

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 040/00195/2019

Date of Order: This, the 24th day of January 2020

THE HON'BLE SMT. MANJULA DAS, MEMBER (J)

THE HON'BLE MR. NEKKHOMANG NEIHSIAL, MEMBER (A)



Padma Kalita (Aged about 43 years)
S/o Late Jana Ram Kalita
Residence – Railway Quarter
No. 44/B, Nambari
P.O. – Maligaon, Guwahati – 11.

...Applicant

By Advocates: Sri K. Bhuiyan & Sri N. Islam & A Kalita

-Versus-

1. The Union of India
Represented by the General Manager (P)
N.F. Railway, Maligaon
Guwahati, Assam, Pin – 781011.
2. The Principal Chief Personal Officer
N.F. Railway, Maligaon
Guwahati, Assam, Pin – 781011.
3. The Assistant Personal Officer
Bill & Grievance, N.F. Railway
Maligaon, Guwahati, Assam, Pin – 781011.
4. The Chief Public Relations Officer
N.F. Railway, Maligaon
Guwahati, Assam, Pin – 781011.

...Respondents

By Advocate: Ms. U. Das, Railway Standing Counsel

ORDER

NEKKHOMANG NEIHSIAL, MEMBER (A):-

This O.A. No. 040/00195/2019 has been filed by the applicant seeking the following reliefs:

- "8(i) To set aside and quash the impugned cancellation order dated 10-06-2019 issued by Respondent No. 3.
- (ii) To direct the/commend the respondents to provide the Select list in respect to the interview dated 15-03-2019.
- (iii) To direct/commend the respondents to act in accordance with the Select list in respect to the interview dated 15-03-2019.
- (iv) To pay cost of this application and incidentals and/or pass such other order/orders as this Hon'ble Tribunal may deem fit and proper in the interest of justice."



2. In the admission stage itself, the O.A. was dismissed vide order dated 20.06.2019 on the ground that since the applicant was not selected, he could not have challenged the order of the competent authority dated 10.06.2019 which cancelled the examination held on 15.03.2019 due to some technical anomalies. The applicant filed WP(C) No. 4538/2019 in the Hon'ble Gauhati High Court, got set aside and remanded it to

this Tribunal vide its order 28.06.2019 with the following remarks:-

“Having taken part in the examination, the petitioner is entitled to know the outcome and to that extent the petitioner has a vested right. However, if good and sufficient reasons the examination in which the petitioner had taken part is cancelled, the Court may not interfere with such decision. No such adjudication has taken place as the Tribunal has dismissed the application holding that the petitioner has no such right to challenge the order of cancellation. The view taken by the Tribunal is clearly not sustainable in law.

Accordingly, we set aside the order dated 20.06.2019 and direct the Tribunal to hear the application on merit.”

(Emphasis supplied)



3. The case was again taken up by this Tribunal on 19.07.2019 with the order that “*Result of the examination conducted, shall be subject to the outcome of the O.A.*”.

4. The respondent authorities filed their written statement on 30.09.2019. Amongst others, they stated that-

“A Notification E/41/III/16-1(Q) Pt.III dated 04.12.2018 was issued by the respondents inviting application from erstwhile Group D staff of “G” branch working in Level-1(PB-1 GP Rs. 1800) for holding a selection for forming a panel of 02 (two) persons (UR) for the post of Jr. Clerk in Level-2 (PB-1 GP Rs. 1900) against 33 1/3% DP (Departmental Quota). It was clearly specified in the notification that the selection will be based on candidate’s performance in the written exam and record of service (APARs). In response to the notification few applications were received and out of which 13 no. applicants were found eligible for appearing in the written Examination and asking

them to appear for the same in terms of letter dated 01.03.2019."

5. They further submitted at para 4 of their written statement as follows:



"That the order dated 10.06.2019 cancelling the written examination held on 15.03.2019 was issued purely on the ground that there were serious anomalies noticed in the setting of question paper which has made the evaluation impossible. Moreover, the question on official language policy for 10 marks needs to be set but that question has to be optional for the candidates but in the question paper no such instruction was given and therefore the RAJBHASA question was made compulsory in the question paper thus vitiating the examination process. Further, the question paper which needs to be set for 100 marks was set for total 110 marks but maximum marks were shown as 100 only. Due to these anomalies the evaluator did not evaluate the answer sheets and instead the committee met on 22.03.2019 and deliberated on the issue and after considered of the entire facts recommended for cancelling the written test held on 15.03.2019 and for holding fresh written test for finalising the selection. The competent authority i.e. SDGM (Senior Deputy General Manager) after considering the facts approved for cancelling the written test held on 15.03.2019 and for holding fresh written test.

Therefore, from the facts and circumstances narrated above it is crystal clear that the written test held on 15.03.2019 had to be cancelled to ensure fair selection and also to avoid any complaint or court case as the selection being a sensitive issue. Therefore, in the absence of any malafide and statutory violation, the action of cancelling the written examination held on 15.03.2019 and holding a fresh written examination on 05.07.2019 is required to be upheld by the Hon'ble Tribunal. Moreover, Hon'ble High Court Guwahati also in the order dated 28.06.2019 in writ petition WP(C) No. 4538/2019 has observed that ".....However, if for good and sufficient reasons the examination in which the petitioner had taken part is cancelled, the Court may not interfere with such decision.....".

(Emphasis supplied)

6. The applicant submitted his rejoinder on 14.12.2019. It was also pointed out by him that so far question No. 6 is concerned regarding Rajbhasa consisting 10 marks was deleted in the examination hall at the very beginning of the commencement of the examination by Senior Assistant D.G.M. of N.F. Railway, therefore, question of excess 10 mark as anomaly does not arise at all and cancellation of written test dated 15.03.2019 is without any basis.



7. We have considered and found that the decision and action on the part of the respondent authorities in cancelling the said examination as elaborated by them at para 4 (supra) is quite fair to all the participated candidates including the present applicant. The respondent authorities have to be transparent and not only fair and right but also appear to be fair and right.

8. During the hearing, learned counsel for the applicant argued that applicant had done 'very good' in the said examination held on 15.03.2019. We have considered this argument. We found that this argument encounters difficulties of two levels. It is not only this applicant who could claim to have done very good. In

that case, the logic of this argument cannot go beyond this point. Secondly, in any examination which is competitive in nature, the performance of every candidate is subject to the relative performance of all other candidates. As such, one cannot make exclusive claim on this point. We therefore, found that this is not sustainable.



9. We do not, therefore find any justified reason to interfere with the decision of the respondent authorities in cancelling the said examination and holding it afresh. As such, the O.A. is devoid of merit and liable to be dismissed.

10. Accordingly, O.A. is dismissed.

11. Interim order dated 19.07.2019 passed by this Tribunal stands vacated.

12. There shall be no order as to costs.

(NEKKHOMANG NEIHSIAL)
MEMBER (A)

(MANJULA DAS)
MEMBER (J)

