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# Swadin Deb @ Shadin Deb Vs Union of India (UOI) and Others <BR> Union of India (UOI) and Others Vs Surajit Ghosh and Others

## W.P.C.T. 11 and 44 of 2010

**Court:** Calcutta High Court

**Date of Decision:** Aug. 27, 2010

**Citation:** (2010) 4 CALLT 314 : (2011) 1 CHN 74

**Hon'ble Judges:** Pranab Kumar Chattopadhyay, J; Md. Abdul Ghani, J

**Bench:** Division Bench

**Advocate:** Kalyan Bandyopadhyay and Chaitali Bhattacharyya, in W.P.C.Ts. 44, 45 and 46/2010, for the Appellant;Kashi Kanto Moitra and Pulakesh Bajpayee for the Respondent Nos. 1 to 3 and 7 in W.P.C.Ts. 11, 44, 45 and 46/2010, Chaitali Bhattacharyya in W.P.C.T. 11/2010 and D.K. Singh, for the Respondent

**Final Decision:** Allowed

## Judgement

Pranab Kumar Chattopadhyay, J.
All these writ petitions have been filed assailing the common judgment and order dated 22nd October,

2009 passed by the Central Administrative Tribunal, Calcutta Bench in the application being O.A. 75 of 2006 and two other similar applications

being O.A. 76 of 2006 and O.A. 77 of 2006, which were heard analogously by the said learned Tribunal.

2. By the aforesaid common judgment, learned Tribunal held that the selections made by the competent authority in respect of three Group "D"

posts under Sports quota were contrary to the Rules and as such the said selections were declared invalid and appropriate directions were issued

by the said learned Tribunal for fresh selection in respect of the aforesaid three Group "D" posts under Sports quota.

3. A writ petition was also filed on behalf of the Union of India and the authorities of the North-East Frontier Railway assailing the aforesaid

common judgment and order passed by the learned Tribunal.

4. All the aforesaid writ petitions have also been heard by us analogously since the facts are similar and the points of law involved therein are

identical.

5. From the records we find that an advertisement was published in the newspapers by the North-East Frontier Railway, Divisional Railway Sports

Club, Alipurduar Junction inviting applications from eligible male candidates for filling up three Group "D" category posts under Sports quota. Out

of the aforesaid three Group "D" category posts, one was for Badminton and rest two were for Cricket out of which one post was for Batsman

and another for Fast Bowler-All Rounder.

6. Trial and interview were held for the purpose of selecting the candidates in order to fill up the aforesaid three posts in Group "D" category under

Sports quota. Ultimately, panel of successful candidates was published on 29th March, 2005.

7. The petitioner in W.P.C.T. 44 of 2010 was selected as Batsman and the petitioner in W.P.C.T. 45 of 2010 was selected as All Rounder for the

purpose of filling up the two posts in Cricket. The petitioner in W.P.C.T. 46 of 2010 was selected for filling up the other post under Sports quota

in Badminton. All the selected candidates were appointed to the respective posts in the month of April, 2005.

8. After publication of the panel, private respondents/applicants herein filed applications before the learned Central Administrative Tribunal praying

for cancellation of the said panel on the ground that the respective Trial committees were not constituted in accordance with the Railway Board''s

circular as there was no ''Coach'' in the said Trial committees.

9. The learned Tribunal by the order dated 5th October, 2005 was pleased to dispose of the three applications initially filed at the instance of the

private respondents/applicants herein being O.A. 385 of 2005, O.A. 386 of 2005 and O.A. 387 of 2005 at the admission stage by directing the

authorities to consider the relief sought by the said private respondents/applicants upon treating the applications filed before the said learned

Tribunal as representations of the applicants. The authorities were also directed by the learned Tribunal herein to grant personal hearing to the

respective private respondents/applicants and pass a speaking order.

10. In compliance with the aforesaid order passed by the learned Tribunal on 5th October, 2005, the concerned Railway authority upon providing

the opportunity of hearing to all the respective parties passed a reasoned order on 27th December, 2005 disposing of the objections raised on

behalf of the private respondents/applicants herein. By the aforesaid reasoned order, concerned Railway authority upheld the validity of the panel

and subsequent appointment of the selected candidates namely, the petitioners in W.P.C.T. 44 of 2010, W.P.C.T. 45 of 2010 and W.P.C.T. 46

of 2010.

11. Challenging the said order dated 27th December, 2005, applications were filed again on behalf of the private respondents/applicants herein

before the learned Central Administrative Tribunal being O.A. 75 of 2006, O.A. 76 of 2006 and O.A. 77 of 2006 respectively. The learned

Central Administrative Tribunal by the impugned judgment and order dated 22nd October, 2009 allowed all the three applications and set aside

the selection process for appointment to the three Group "D" category posts under Sports quota and directed the authorities to constitute a proper

Recruitment Trial Committee and thereafter, proceed to make the selection as per the Rules.

12. Assailing the aforesaid common judgment and order dated 22nd October, 2009 passed by the learned Central Administrative Tribunal, these

4 writ petitions have been filed before this Court.

13. The private respondents/applicants herein filed the aforesaid applications before the learned Tribunal challenging the selection process on the

ground of illegal and/or improper constitution of the respective Trial committees. It has been specifically urged on behalf of the private

respondents/applicants that the Trial committees were constituted in violation of the Railway Board"s circular dated 19th June, 2000.

14. The relevant extracts from the Railway Board"s circular dated 13th November, 1998 are set out hereunder:

2.3.1. The distribution of marks for selection will be as under:

(i) Trial 20

(ii) Interview

(a) Assessment of sports achievements 50

(b) General

(i) Educational qualification 15

(ii) General Intelligence/

personality etc. 15

Total Marks 100

2.4. For conducting the recruitment, there will be a recruitment committee which will be as per the instructions contained in Board"s letter No.

E(NG)II/96/RR-1/40 dated 27.4.98. However, for recruitment to Group "C" posts all the members will be of the rank of SAG, to be nominated

with the approval of Competent Authority. In respect of Group "D", all members of the Recruitment Committee will be Junior Administrative

Grade/Senior Scale Officers, to be nominated with the approval of the competent authority. Also one of the members of the Committee shall be an

officer connected with the sports/sports associations on the Railways.

2.4.1. Also a trial committee will be constituted to conduct the trial under the supervision of the Recruitment Committee. The trial committee will

consist of three members - (1) Coach of the respective games (National/Railways/NIS qualified) (2) Senior player in the relevant discipline and (3)

Assistant Sports Officer. The composition of the trial committee will be finalised by the Recruitment Committee. If any unit does not have any

Coach at the level mentioned above, they may seek the assistance of the adjoining Units.

15. Subsequently, revised instructions were issued for recruitment of sports persons by the Railway Board by the circular dated 19th June, 2000.

The relevant extracts from the aforesaid circular dated 19th June, 2000 are set out hereunder:

7.1.3. For the purpose of trials for recruitment both in Group-C & D through Talent Scouting, a trial committee may be nominated by the

President of concerned Sports Association at Head quarter level and by DRM at Divisional Level. The Committee will comprise of 3 officials with

experience of sports including one JAG Officer, a Sports Officer and a Coach of that particular sports discipline in which recruitment is to be done.

The trials should be conducted in the presence of all the 3 members of the Trial Committee.

7.2. Open Advertisements.

7.2.2. The instructions contained in Board"s letter No. E(Sports)98/Rectt.Policy/2 dated 11.12.98, regarding distribution of marks for the

selection of sports persons through Open Advertisements are modified as under:

Interview

(a) Assessment of sports achievements 50

(b) Educational qualification 10

Total 100

Note: Trials should be conducted in the presence of all 3 members of the Recruitment Committee. The interview of successful candidates should

invariably held on the same day just after the trial or at the most next day of the trial.

16. Mr. Kalyan Bandyopadhyay, learned Senior Counsel representing the writ petitioners in W.P.C.T. 44 of 2010, W.P.C.T. 45 of 2010 and

W.P.C.T. 46 of 2010 submitted that presence of "Coach" at the time of trial under the Railway Board"s circulars is not mandatory. Referring to

Clauses 1, 7.2 and also the Note appended to Clause 7.2 of the circular dated 19th June, 2000 issued by the Railway Board, Mr.

Bandyopadhyay further submitted that the provision mentioned in Clause 2.4.1 of the circular dated 13th November, 1998 has been superseded.

Mr. Bandyopadhyay also submitted that in terms of the Railway Board"s circular dated 13th November, 1998, Trial committee was required to

conduct the trial under the supervision of the Recruitment Committee but in view of the revised circular dated 19th June, 2000, trial is to be

conducted in presence of all three members of the Recruitment Committee. Therefore, according to Mr. Bandyopadhyay, the role of the

Recruitment committee at the time of conducting the trial has been given more importance under the revised circular issued by the Railway Board

on 19th June, 2000.

17. For the aforementioned reasons, Mr. Bandyopadhyay submitted that the presence of "Coach" at the time of trial cannot be said to be a

mandatory requirement in view of the assignment of important role to the Recruitment Committee under the revised instructions issued by the

Railway Board by the circular dated 19th June, 2000 for recruitment of the sports persons. Mr. Bandyopadhyay also submitted that the aforesaid

circulars issued by the Railway Board are only the guidelines and in the said circulars it has not been mentioned that the absence of "Coach" in the

Trial committee would nullify the selection. In the aforesaid circumstances, according to Mr. Bandyopadhyay, provision as regards the presence of

"Coach" in the Trial committee should be read as directory and not mandatory.

18. Mr. Bandyopadhyay relied on the following decisions of the Supreme Court in support of his aforesaid contentions:

(1) Modern School Vs. Shashi Pal Sharma and Others,

(2) P.T. Rajan Vs. T.P.M. Sahir and Others,

19. Mr. Bandyopadhyay specifically urged before this Court that the private respondents/applicants herein participated in the selection process

without raising any objection with regard to the validity of the constitution of the Trial committee. According to Mr. Bandyopadhyay, applications

were filed before the learned Tribunal by the private respondents/applicants herein challenging the constitution of the Trial committee and validity of

the panel prepared by the Recruitment Committee only after being declared as unsuccessful.

20. Since the private respondents/applicants herein participated in the selection process without raising any objection questioning the validity of the

constitution of the Trial committee on the ground of absence of the "Coach", the said private respondents/applicants are estopped from raising any

objection regarding validity and/or legality of the constitution of the respective Trial committees in view of Doctrine of Estoppel. Mr.

Bandyopadhyay submitted that each one of the aforesaid private respondents/applicants took the calculated risk and participated in the selection

process without raising any objection questioning the validity of the constitution of the Trial committee in absence of "Coach" and, therefore, the

said private respondents/applicants are not entitled to challenge the selection process after becoming unsuccessful. Mr. Bandyopadhyay referred to

and relied on the following decisions in support of his arguments:

(1) Chandra Prakash Tiwari and Others Vs. Shakuntala Shukla and Others,

(2) Trivedi Himanshu Ghanshyambhai Vs. Ahmedabad Municipal Corporation and Others,

21. Mr. Bandyopadhyay specifically urged before this Court that the private respondents/applicants did not suffer any prejudice in absence of

"Coach" in the Trial committee since according to the said learned Senior Counsel, private respondents/applicants secured higher marks than the

writ petitioners in the trial. Mr. Bandyopadhyay further submitted that the senior player was inducted in every Trial committee instead of "Coach"

where the "Coach" was not readily available.

22. In any event, according to Mr. Bandyopadhyay, since the private respondents/applicants did not suffer any prejudice in the trial in absence of

"Coach" in view of securing higher marks than the writ petitioners herein, objections subsequently raised by the said private respondents/applicants

should not be entertained on the touchstone of prejudice. Mr. Bandyopadhyay referred to and relied on the decision of the Supreme Court

reported in State of U.P. Vs. Harendra Arora and Another, in this regard.

23. The learned Counsel representing the Union of India virtually adopted the arguments advanced by Mr. Kalyan Bandyopadhyay, learned Senior

Counsel representing the writ petitioners in W.P.C.T. 44 of 2010, W.P.C.T. 45 of 2010 and W.P.C.T. 46 of 2010.

24. Mr. Kashi Kanta Moitra, learned Senior Counsel representing the private respondents/applicants submitted that in the absence of an

independent "Coach", entire exercise made by the Recruitment Committee stood vitiated. It was further argued that inclusion of "Coach" in the

Trial committee was not a procedural requirement but, according to Mr. Moitra, it was a mandatory statutory requirement. Mr. Moitra also

submitted that under the amended Circular of 2000 it was made clear that in the event any independent "Coach" was not available in a particular

region then an independent "Coach" from the neighbouring region should be included in the Trial committee.

25. It has been specifically urged before this Court on behalf of the private respondents/applicants that the presence of "Coach" in the Trial

committee was not a procedural requirement but a mandatory requirement and, therefore, the requirement regarding the presence of "Coach" in

the Trial committee cannot be dispensed with. The learned Senior Counsel of the private respondents/applicants argued that the constitution of the

Trial committee without "Coach" is illegal and, therefore, the entire exercise relating to the recruitment of Group "D" staff under Sports quota in the

facts of the present case stood invalid and void being violative of the executive orders/circulars issued by the Railway Board.

26. Mr. Moitra further argued that even in absence of a penal provision for non-compliance does not lead to an inference that the concerned

provision is directory in nature. Mr. Moitra submitted that it is one of the settled principles of interpretation of statutes that a statute or a Rule or a

circular having the force of law requires that when something has to be done in a certain manner, the same should be done in that manner and other

modes are strictly forbidden.

27. It has also been submitted on behalf of the private respondents/applicants that the statutory instructions are mandatory in nature and theory of

substantial compliance or test of prejudice could not be applicable. Mr. Moitra referred to and relied on the following decisions in support of his

aforesaid arguments:

(1) Prakash Ratan Sinha Vs. State of Bihar and Others,

(2) 2010 (1) CLJ 66 Avijit Mondal v. Union of India and Ors. (Paragraphs 15 & 16)

(3) Shalimar Tar Products Ltd. Vs. H.C. Sharma and Others,

(4) Karnal Leather Karamchari Sanghatan (Regd.) Vs. Liberty Footwear Company (Redg.) and others,

(5) (2008) 16 SCC 582 Virendra Alias Buddhu and Anr. v. State of Uttar Pradesh (Paragraphs 87, 89 to 91)

28. The learned Senior Counsel of the private respondents/applicants also argued that question of estoppel or waiver cannot be raised in respect

of any selection which is invalid by reason of improper constitution of the Trial committee.

29. It is now to be decided whether absence of "Coach" in the Trial committee vitiated the selection process.

30. In terms of Clause 2.4.1 of the Railway Board"s circular dated 13th November, 1998, a Trial committee is to be constituted to conduct the

trial under the supervision of the Recruitment Committee and the said Trial committee will consist of three members including "Coach" of

respective games. By the subsequent circular dated 19th June, 2000, Railway Board made it clear that trials should be conducted in presence of all

three members of the Recruitment Committee and thus, the role of the Trial committee has been considerably diluted in view of the mandatory

requirement regarding presence of all the three members of the superior Recruitment Committee during trial. The role of the Recruitment

Committee at the time of conducting the trial has been given more importance by the Railway Board pursuant to the aforesaid circular dated 19th

June, 2000.

31. On examination of the aforesaid circulars dated 13th November, 1998 and 19th June, 2000 we find that the Railway Board issued instructions

for the purpose of recruitment of sports persons. According to the learned Senior Counsel of the writ petitioners, instructions mentioned in the

aforesaid circulars issued by the Railway Board for the purpose of recruitment of sports persons are mere guidelines and have no statutory force,

which, in our opinion, cannot be said to be devoid of any merit. We find much force in the aforesaid argument.

32. In the case of Sureshchandra Singh and Others Vs. Fertilizer Corpn. of India Ltd. and Others, , Supreme Court held:

6. ...It is only an administrative direction and court cannot issue a writ to enforce such administrative instructions that is not having the force of

law....

33. Furthermore, in the aforesaid guidelines it has never been mentioned that trial should not be conducted by the Trial committee in absence of

"Coach". On the contrary, in the Note appended to Clause 7.2.2, it has been specifically mentioned that trial should be conducted in presence of

all three members of the Recruitment Committee, which is the superior committee.

34. In any event, it is not in dispute that the private respondents/applicants appeared before the Trial committee and participated in the trial even in

absence of "Coach" without raising any objection. The said private respondents/applicants challenged the selection process on the ground of

absence of "Coach" in the Trial committee only after being declared unsuccessful.

35. The law is well settled in this regard. If a candidate takes a calculated chance and participates in the selection process without raising any

objection then subsequently, he cannot challenge the said selection process only because he was declared unsuccessful in the selection. In the case

of Chandra Prakash Tiwari and Ors. (Supra), Hon''ble Supreme Court held:

33. ...It is now well settled that if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview

is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not

properly constituted....

34. There is thus no doubt that while question of any estoppel by conduct would not arise in the contextual facts but the law seem to be well settled

that in the event a candidate appears at the interview and participates therein, only because the result of the interview is not ''palatable'' to him, he

cannot turn round and subsequently contend that the process of interview was unfair or there was some lacuna in the process.

36. The learned Senior Counsel representing the private respondents/applicants herein fairly admitted before us that the said private respondents

secured higher marks than the writ petitioners herein in the trial. As a matter of fact, even in absence of ''Coach'' said private

respondents/applicants secured 38 marks out of total 40 and, therefore, it cannot be said that by reason of absence of "Coach" in the trial, private

respondents/applicants herein suffered any prejudice.

37. In the case of State of U.P. v. Harendra Arora and Anr. (Supra), Hon''ble Supreme Court held:

13. ...There may be cases where there are infractions of statutory provisions, rules and regulations. Can it be said that every such infraction would

make the consequent action void and/or invalid?... Even amongst procedural provisions, there may be some provisions of a fundamental nature

which have to be complied with and in whose case the theory of substantial compliance may not be available, but the question of prejudice may be

material. In respect of procedural provisions other than of a fundamental nature, the theory of substantial compliance would be available and in

such cases objections on this score have to be judged on the touchstone of prejudice....

38. In the present case, even in absence of ''Coach'' there was senior player in the Trial committee and the concerned Trial committee awarded

maximum marks to the private respondents as a result whereof, it cannot be said that the said private respondents/applicants suffered any prejudice

due to non-inclusion of "Coach" in the Trial committee. The private respondents/applicants were not selected because of their poor performance at

the interview wherein the Trial committee had no role to play.

39. In the instant case, performance of the candidates at the time of trial and also at the interview were considered by the Recruitment committee

for the purpose of recruitment of the sports persons and thus, the instructions issued by the Railway Board in the circulars dated 13th November,

1998 and 19th June, 2000 have been substantially complied with.

40. The writ petitioners in W.P.C.T. 44 of 2010, W.P.C.T. 45 of 2010 and W.P.C.T. 46 of 2010 were selected and appointed by the

respondent-Railway authorities in the month of April, 2005. Therefore, after lapse of more than five years, selection of the aforesaid writ

petitioners cannot be upset at the instance of the private respondents/applicants who participated in the trial even in absence of "Coach" by taking

a calculated chance and challenged the selection process only after being declared unsuccessful. Furthermore, the said private

respondents/applicants also did not suffer any prejudice as mentioned hereinbefore.

41. The decisions cited by the learned Senior Counsel of the private respondents/applicants, in our opinion, have no manner of application in the

facts of the present case.

42. Therefore, following the decisions of the Supreme Court in the case of Chandra Prakash Tiwari and Ors. (Supra) and State of U.P. v.

Harendra Arora and Anr. (Supra), we are not inclined to quash the selection and appointment of the writ petitioners in W.P.C.T. 44 of 2010,

W.P.C.T. 45 of 2010 and W.P.C.T. 46 of 2010 only on the ground of absence of "Coach" in the Trial committee when the trial was conducted

by the Trial committee in presence of the superior Recruitment Committee in each case.

43. For the reasons discussed hereinabove, we are unable to approve the decision of the learned Tribunal and, therefore, we set aside the

impugned judgment and order passed by the said learned Tribunal on 22nd October, 2009 in the applications being O.A. 75 of 2006, O.A. 76 of

2006 and O.A. 77 of 2006.

44. These writ petitions thus, stand allowed.

45. In the facts and circumstances of the present case, there will be, however, no order as to costs.

46. Let urgent Xerox certified copy of this judgment and order, if applied for, be given to the learned Advocates of the parties on usual

undertaking.

Md. Abdul Ghani, J.

47. I agree.