

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 609 of 2019

MA No. 689 of 2019

MA No. 751 of 2019

MA No. 996 of 2019

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

1. G.Srinivas Rao, aged about 30 years, S/o G.Krishna Rao
2. Sujit Kumar Sahoo, 32 years, S/o Madan Mohan Sahoo
3. Jeeban Jyoti Pradhan, aged about 34 years, S/o Junus Pradhan
4. Md.Kuktar Alam, aged about 35 years, S/o Md.Jalaudin
5. K.Kamesh Kumar aged about 31 years, S/o K.Eswara Rao
6. Satyabrata Nayak, aged about 32 years, S/o Chandrasekhar Nayak
7. Jagannath Das, aged about 30 years, S/o Purna Chandra Das
8. Ch. Pramodh Kumar, aged about 28 years, S/o Jagannothan
9. R.Ravi Kumar, aged about 30 years, S/o R.Madhava Rao
10. A.Satish Kumar, aged about 31 years, S/o Sai Babu
11. G.Srihari Rao, aged about 30 years, S/o C.Mouli
12. V.Prasad Rao, aged about 31 years, S/o Suryanarayanan
13. B.Sairam, aged about 35 years, S/o Marreppadu
14. B.Padmanav, aged about 26 years, S/o B.Surya
15. P.Ram Raju, aged about 28 years, S/o Pentayya.

All are working as Group 'D' Employees under East Coast Railway, Khordha Division, Jatni, AT/PO-Jatni, District-Khordha and their names appear in the Select List of Limited Departmental Competitive Examination (L.D.C.E.)

OA No. 717 of 2019

MA No. 906 of 2019

1. Ajit Bahira, aged about 26 years, S/o Bharat Bahira
2. Ajit Kumar Moharana, aged about 27 years, S/o Kailash Chandra Moharana
3. Biswajit Behera, aged about 29 years, S/o Kashinath Behera
4. A.Lokesh, aged about 29 years, S/o A.Venkat Rao
5. Manas Behera, aged about 31 years, S/o Makar Behera
6. Amulya Kumar Jena, aged about 36 years, S/o Pitambar Jena
7. Bikram Gochhayat, aged about 36 years, S/o Kailash Chandra Gochhayat
8. Pradeep Kumar Parida, aged about 26 years, S/o Trilochan Parida
9. Manas Kumar Sahoo, aged about 39 years, S/o Musa Sahoo
10. Pravat Kumar Moharana, aged about 32 years, S/o Abhiram Moharana
11. Sunaram Singh, aged about 30 years, S/o Shukana Singh
12. Sumanta Kumar Sethy, aged about 41 years, S/o Parsuram Sethy

All are working as Group 'D' Employees like TP/GK under East Coast Railway, Khordha Division, Jatni, AT/PO-Jatni, District-Khordha and their names appear in the Select List of Limited Departmental Competitive Examination (L.D.C.E.)

.....Applicant.

VERSUS

1. Union of India represented through the General Manager, East Coast Railway, Rail Bhawan, Bhubaneswar, Dist.-Khordha – 751023.
2. Senior Divisional Personnel Officer, East Coast Railway, Khordha Road, Jatni, At/PO-Jatni, Dist.-Khordha. Pin-752050.
3. Divisional Personnel Officer, East Coast Railway, Khordha Road, Jatni, At/PO-Jatni, Dist.-Khordha. Pin-752050.

.....Respondents.

For the applicant : Mr.S.Mohapatra, counsel (OA 609/2019)
Mr.D.Panda, counsel (OA 717/2019)

For the respondents: Mr.T.Rath, counsel
Mr.N.K.Singh, counsel

Heard & reserved on : 13.1.2020

Order on : 04.02.2020

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

Both the OA Nos. 609 and 717 of 2019 were considered together since the dispute involved and reliefs sought for in both the OAs are common and both arise from the same Limited Departmental Examination (in short LDCE) held by the respondents for selection for the post of Goods Guard on promotion. Both the OAs are disposed by this common order after considering the facts of the OA No. 609/2019.

2. The applicants have filed this OA (No.609/19), being aggrieved by the decision of the Respondent No. 1 to have the examination for the post of Goods Guard cancelled so as to conduct the examination again for some of the applicants. The facts leading to this OA are that the respondents had conducted a LDCE for selection for the post of Goods Guard on 6.5.2018 and its results were declared on 14.9.2018 in which the applicants were shown to have qualified. But the examination in respect of the candidates appearing in room Nos. 4, 5 and 7 were cancelled subsequently on 23.1.2019, while retaining the examination held in Room Nos. 1 and 6. Such partial cancellation of the examination was resorted to after the result of the said examination had been published on 14.9.2018 and without assigning any reason. On 6.2.2019 (Annexure-A/4), the date of re-examination was notified to be 28.2.2019 and the candidates who will appear in the re-examination was also notified.

3. Being aggrieved, the applicants had filed the OAs in the first round disputing partial cancellation of the examination affecting them adversely and those OAs were disposed of by this Tribunal vide order dated 10.7.2019 (Annexure-A/7) by which, the order dated 6.2.2019 (A/4) for re-conduct of the examination was quashed and the matter was remitted to the Respondent No. 1 to reconsider the matter and take a decision after perusing the CCTV

footages for the LDCE and the records. The Respondent No. 1 has accordingly reconsidered the matter and passed the impugned order dated 21.8.2019 (Annexure-A/8) confirming the earlier decision to cancel the examination in respect of the Room Nos. 4, 5 and 7 while retaining the examination in Room Nos. 1 and 6.

4. Being aggrieved by this order, the applicants have filed this OA with the following prayers:-

- “(i) hold/declare that the Order, dated 06.09.2019 under Annexure A/8 and Order dated 12.09.2019 under Annexure A/9 are non-est in the eye of law and thereby quash the same and direct/order the Respondent No.1 to issue empanelment for promotion to the post of Goods Guard on the basis of the result published on 14.09.2018;
- “(ii) pass such other order(s) or issue direction(s) as may be deemed fit and proper in the bona fide interest of justice.”

Identical reliefs have been prayed for in the OA No. 717/19.

5. The applicants had also filed the MA No. 689/19 in OA No. 609/19 under the rule 4(4)(a) of the CAT (Procedure) Rules, 1987 to permit the applicants to pursue the OA jointly. Since the MA No. 689/19 has not been disposed of, it is allowed since all the applicants have common grievance seeking the same relief and the matter was considered for final disposal after receipt of replies of the parties. Similarly, the MA No. 906/2019 in OA No. 717/19 is also allowed.

6. Vide order dated 19.9.2019 passed in OA No. 609/19, it was observed that the examination held on 20.3.2019 was by virtue of the order dated 6.2.2019 which was quashed by the Tribunal in order dated 10.7.2019. Hence, the respondents were given liberty to re-examine the matter and pass an appropriate order in the matter. Accordingly, the Respondent no. 1 has passed the order dated 22.11.2019 (Annexure to the MA No. 996/19 filed in OA No. 609/19) in modification to his earlier order dated 21.8.2019 (Annexure A/8), by which, the decision was taken to have the re-examination for candidates in Room Nos. 4, 5 and 7 again and the panel published on 12.9.2019 based on the basis of the examination on 20.3.2019 was cancelled. Vide order dated 3.12.2019, the re-examination has been scheduled to be held on 28.12.2019 and 67 candidates including the applicants have been called to appear in the examination. In the MA No. 996/19, the prayer was made by the applicant to stay the operation of the order dated 23.11.2019 (Annexure-A/10 of the MA), which has enclosed the order dated 22.11.2019 of the Respondent No. 1 to hold the re-examination again and to cancel the panel dated 12.9.2019. Since no order was passed on the MA, with consent of the counsels for both the sides, the OA was considered with all pending MAs for final disposal.

7. Heard learned counsel for the applicants. It was submitted that although the order dated 6.2.2019 of the respondents notifying the re-examination held on 20.3.2019, was quashed by the Tribunal vide order dated 10.7.2019, but the respondents went ahead with the said examination dated 20.3.2019 and have acted upon it by publishing the selection panel. Hence, it was argued that the examination held on 20.3.2019 was illegal. Learned counsels for the applicants also argued that the impugned order dated 21.8.2019 (A/8) is not sustainable as it was contemptuous for violating the Tribunal's order and it was also passed in a mechanical manner. It is also stated that some of the candidates who had failed in earlier examination, have passed in the re-examination. Learned counsel for the applicant also submitted that the revised order dated 23.11.2019/22.11.2019 was not as per the order of the Tribunal.

8. Learned counsel for the applicants in OA No. 609/19 has filed a Written Note of submissions stating that the order passed by the Respondent No. 1 for re-conduct of examination is discriminatory and violative of Article 14 of the Constitution of India. It is further submitted that the reasons furnished in the order of the Respondent no.1 are not adequate to cancel the examination of some candidates. The judgment in the case of Union of India and others vs. Rajesh P.U. Puthuvalnikathu reported in AIR 2003 SC 4222 was cited, in which it was observed by Hon'ble Apex Court that : "There seems to be no serious grievance of any malpractices as such in the process of written examination either by the candidates or by those who actually conducted them..."

9. Learned counsels for the respondents in both the OAs were heard. They submitted that the decision was taken by the Respondents No. 1 based on the order of the Tribunal and following the Railway Board circular dated 8.9.2005 which has been referred in the impugned order dated 21.8.2019 (A/8). Learned counsel for the respondents in OA No. 609/19 filed a Memo subsequently informing that the examination was held on 28.12.2019 and the result has been declared in which 2 of the applicants have been found to be successful.

10. Having due regard to the submissions of learned counsels as well as the pleadings on record, it is necessary to resolve the following issued:-

(i) Whether basing on the materials available on the record, the decision of the respondents to cancel the examination held on 6.5.2018 partially in Room Nos. 4, 5 and 7 while not cancelling the examination in Room Nos. 1 and 6, is sustainable under law.

(ii) Whether cancellation of examination for some candidates on ground of malpractices at the time of the examination, long after declaration of the results, is sustainable under law.

(iii) Whether the order dated 21.8.2019 (A/8) as modified by the order dated 23.11.2019 (A/10), is in accordance with the order dated 10.7.2019 of the Tribunal.

11. It is noticed from the MA No. 996/19 (filed in OA No. 609/19) that the Respondent No. 1 has modified the order dated 21.8.2019 (A/8) by passing another order dated 22.11.2019 (Annexure-A/10) by which, the examination held on 20.3.2019 and the panel notified based on the said examination have been cancelled and it was decided that another examination will be held on 28.12.2019 in respect of the candidates who had appeared in the Room Nos. 4, 5 and 7 for the examination held on 6.5.2018. It is further noted from the order dated 22.11.2019 that there is confusion about the candidates who had appeared in Room No. 7, but their attendance was taken by the invigilator as if they appeared in Room No. 1. Similarly, the candidates who had appeared in Room No. 1 had been shown in the Attendance Sheet as Room No. 7. How such a mistake could occur has not been investigated by the Vigilance department. It has been submitted by learned counsel for the respondents that it was due to the mischief on the part of the invigilators. As per the duty given to the invigilators, copy of which has been enclosed with the Counter, the invigilator allotted for Room No. 7 has taken the attendance of the candidates for Room No. 1, where the irregularities in the examination was observed by the Vigilance mainly due to the invigilator allotted for the Room No. 7. It is also noted by the Respondent No. 1 in his order dated 22.11.2019 that disciplinary action has been initiated against the officials found responsible for such irregularities in the examination held on 6.5.2018.

12. It is unfortunate that for selection for the post of the Goods Guard, that was projected by the respondents' counsels as important functionary of the Railways, has not been handled promptly by the authorities for alleged irregularities. Vigilance authority took their own time to report about the irregularities at the time of holding of examination much after declaration of the results on 14.9.2018. If such irregularities in Room Nos. 4, 5 and 7 were serious as mentioned by Respondent No. 1 in order dated 21.8.2019 read with 22.11.2019, why the Vigilance authorities did not inform anything about it to the competent authority soon after conduct of the examination on 6.5.2018 and before declaration of the result of the examination on 14.9.2018, has not been explained by the respondents in their pleadings. Very fact that the Vigilance delayed their report informing about malpractices in the examination

till 10.1.2019 i.e. more than three months after declaration of the results of the examination and the Railway authorities had declared the results of such examination and subsequently the Vigilance reported irregularities and malpractices on 10.1.2019 (para H of the Counter in OA No. 609/19), show that the authorities had not considered such irregularities/malpractices in the examination to be serious enough as to consider re-conduct of the examination till declaration of the results on 14.9.2018 and till receipt of the Vigilance report on 10.1.2019. There is nothing on record to show that there was any complaint about irregularities and malpractices in the written examination held on 6.5.2018 before the authorities from the candidates or invigilator or from any other credible source immediately after 6.5.2018. The authorities had proceeded on the basis of no complaint and went ahead to declare the results on 14.9.2018. Even after more than 3 months of publication of results, there was no complaint from any source questioning the sanctity of the examination held on 6.5.2018 till 10.1.2019 when the Vigilance report in the matter was received.

13. From the order dated 21.8.2019 read with the order dated 22.11.2019, it is noticed that the order did not disclose that the Respondent No. 1 had viewed the CCTV footage of all five rooms to assess the sanctity of the examination held on 6.5.2018, although learned counsels for the respondents vehemently argued at the time of hearing stating that the Respondent No. 1 had viewed the CCTV footages of all the rooms while passing his order. It is mentioned in the order of the Respondent no. 1 that he had examined the CCTV footages for the Room Nos. 4, 5 and 7, which were the rooms reported by the Vigilance. It would appear that the Respondent No. 1 has relied upon the Vigilance report and earlier decision of other authorities in pursuance to Vigilance report in the matter, while passing the order dated 21.8.2019 which was later modified on 22.11.2019, upholding the decision of the authorities to cancel the examination in Room No. 4, 5 and 7, while not interfering in the examination for the Room Nos. 1 and 6 and thereby, accepting the recommendation of the Vigilance on the issue.

14. In this regard we take note of the following observations made by this Tribunal vide the order dated 10.7.2019 (Annexure-A/7 of OA No. 609/19) of this Tribunal in OA No. 104/2019 and 136/19 filed by the applicants earlier as under:-

“10. It is seen from above that the Vigilance department has not informed any specific malpractice in the examination. On perusal of vigilance records (copy filed by respondents' counsel), the following has been stated in the “Preliminary Preventive Check Report” of the CVI(P) stating as under:

“It was noticed in the examination hall that at the Room No. 01, 04, 06 & 07 maximum candidates were talking with each other in spite of the repeated instruction by the Room Invigilators and Exam. Conducting

officer which can be easily identified from CCTV footage captured on that date. The candidates were not maintaining the proper silence inside the examination hall. All the candidates had sat on their own choice without any allotment. The invigilators were also not in a position to maintain the proper discipline and regularity inside the examination hall. Many Chits of papers (micro Xerox copies) have been seized from the bath room of the examination centre. Hence it has been confirmed that the candidates were doing the malpractice. Even after the repeated instructions to the candidates and the invigilators, the situation was in laissez faire.”

11. The above reports show on one hand that there were irregularity in all the room i.e., Room No.1, 4, 5 6 and 7 as stated in the report of the CVI(P), whereas the Sr. Vigilance Officer has reported for re-conduct of the examination in respect of the candidate in Room No. 4, 5 and 7. The reasons for excluding the candidates in Room No. 1 and 6 in the notes recorded by Sr.Vigilance Officer are not satisfactory.”

15. It is clear from above observations that the Vigilance report did not disclose any specific malpractice and the reason why they recommended cancellation of the examination in Room Nos. 4, 5 and 7 whereas as per the preliminary report, similar malpractices were reported in all the rooms. Sr. Vigilance Officer excluded the Room Nos. 1 and 6 for the purpose of cancellation of the examination without assigning any reason for such recommendation made in his report. We also note that the order dated 21.8.2019 and 22.11.2019 passed by the Respondent No. 1 did not clearly mention if any assessment of the examination in respect of the examination in the Room Nos. 1 and 6 was done before arriving at the finding confirming the decision based on the report of the Sr. Vigilance Officer.

16. For the reasons discussed above, we are of the considered opinion that based on the materials on record, it is difficult to agree with the contentions of the respondents that there were malpractices in the examination in Room Nos. 4, 5 and 7, which has compromised the examination in these rooms to the exclusion of the Room Nos. 1 and 6. Taking into account the facts that there was no mention of any complaint from anyone after conduct of the examination on 6.5.2018 till declaration of the result on 14.9.2018 and that the Vigilance has not reported any irregularity in the examination till 10.1.2019 i.e. about more than three months after declaration of the result on 14.9.2018 without explaining the reason for such delay, we are of the view that the irregularities reported were not such as to warrant cancellation of the examination in Room Nos. 4, 3 and 7 after more than three months of declaration of the results on 14.9.2018. Further, it is also noticed that no independent inquiry involving the stakeholders and witnesses was conducted by the authorities before deciding to cancel the examination in three rooms out of five rooms long after declaration of the result.

17. The applicants had prayed for a direction to stay the conduct of the re-examination scheduled to be held on 28.12.2019. We did not accept such a

prayer as neither the order dated 22.11.2019 nor the order dated 3.12.2019 has been challenged in the OA. By passing the order dated 22.11.2019, the respondent No.1 has modified his earlier order dated 21.8.2019 taking into account the order dated 10.7.2019 of this Tribunal.

18. In view of the above discussions, both the OAs (No. 609/19 and 717/19) are allowed to the extent that the case of those applicants in both these OAs, who had been notified/declared to be successful in the examination held on 6.5.2018 as per the result declared on 14.9.2018, will be considered by the respondents for their selection and appointment against the post in question with consequential service benefits as per the provisions of law. It is made clear that this order has been passed taking into account the facts and circumstances in respect of the applicants in both these OAs who had challenged the decision of the respondents to re-conduct the examination held on 6.5.2018 in respect of some of the rooms. There will be no order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath