CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/01899/2018

DATED THIS THE 17TH DAY OF DECEMBER, 2019

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C.V. SANKAR, MEMBER (A)

Shri Manoj Marandi
S/o Mantu Marandi,
Aged about 34 years,
Working as Sr. TE,
O/o CTI/Sleeper/Vascodagama
Residing at-Londa Church Galli,
P.O – Londa, Tq-Khanapur,
Dist, Belgavi 591 301 …..Applicant

(By Advocate Shri B.S. Venkatesh Kumar)

Vs.

1. The Divisional Personnel Officer & PIO,
Divisional Office Personal Branch,
South Western Railway,
Hubli – 20

2. The Union of India
Ministry of Railways,
Rep by its General Manager,
South Western Railway,
Hubli – 20 ….Respondents

(By Shri J. Bhaskar Reddy, Counsel for the Respondents)

O R D E R (ORAL)
(HON'BLE DR. K.B. SURESH, MEMBER (J)

The matter seems to be covered by our order in OA No. 1828/2018 dated 27.11.2019, which we quote:

"O R D E R

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN)

The case of the applicant is that while he was a Group D staff of Commercial and Operational Department, the respondents have

called for applications for filling up the Group-C posts of Ticket Examiner in PB 5200-20200 with GP 1900 through Limited Departmental Competitive Examination(LDCE) against 33 1/3% and 16 2/3% quota vide notification dtd.28.2.2011(Annexure-A1). The applicant having eligibility criteria had volunteered for the said exam. The respondents have issued notice for written examination vide letter dtd.13.5.2011(Annexure-A2) and they have issued another letter dtd.23.2.2012(Annexure-A3) directing the supplementary written examination of 25 minutes. The selected candidates who have qualified in the written examination were notified vide memorandum dtd.3.4.2012(Annexure-A4). Subsequently, a provisional panel in the order of merit was published vide memorandum dtd.4.5.2012(Annexure-A5). The applicant and others have been deployed for initial training course w.e.f. 14.5.2012 as evident from letter dtd.9.5.2012(Annexure-A6). After passing the initial training from 14.5.2012 to 20.5.2012, all the 19 departmental candidates were absorbed as Ticket Examiner on regular basis and posted to work in the stations mentioned against each of them(Annexure-A7). From the post of Ticket Examiner, there is promotional avenue to the post of Senior Ticket Examiner in PB-1 with GP 2400 and the respondents have placed the applicant in the select list for promotion along with others as senior TE/TTE vide officer order dtd.12.8.2014(Annexure-A8) and the respondents have effected the promotions vide letter dtd.3.8.2016(Annexure-A9).

2. *The applicant submits that the 1st respondent issued a show cause notice vide letter dtd.21.9.2016(Annexure-A10) for cancellation of written examination and panel for the post of Ticket Examiner in view of the irregularities found in the selection to the post of Ticket Examiner. Consequent to this, the respondents have reverted the applicant back from the post of Sr.Ticket Examiner to the substantive post of Luggage Porter in PB-1 with GP 1800. In response to the show cause notice, the applicant has submitted his representation dtd.17.10.2016(Annexure-A11) praying for supply of information and to grant another 20 days time to submit his explanation. But the respondents have not furnished information till date. Being aggrieved by the show cause notice, the applicant along with similarly situated people approached the Tribunal in OA.No.939/2016 which was disposed of vide order dtd.13.6.2018(Annexure-A12) with direction to decide on the explanation given by the applicant. But the said panel is yet to be given effect to and the respondents have not acted in disposing the representation within the stipulated period of two months as prescribed by this Tribunal. After a period of five months, the 1st respondent issued an impugned reply dtd.19.11.2018(Annexure-A13) stating that the competent authority has decided to cancel the*

panel duly withdrawing the consequential promotional benefits extended and reverting the applicant back to the substantive post. Aggrieved by the same, the applicant has filed the present OA seeking the following relief:

a. *Call for the relevant record and on perusal,*
b. *Quash and set aside the impugned show cause notice in No.H/P.608/III/TE/Comml(33 1/3% PQ) dated 21.9.2016 Annexure-A10 and letter No.H/P.608/III/TE/Comml(33 1/3 PQ) dated 19.11.2018 Annexure-A13, while declaring the same as unjust unfair and void for the reasons stated herein above.*

3. *The applicant further submits that when he was considered for further promotion to the post of TTI vide memorandum dtd.19.7.2018, passing of the order dtd.19.11.2018 cancelling the selection/panel in continuation of the show cause notice dtd.21.9.2016 and reversion in double nature/double post is untenable in law. In the written examination held on 4.6.2011, question paper was set with 20% marks questions for Rajyabhasha and without options as against 10% questions (optional), as per extant instructions. In view of the same, the competent authority has ordered for another supplementary written exam of 25 minutes duration with one question of three parts and each part carrying 10 marks. Out of 3 parts, one part will be on Rajyabasha and the remaining two parts will be general questions. Marks secured in this exam will be compared with the marks secured earlier in Q.No.VIII. Better marks will be taken into account. Having said so and having accepted the same, the respondents cannot go back and proposed to revert the applicant at this distant date. The applicant has secured promotion with the due process of law and his name was arranged in the order of merit in terms of RBE No.113/2009 and he has been deployed for training from 14.5.2012 to 20.6.2012 and after completion of the training, the applicant reported back on 21.6.2012 and the respondents issued office order at Annexure-A9 indicating the intervening period from 21.6.2012 to 6.8.2012 is treated as duty since they were waiting further posting orders. Thereafter the applicant was further promoted to the post of TTI. A panel once approved should normally not be cancelled or amended. As per para 219 of IREM Vol.1, 'if after the formation and announcement of the panel with the approval of the competent authority, it is found subsequently that there were procedural irregularities or other defects and it is considered necessary to cancel or amend such a panel, this should be done after obtaining the approval of the authority next higher than the one that approved the panel'. Having rectified the irregularities by way of conducting the supplementary examination, there cannot be further rectification or cancellation on the ground of*

irregularities. It is not the case of the respondents that the irregularity has taken place in the supplementary examination. The impugned show cause notice as well as its reply is silent as to when the irregularities were noticed, by whom it was noticed and immediate action taken there for. After having been approved by the competent authority with regard to the written examination, selection, promotion etc., the show cause notice dtd.21.9.2016 is unjust and unfair as it does not indicate as to the authority who had approved the proposed action of reversion. The applicant has in no way committed the irregularities and also failed to take congnizance that the applicant having worked in the promotional post since 2012 and having spent 6 years of service in the promotional post have acquired a civil right to continue in the said post and the decision of the respondents is against the decision of the Hon'ble Apex Court in Bhim Singh vs. State of Haryana(1981 SCC (L&S) 437) wherein it was held that the respondents cannot back track against their promise which has been acted upon by the officials. The Tribunal by its order dtd.13.6.2018 in OA.No.939/2016 directed the respondents 'to look into the response of the applicant and pass appropriate order within two months. If the order is against the applicant, for one month it will not be implemented'. Despite the same, the impugned order dtd.19.11.2018 has not specified the effective date. In the absence of the effective date, it is deemed that the impugned order is effective from the date of issuance of the same. If that being so, the action of the respondents amounts to contempt of court. Therefore, suo-motu contempt proceedings should be initiated against the respondents. The action of the respondents is blatant one as show cause notice was issued after a period of 4 years and after a period of two years and two months, the impugned reply was issued. Thus, the action of the respondents is arbitrary, discriminatory and violative of articles 14 & 16 of the Constitution of India.

4. *The respondents, on the other hand, have submitted in their reply statement that the orders of this Tribunal in OA.No.939/2016 dtd.13.6.2018 have been complied with vide Annexure-A13 due to administrative reasons and the respondent No.1 does not have detailed findings upon which the competent authority in vigilance department has approved the cancellation of selection and he did not call for the findings of the competent authority. Since the competent authority communicated the approval to cancel the selection as per Annexure-R1, the only option left to the 1st respondent was to issue Annexure-A10 show cause notice to cancel the selection. There is no illegality on the part of the 1st respondent. The applicant was at liberty to initiate contempt proceedings right away when the 1st respondent had not complied with the order of this Tribunal in OA.No.939/2016 and should not*

have waited for the action of the 1st respondent. Since Annexures-A10 & A13 are issued in due compliance with the order communicated by the competent authority by Annexure-R1, there is no illegality and any selection fraught with procedural defects can be set aside at any stage as laid down by the Hon'ble Apex Court in a catena of cases. As per the Indian Railway Establishment Manual, if the selection is fraught with procedural irregularities, para 219 (k) procedure to be adopted by Selection Board i.e., '(k) the list will be put up to the competent authority for approval. Where the competent authority does not accept the recommendations of a Selection Board, the case could be referred to the General Manager, who may constitute a fresh Selection Board at a higher level, or issue such other orders as he considers appropriate. After the competent authority has accepted the recommendations of the Selection Board, the names of candidates selected will be notified to the candidates. A panel once approved should normally not be cancelled or amended. If after the formation and announcement of the panel with the approval of the competent authority, it is found subsequently that there were procedural irregularities or other defects and it is considered necessary to cancel or amend such a panel, this should be done after obtaining the approval of the authority next higher than the one that approved the panel'. The competent authority of vigilance department had communicated approval to cancel the selection. The applicant is bound to suffer the consequences, even though the 1st respondent has made an effort to mitigate the effect by conducting a supplementary examination. The 1st respondent was not aware as to on what basis/complaint the investigation was carried out by the vigilance department and he has to merely comply with the orders of the competent authority issued vide Annexure-R1 to cancel the selection. The vigilance department after conducting inquiry into the case had not intimated respondent No.1 not to conduct further selections after 2012 and hence respondent No.1 continued regular selections and issued further promotions not only to the applicant but other candidates also as per the rules. Respondent No.1 with the approval of the next higher authority Principal Chief Personnel Officer/SWR/Hubballi had also taken steps to conduct supplementary examination to cure the procedural defects of the main examination but the vigilance department have not considered the same and have issued Annexure-R1, hence, there is no illegality on the part of the respondent No.1. Since the outcome of the findings of vigilance inquiry was made known to the respondent No.1 by communication dtd.21.4.2016(Annexure-R1), the respondent No.1 has treated the applicant as per the rules under RBE 113/2009 and also granted further promotions to some of the candidates in the same selection and hence the respondent No.1 has acted according to law in a fair

and just manner and due to communication of Annexure-R1, the respondent No.1 had to issue Annexure-A10 and in compliance to the order of this Tribunal, he had also issued Annexure-A13. The action of the respondent No.1 is not suo-motu action but is based on the findings of vigilance department communicated to him with the approval of competent authority to cancel the selection and therefore the respondent No.1 has no other alternative except to issue Annexure-A10 and hence the action of the respondent No.1 is according to rules. Therefore, the OA is liable to be dismissed.

5. *We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. The respondents have submitted the original vigilance report file in the matter of selection for filling up the Group C post of TE against 33 1/3% quota in commercial dept. of Hubli Dvn.. In this case, the applicant who was a Group-D employee sat for the Limited Departmental Examination for promotion under the 33 1/3 quota for the post of Ticket Examiners which was notified vide Annexure-A1. The examination was held on 4.6.2011. Thereafter, a supplementary examination was notified on 23.2.2012 and the examination was held on 17.3.2012. Vide Annexure-A5, the applicant was included in the panel and vide Annexure-A6, the applicant was sent for initial training course. Vide Annexure-A7, the applicant was promoted and posting was given. The applicant has been working in the said post from 7.8.2012. Vide Annexure-A8, the applicant was found suitable for further promotion to the level of Senior Ticket Examiner/TTE in the Pay Band Rs.5200-20200 with GP Rs.2400. This order was dtd.12.8.2014. Suitable posting was also given vide Annexure-A9. For an examination conducted in 2011-2012, vide Annexure-A10 a show cause notice is issued on 21.9.2016 stating that in view of the irregularities found in the selection, the competent authority has decided to cancel the panel and therefore a notice is issued to the applicant to revert him from the post of Sr.Ticket Examiner to the substantive post of Luggage Porter in the same pay band with GP Rs.1800. This is under challenge. In the interregnum in OA.No.939/2016 vide our order dtd.13.6.2018, we had directed the respondents to look into the response of the applicant and pass appropriate orders within two months next. The applicant was also given liberty to approach the Court if the orders are not favourable based on the representations. Vide Annexure-A13, the reversion as per the show cause notice vide Annexure-A10 has been made final. It is clear that a selection panel which was notified in the year 2012 is sought to be revisited after 6 years especially when the persons who had been selected based on that examination and panel have been given subsequent promotions. The respondents have taken a plea that the competent authority based on a vigilance report has set aside the results of the examination and therefore, the*

applicant will lose the selection through the examination as well as further promotions and be reverted. Before going into the merit of this contention, it is seen that since the applicant and other similarly placed persons have been given several promotions in the interregnum, they had not insisted to sit for any subsequent examinations and therefore, by setting the clock back by 6 years, the applicant and similarly placed persons are placed at a serious disadvantage apparently for no fault of theirs. We had gone in to the details of the said vigilance report from the respondents and found that the examination has been concluded as irregular since there were certain lapses in the conduct of the examination. While the notification at Annexure-A1 states that in the examination only 10% of the marks will be given for Official Language Policy and Rules, in the actual examination conducted on 4.6.2011, the questions on official language policy, by mistake, carried 20 marks and they were also made compulsory instead of being made optional as per the extant rules of the respondent organization. When this was pointed out through a complaint from a single person who also turned out to be not at present either working in the respondent organization or in the list of those who took the examination, the respondents decided to conduct the supplementary examination with 20 marks from 3 questions out of which two only need to be answered. This way, they had tried to nullify the mistake by making the marks for the official language policy only 10% and that too optional. Apparently, the conduct of this examination was not as per the rules since the rules do not permit any supplementary examination like this. The respondents had also decided to take better marks of the two after this 20 marks for which the supplementary examination was held. Obviously, due to the supplementary examination, certain changes were there in the order of merit and the panel finally consisted of 31 persons. In the notings of the respondent organization, it is clearly mentioned that there is no vigilance angle in the whole examination and that it was only a lapse on the part of certain officials for not having set the question paper properly. Once some mistake was discovered, instead of cancelling the examination at that time itself, the respondents went ahead with a supplementary examination not provided for in the rules but apparently with no malafide intention. Their case is supported by the fact that only one person complained against the actual setting of the question paper and even here all the persons concerned had to face the supplementary examination and there was no discrimination or favouratism. It is clear that there was no vigilance angle or any malafide action on the part of the respondents even though the rules may not have permitted them to follow the procedure which they did. The panel had also been approved by the then DRM and as stated by the applicant, even in cases where mass copying was

indulged in, the Courts have consistently held that only the persons who indulged in such malpractices should be held responsible and the entire process should not be negated affecting other innocent examiners who had no role whatsoever in the malpractices. In the present case, the applicant obviously had no role whatsoever in whatever lapses that were later found by the vigilance department. The department after having selected the applicant after a due process and promoted him to the further higher posts, cannot turn around and deny the benefit of the whole exercise making him to suffer vis-à-vis his juniors and without providing any opportunity whatsoever for them to retrace the steps since there was no necessity for taking up further exams in the years thereafter. Therefore, the order at Annexure-A13 is quashed and the respondents are directed to restore whatever benefits or promotions they had withdrawn vide this order to the applicant within a period of two (2) months from the date of issue of this order.

6. *The OA is allowed as above. No costs."*

2. Now the consequences are being sought for and the respondents submit that in that case they will be eligible for the consequences. Also, as it has not been challenged or rebutted in any way, therefore only what remains is that for a mandate to be issued to the respondents to grant all the consequences of the earlier order to the applicant within two months next.

3. The OA is allowed to this limited extent. No order as to costs.

(C.V. SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No. 170/01899/2018

Annexure A1 Copy of the OA No. 1826/2018
Annexure A2 Copy of the interim order dated 05.12.2018
Annexure A3 Copy of the panel dated 19.07.2018
Annexure A4 Copy of the implementation of the panel dated 04.12.2018

Annexures referred in reply

Nil

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