified in interfering with the findings of the Tribunal.

16. To repeat with, in the present case Sri Gupta. Chairman of the Board in order to ascertain whether selection process was fair and proper picked up answer-sheets of top four candidates and on enquiry found.....

(i) that the signatures of invigilator appearing in those answer-sheets to be forged as compared to the remaining answer-sheets since the same were "unsure" and on hesitant lines not in flowing manner :

(ii) that the answer-sheets were thicker, yellowish and different from the batch ;

(iii) that the stamps appearing on the back of those booklet (answer-sheets) were found to be different in colour, ink and style : and

(iv) that the descriptive question No. 20 was not attended to by those four candidates for fear of the handwriting being identified at the time of evaluation of

the answer-sheets.

17. Tested with the principles of "reasonableness", it cannot be said that the ultimate decision of the Chairman cancelling the examination on the basis of the findings as aforesaid was unreasonable and no prudent man could have arrived at such decision.

To naked eye, he found that the four answer-sheets were quite dissimilar to others in size, colour and the stamp/seal appearing on the back thereof had a different colour of ink, font and style. Besides the signature of the invigilator also appeared to be forged as compared to others. From all these, what appears is that the written examination conducted by the Board was an eyewash. The officials entrusted with the duty of conducting the examination betrayed the trust reposed in them. They in order to help the candidates for whom they were interested for obvious reason substituted the answer-sheets in place of originals by forging the signature of the Invigilator. In our considered opinion, examination was not fair and above-board. This observation of ours gains support from the other attending circumstance, inasmuch as, no secrecy was maintained in the matter of awarding marks to the candidates in the written examination. It was expected of the Board and its officials to keep the mark-sheet of the candidates of the written examination in sealed cover so long as viva voce was not concluded. No sensible man can appreciate the manner the records of the written examination were handled by the officials. Sri Tripathi, respondent No. 1 being one of the candidates, could be able to get a copy of the mark-sheet of the written test and place the same on record before the Tribunal. It cannot, therefore, be denied that the officials having control over the confidential record parted with the copy of the mark-sheet to Sri Tripathi. In such circumstances, Court cannot be a mute spectator and approve corruption, nepotism and favouritism that prevailed in the selection and permit the candidates having come out successful in such selection to enter into public service. It need not be emphasized, competitive examinations are required to be conducted by the authorities concerned in strict manner to get the best brain. Public interest involved in such service requires no compromise. Therefore, any violation of it should be dealt with strong hand.

18. Corruption, favouritism and nepotism have become order of the day. It has affected the whole society like AIDS. Corrupt people have taken place of pride in the society. These people supported by the hypocrites shamelessly commit crime in broad day light, as a result, the whole society is affected. In crime graph, corruption has reached such a high proportion that unless right minded people come forward to check it, it may lead to social disorder. The Court has vital role to play when such matter comes to its notice.

19. The argument advanced by the learned counsel appearing for respondent Nos. 2 to 5 that in view of the law laid down in *Asha Kaul* (supra) that a detail enquiry ought to have been conducted by the Board before cancelling the examination merits no consideration. The decision of the Supreme Court in the

aforesaid case was rendered in altogether different fact situation and therefore, the same has no application to the case in hand. In that case, some of the candidates whose names were there in the select list for appointment as Munsifs approached the High Court of Jammu and Kashmir since the Government did not approve and publish the list. The learned single Judge allowed the petition directing the State Government to approve the list, but on appeal by the State, the Division Bench disagreed with the learned single Judge. It held that the Government was not bound to fill up the existing vacancies and mere inclusion of names in the select list did not confer upon the candidates any indefeasible right to appointment. The matter was then carried to Supreme Court. It was contended that Government had not disclosed the reason for not approving the remaining names while approving the list of 13 candidates and so its action was arbitrary, capricious and vitiated by inadmissible and extraneous consideration. On behalf of the State, the main contention was that a large number of complaints were received by the Government against the selection and many of them were found to be not without substance. This being the submission of the State, their Lordships observed that if the Government was satisfied after due enquiry that selection had vitiated either on account of violation of fundamental procedural requirement or was vitiated by consideration of corruption and favouritism, it can refuse to approve the select list. But while doing so, it was bound to record the reasons for its action and produce the same before the Court if and when summoned. This observation of their Lordships should not be read in isolation. It should be read and interpreted in the context and circumstances it was rendered. In the present case, it cannot be said that no enquiry whatsoever was made by the Chairman of the Board. As stated earlier, he verified and scrutinized the answer-sheets of four top candidates and for the reasons indicated in the preceding paragraph, came to hold that the examination was not fair and proper. In that view of the matter, the Tribunal ought not to have interfered with and reviewed the decision of the Chairman as if it was exercising the power of appellate authority.

20. In the result, both the writ petitions are allowed. The impugned orders passed by the learned Tribunal in the aforesaid two cases sitting over the decision of the Chairman and directing the Board to allow Sri Tripathi to appear in viva voce test and finally to declare the result of the examination are quashed. There shall be no order as to costs.