

Central Administrative Tribunal, Principal Bench

Original Application No. 2375 of 1999
M.A. No. 2394/99

(8)

New Delhi, this the 16th day of February, 2000

Hon'ble Mr. S. R. Adige, Vice Chairman(A)
Hon'ble Mr. Kuldip Singh, Member (J)

1. Shri Anoop Kumar Pandey,
S/o Shri A.P. Pandey,
Junior Engineer - II (Works)
under Deputy Chief Engineer (C)
Central Railway,
Jhansi
2. Shri Anil Kumar Jain,
S/o Shri G.C. Jain,
Junior Engineer-II (W)
Office of Divisional Railway Manager,
Central Railway,
Jhansi
3. Shri Ashok Kumar Sharma
S/o Shri S.P. Sharma,
Section Engineer (Works)
Office of Divisional Railway Manager,
Central Railway,
Bhopal
4. Shri N.K. Misra,
S/o Shri M.L. Misra,
Junior Engineer I (Drawing)
Office of Divisional Railway Manager,
Central Railway,
Bhusawal
5. Shri Rama Kant Pandey
S/o Shri J.N. Pandey,
Section Engineer (P.Way)
Central Railway,
Jhansi

- Applicants

(By Advocate - Shri B.S. Mainee)

Versus

Union of India, through

1. The Secretary,
Ministry of Railways
(Railway Board)
Rail Bhawan, Raisina Road,
New Delhi
2. The General Manager,
Central Railway,
Mumbai CST

- Respondents

(By Advocate - Shri V.S.R. Krishna)

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ORDER

By Hon'ble Mr. Kuldip Singh, Member (J)

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This is a joint application filed by Shri Anoop Kumar Pandey and four others challenging the impugned order No. HPB/661/RE/CL.II/LDCE dated 27.10.89 passed by the Chief Personnel Officer(E), Central Railway Mumbai. By the impugned order, the respondents have cancelled the selection proceedings which were held for promotion to the Gazetted post Group 'B' (Assistant Engineer) against 30% Limited Departmental Competitive Examination (in short "LDCE") quota.

2. The applicants claim that they are amongst 19 candidates who have qualified in the LDCE held on 12.6.99 and 13.6.99. The final interview was also held on 4.10.99. The applicants have prayed for quashing and setting aside the impugned order and further prayed that the respondents be directed to declare the results of the selection proceedings.

3. It is pleaded that in order to fill up 16 vacancies against 30% LDCE quota for Group 'B' service, an examination was initiated vide letter dated 17.12.98. The eligible staff was called upon to appear in the examination. The applicants were amongst 800 candidates who were found to be eligible to appear in the examination. According to the rules, there were two papers of 150 marks each and the candidates had to secure 90 marks out of 150 in each paper for qualifying the examination. After the

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examination, the results were declared and only 19 candidates are stated to have qualified the same. However, 18 candidates were called for viva voce test and the applicants were amongst them. They were expecting result of their hard labour but suddenly vide the impugned order, the selection proceedings were cancelled.

4. To challenge the impugned order, the applicants have submitted that since the selection proceedings were held in accordance with the rules laid down by the Railway Board, there is absolutely no reason to cancel the same and since they have qualified one of the toughest competition and have secured a right, the same cannot be arbitrarily defeated. It is also stated that the impugned order does not show any reason nor does it indicate as to who has passed this order, particularly when it was held by three Principal Heads of the Department. As such, the order is stated to have been passed in a malafide manner in order to please some of the candidates who have failed to qualify.

5. The application is contested by the respondents. The plea of the respondents is that the proceedings of the Selection Board were put up before the General Manager for approval, however, he didn't approve the same and decided to cancel the proceedings in terms of para 204.10 of IREM Vol-I, 1989. It is further stated that as per the rules, if the General Manager does not approve the recommendations of the Selection Board, he has to record reasons in writing
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and order for fresh selection. It is stated that since the examination has been cancelled with the approval of the General Manager in accordance with the rules, the same cannot be challenged before this Tribunal. It is also submitted that the General Manager has recorded reasons for cancellation of the selection proceedings and, therefore, there is nothing bad in the cancellation order.

6. The applicants in their rejoinder have submitted that the rule under which the respondents are taking shelter, is not applicable to the LDCE. It is only applicable in the case of normal selection to fill up 70% of the vacancies. It is also stated that the order passed by the General Manager is a bald order which has nullity in the eyes of law.

7. We have heard the learned counsel for the parties and gone through the record.

8. Learned counsel for the applicant submitted that in the similar circumstances, earlier also a litigation had cropped up and it was held by the Calcutta Bench of the Tribunal that " (If) there is no fault of the candidates and the fault lies with the examiner. The correct course is to re-evaluate the papers and not to cancel the examination itself." As such, he submitted that the applicants in this case at the cost of their hard labour had been able to qualify the examination and it should not have been cancelled.

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He submitted vehemently that since no cogent reason has been given for cancellation of this examination, so this order of cancellation should be set aside.

9. On the contrary Shri Krishna, learned counsel for the respondents submitted that in this case, an enquiry was conducted by the Vigilance Department. The enquiry report as well as the answer-sheets evaluated by the examiners were placed before the General Manager, who after scrutiny of the same, came to the conclusion that there was some hanky-panky in the conduct of the examination and the evaluation of the answer sheets. So, in his wisdom, he passed the order for cancellation of the examination and the relevant rule 204.10 empowers the General Manager to pass such like an order and it is not in the interest of justice to set aside the same, particularly when the order has been passed at the level of General Manager after having recorded the reasons.

10. In this case, we had summoned the records also. Even the answer-sheets were brought to the court which were gone through by us as well as the learned counsel for the applicants. We may also mention that on 5.1.2000, the General Manager, Central Railway, respondent no.2, was also directed to pass a reasoned and detailed order after due application of mind, whether or not the selections initiated by notification dated 17.12.98 should stand cancelled and whether he confirms his earlier order dated 18.10.99. Pursuant to this order, the General Manager had again

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considered it and passed an order confirming his earlier order of cancellation of examination and also stated that the vigilance report had shown certain irregularities by way of addition and alteration of marks in the answer sheets and certain papers had also been moderated, that too selectively, which was subsequent to the written examination. So he had no option but to cancel the examination initiated by notification dated 17.12.98.

11. Commenting upon this, learned counsel for the applicants Shri B.S. Maine submitted that as regards moderation is concerned, the examiners have admitted that they had done moderation and rather they had done it while rechecking the papers. In these circumstances, no malafide can be attributed to the examiners and it was their right to re-check the papers and do moderation since they had been appointed as examiners. Therefore, he submitted that merely on this ground, the examination cannot be cancelled.

12. We have considered this aspect also. The rules permit moderation of results by way of awarding grace marks to candidates but it shall not be resorted to without the authority of the Selection Board or the authority competent to accept the recommendations of the Selection Board and no grace marks are to be allowed in individual cases. We have also gone through the statements recorded by the Vigilance Department which do indicate that moderation was done. These statements also indicate that there are cuttings in the answer books of some of the candidates.

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13. The manner in which moderation has been done unauthorisedly does show strong reasons for the General Manager to resort to cancellation of the examination. The fact that the examiners have stated that they had a right to recheck and re-evaluate the papers, alone is not sufficient to say that re-evaluation and rechecking was innocuous one and in such like examinations where career of a large number of candidates is at stake, if there are reasons for cancellation of the examination, it is always better to cancel the selection because it may lead to multifarious litigation as many other candidates may also come forward to challenge the selection if the same is allowed to be carried with merely because the examiners had given a statement that they had a right to recheck and re-evaluate the papers. The statements of the examiners can be stated to be self-serving one because of the fact that during re-checking, more marks were awarded as is evident on record and now they have no option except to state that they have done it in their rights. The fact remains that they have done moderation in violation of the rules.

14. We may further mention that Rule 204.10 of IREM Volume I requires that the recommendations of the Selection Committee are to be put up to the General Manager for approval and if the General Manager does not approve the recommendations, he can order fresh selections and in this case the General Manager has assigned valid reasons for cancellation of the earlier examination and we find ourselves unable to

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substitute our own views over the General Manager regarding the cancellation of the examination. In this regard we may also refer to a judgment entitled Chairman, J&K State Board of Education Vs. Feyaz Ahmed Malik & Others reported in JT 2000 (1) SC 398. In that case the competent authorities cancelled the examination because of malpractices and mass copying. The cancellation of the examination was challenged and in this context the Hon'ble Supreme Court observed as under:-

"In matters concerning campus discipline of educational institutions and conduct of examinations the duty is primarily vested in the authorities in-charge of the institutions. In such matters Court should not try to substitute its own views in place of the concerned authorities nor thrust its views on them. That is not to say that the Court cannot at all interfere with the decisions of the authorities in such matters. The court has undoubtedly the power to intervene to correct any error in complying with the provisions of the Rules, Regulations or Notifications and to remedy any manifest injustice being perpetrated on the candidates." (emphasis supplied)

15. The Hon'ble Supreme Court further observed as under:-

A notification cannot be struck down as discriminatory merely because in implementing the same injustice is likely to be suffered by some candidates." (emphasis supplied)

16. On the same analogy we may mention that in the case of examination in question the rules vested power in the General Manager to approve the recommendations of the Selection Committee and he is also at liberty to reject the recommendations of the Selection Committee for reasons to be recorded in

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writing. In this case since the General Manager has assigned valid reasons for the cancellation of the examination, so we are of the considered opinion that the Tribunal should not try to substitute its own views since the purpose of holding the examination is to provide efficient and safe running of trains. If there is doubt about the favouritism and tampering with the answer-sheets etc., then the purpose for which the examination was held, cannot be achieved and in such like circumstances, the General Manager is within his rights to cancel the examination.

17. In these circumstances, we find that the order passed by the General Manager, Central Railway cancelling the selection on the basis of vigilance reports, is totally justified and cannot be questioned. Hence, we are of the considered opinion that no interference is called for in the impugned order and the O.A. is liable to be dismissed. We order accordingly. No costs.

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(Kuldip Singh)
Member(J)

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(S.R.Adige)
Vice Chairman(A)

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