

CASE NO.:
Appeal (civil) 1326 of 2002

PETITIONER:
UNION OF INDIA & ORS.

Vs.

RESPONDENT:
O. CHAKRADHAR

DATE OF JUDGMENT: 19/02/2002

BENCH:
G.B. Pattanaik & Brijesh Kumar

JUDGMENT:

Brijesh Kumar, J.

Leave granted. Heard learned counsel for the parties.

The appellants, Union of India and others have impugned the judgment and order dated July 18, 2002 passed by the High Court of Andhra Pradesh, dismissing their writ petition assailing the order passed by the Central Administrative Tribunal by which the Tribunal had set aside the termination of the services of the respondent.

The Railway Recruitment Board, Bangalore issued an advertisement notice 4 of 1995 for recruitment to the posts of Junior Clerk Cum Typist. In pursuance of the selection held, the respondent was appointed as Junior Clerk cum Typist on 28.6.1996. After about three years of appointment, a communication dated 21.4.1999 was received by the respondent from the Railway administration relevant part of which has been quoted in the order passed by the Central Administrative Tribunal. It is re-produced below:-

"Now it has come to notice of Railway Board that RRB Bangalore has not subjected the candidates to typewriting test which was an essential recruitment besides there being certain serious irregularities in the conduct of examination. The Railway Board after considering the matter totally and taking into account the report of CBI and serious nature of irregularities in conduct of selection have decided to cancel the entire panel and to terminate the services of all the candidates appointed on South Central Railway by giving the notice as per rules"

The service of the respondent was terminated by order dated 18.8.1999. The respondent preferred a petition before the Central Administrative Tribunal challenging the order of his termination among other on the ground that the respondent was not responsible for any kind of irregularity and in case it was committed by the Railway Recruitment Board he could not be held responsible for it. It could not be said that each and every selected candidate was involved in it, if at all. Hence, a

decision to terminate the services of all the appointees or to cancel the selection was bad. The other ground of challenge is that proper show cause notice should have been individually issued to each selectee so as to enable him to submit his proper explanation in respect of the allegations of irregularities, in absence of such a notice the termination order is bad being in violation of principles of natural justice.

The Central Administrative Tribunal while deciding the case held that merely saying that serious irregularities were committed in conducting the selection or that typing test was not held, such general allegations could not be enough to take a decision to cancel the whole selection. It is also observed that the show cause notice which was issued is silent about any irregularity in the selection which could be attributable to the applicant. Therefore the show cause notice was inadequate and incomplete. It has further been observed that the report of the CBI cannot be the only refuge for cancellation of the selection, but its contents should have been brought to the knowledge of applicant in a concise form to enable him to give a proper reply but it was not done by the administration. Thus in absence of proper notice and opportunity to the candidate, the order of termination of the applicant stands vitiated. The Tribunal also observed that the CBI report was also not placed before it. With the above findings the termination order was set aside providing that proceedings could be initiated de novo by issuing fresh show cause notice in the light of the observations made in the judgment.

The writ petition preferred by the appellant against the order of the Central Administrative Tribunal was dismissed as indicated earlier. The judgment of the High Court in the writ petition is also based mainly on the ground of violation of principles of natural justice and that the notice which was given to the candidates was vague which amounted to no notice at all. Hence, no proper cause could be shown against such a notice.

Shri Mukul Rohtagi, learned Additional Solicitor General appearing on behalf of the appellants has placed reliance on a decision reported in 1994 (4) S.C.C. 165 Krishna Yadav versus State of Haryana and on the basis of the same it has been vehemently urged that in a case where irregularity committed in the process of selection is all pervasive vitiating the whole selection in that event it would not be required that each selectee be served with individual show cause notice. In such circumstances it will be open to cancel the whole selection. Shri P.S. Misra, learned senior counsel appearing for the respondent has, however, urged that it was necessary to make known to the respondent appointee about the exact and precise nature of the irregularity committed as well as misconduct if any attributable to him so that it could be possible for him to have explained the position which has otherwise adversely affected the respondent. It is further submitted that the order of termination is in clear violation of Article 311 of the Constitution as on the basis of show cause notice as issued, it was incumbent upon the appellant to hold an enquiry and then alone pass an order of punishment, not otherwise. It is also submitted that according to the report of the CBI the beneficiaries of the irregularities could be identified and the persons against whom action has been recommended are named therein. Name of the respondent-appointee is not amongst those against whom action has been recommended. The submission is that only those who got benefit of the irregularities if any, committed by the Railway Recruitment Board, should have been issued notices and action could be

taken against them. All others, including the respondent who had nothing to do with any kind of irregularity and who have been selected on their own merit, their services were not liable to be terminated.

Before we proceed further, it will be appropriate to peruse the decisions relied upon by the parties. In the case of Krishna Yadav (supra), the allegations of favoritism and arbitrariness in holding the selection for the post of Taxation Inspectors by Subordinate Selection Board were made. Those candidates whose performance was excellent were not selected. An inquiry was ordered by the Supreme Court to be held by the CBI. The report revealed acts of favoritism, selection without interview even on the basis of fake or ghost interview, tampering with the records and fabrication of documents etc. In such circumstances it was held that entire selection was vitiated even in respect of those who had already been appointed and had been working for a past few years. It was further observed individual cases of innocence have no relevance in such circumstances. So far the respondent is concerned, reliance has been placed on a decision reported in 1986 (3) S.C.C. 229 Kashi Nath Dikshita versus Union of India and others on the proposition that a case where reasonable opportunity of hearing is denied to a delinquent, it vitiates the inquiry and renders the order of punishment invalid. There cannot be any doubt about the proposition of law as propounded in the above noted case. Reasonable and adequate opportunity of hearing has always to be provided to a delinquent officer against whom disciplinary proceedings have been initiated by the Department. The case however, pertains to an inquiry against an individual officer based on allegations of misconduct on his part. Another case to which our attention has been drawn is reported in 1991 (1) S.C.C. 662 Mohinder Sain Garg Versus State of Punjab and others. In this case 1200 candidates were called for the interview; for filling up 54 posts. It was not though a proper course but held that it would not vitiate the selection, more particularly when it could not be said to be tainted with mala fide or ill motive. It was also held that allocation of 25% of total marks for viva voce test was excessive and the selection was found to have been vitiated but it was found that whole selection was not necessary to be cancelled as those who had joined long before in pursuance to such a selection had not been impleaded as parties before the High Court and also in view of the fact that unsuccessful candidates who had chances of being selected if the marks allocated for the viva voce test had been reduced, were directed to be appointed to the posts which were kept vacant for them by means of interim orders of the Court.

In our view the nature and the extent of illegalities and irregularities committed in conducting a selection will have to be scrutinized in each case so as to come to a conclusion about future course of action to be adopted in the matter. If the mischief played is no widespread and all pervasive, affecting the result, so as to make it difficult to pick out the persons who have been unlawfully benefited or wrongfully deprived of their selection, in such cases it will neither be possible nor necessary to issue individual show cause notices to each selectee. The only way out would be to cancel the whole selection. Motive behind the irregularities committed also has its relevance.

The copy of the report of the CBI has been made available to the Court by the learned Additional Solicitor General and the same was served upon learned counsel for the respondent earlier. To find out the position in the present case,

we may have to scrutinize the report of the CBI.

It first indicates that Railway Recruitment Board, Bangalore has not laid down any set procedure for holding of selection. The Chairman engages a printer for printing of the question paper and computer firms are given the job of scrutinizing the applications. The examination is conducted at different centres and answer-sheets are sealed and put in boxes in custody of the Chairman in his room. The answer-sheets are given to the computer firm for evaluation. The Board carries on a manual random check of the answer-sheets, and depending upon the result, further call letters are prepared by the computer firm. Since it was a recruitment for the post of Junior Clerk-cum-Typist, a candidate was required to have a typing speed of 30 words per minute in English or 25 words per minute in Hindi. As per relevant Circular the typing test is to be conducted after the written test and those who qualify in the typing test also, they alone are to be called for final interview. In the present case, however, according to the report the candidates during the course of their personal interview were required to give typing test before the members of the Interview Board within the time limit set for the purpose. No separate marks were awarded for typing nor the typing sheets have been preserved by the Board. No candidate was qualified or disqualified on the basis of the typing test. About 100 answer-sheets did not bear the signatures of Supervisor/Assistant Supervisor in the column provided for the purpose. It however, bore the signatures of the invigilator but none from the said candidates is reported to be selected. According to the report, on scrutiny of answer-sheets of 109 selected candidates, a clear difference of hand-writing was noticed in many answer-sheets. Out of these answer-sheets 14 were particularly taken out for the purpose of investigation. According to the report, answer-sheet packets were stealthily opened and the answers were filled up in the blank space left by the examinees. This happened during the period the bags of the answer-sheets were in the custody of the Chairman. So far as the interview is concerned, it is reported that the two Boards constituted for the interview did not have technical personnel as its member as per requirement. Each member was required to award marks to the candidate in the individual assessment sheets provided to them and average was to be worked out but no average was worked out. The column for interview marks was later on filled up as per wishes of the Chairman and Member-Secretary of the Board and signatures of the non official members were obtained on the summary sheet later on.

It is mentioned in the report that huge amount of money was taken for selecting the candidates but none is coming forward to indicate as to who and how much one paid for it for fear of being in trouble. It is further reported that non official Chairman of the Board made payment of printing of the examination paper etc. not to any firm but to one Gaja Raja Yadav. It may also be mentioned that according to the report a large number of applications were missing and postal orders of the missing applications were encashed and misappropriated and even before the closing date of receiving the applications, it started sending applications to the computer firm for their scrutiny. The C.B.I. has named five persons as accused in the report namely the Chairman of the Railway Recruitment Board, Bangalore, who is a non-official, the Member-Secretary of the Board, an officer of the Railways, one Shri Hanumanth Bhaiya, a Senior Clerk of the Railway Recruitment Board and Gaja Raja Yadav, the private person to whom payment had been made for printing of the question paper etc.

As per the report of the CBI whole selection smacks of mala fide and arbitrariness. All norms are said to have been violated with impunity at each stage viz. right from the stage of entertaining applications, with answer-sheets while in the custody of Chairman, in holding typing test, in interview and in the end while preparing final result. In such circumstances it may not be possible to pick out or choose any few persons in respect of whom alone the selection could be cancelled and their services in pursuance thereof could be terminated. The illegality and irregularity are so inter-mixed with the whole process of the selection that it becomes impossible to sort out right from the wrong or vice versa. The result of such a selection cannot be relied or acted upon. It is not a case where a question of misconduct on the part of a candidate is to be gone into but a case where those who conducted the selection have rendered it wholly unacceptable. Guilt of those who have been selected is not the question under consideration but the question is could such selection be acted upon in the matter of public employment? We are therefore of the view that it is not one of those cases where it may have been possible to issue any individual notice of misconduct to each selectee and seek his explanation in regard to the large scale widespread and all pervasive illegalities and irregularities committed by those who conducted the selection which may of course possibly be for the benefit of those who have been selected but there may be a few who may have deserved selection otherwise but it is difficult to separate the cases of some of the candidates from the rest even if there may be some. The decision in the case of Krishna Yadav (supra) applies to the facts of the present case. The Railway Board's decision to cancel the selection cannot be faulted with. The appeal therefore deserve to be allowed.

In the result, the appeal is allowed and the orders passed by the Tribunal and the High Court are set aside and the order of termination of the services of the respondent is upheld. The copy of the CBI report has been placed on record. The administration shall do well in taking action pursuing the matter in the light of the report of the CBI, so as to bring it to a logical conclusion.

There would be no order as to costs.

-----J.
(G.B. Pattanaik)

-----J.
(Brijesh Kumar)

February 19 , 2002