

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

**O. A. No. 266/2020 With M.A. No.255/2020
Dated this the 17th day of September, 2020**

CORAM:

Hon'ble Sh. Jayesh V. Bhairavia, Member (Judicial)

Hon'ble Dr. A.K.Dubey, Member (Administrative)

1. Smt.Bhumika Bhavesh Patel,
Age:36 years (DoB being 29.01.1984),
Wife of Shri Bhavesh Patel,
Presently serving as Khalasi in O/o Station Director,
BRCP, Vadodara Railway Division, Western Railway,
& presently residing at No.21, Divyalok Society,
Near Alwanka, GIDC Road, Manjalpur,
Vadodara – 390 011.
2. Pramod Singh,
Age:42 years (DoB being 15.08.1978)
Son of Shri Latur Singh,
Presently serving as Pointsman in O/o. U.W,
Pratapnagar,
Vadodara Railway Division, Western Railway
& presently residing at No.98/C, Railway Colony,
Pratapnagar,
Vadodara – 390 004.
3. Kamlesh Kumar,
Age:26 years (DoB being 02.01.1994),
Son of Shri Ramswarup Prasad Yadav,
Presently serving as Pointsman “B” in O/o. S.S.,
Kashipura Sarar,
Vadodara Railway Division, Western Railway
& presently residing at No.T/13-1, Railway Colony,
Kashipura Sarar,
Vadodara – 391 240.
4. Sikesh Kumar
Age:27 years (DoB being 07.02.1993)
Son of Shri Jimedari Mahto
Presently serving as Pointsman “B” in O/o.S.S.Geratpur,
Vadodara Railway Division, Western Railway
& presently residing at No.D/206, Navjeevan Vihar,
Geratpur,
Ahmedabad – 382 435.
5. Shashi Kishor Singh,
Age: 29 years (DoB being 08.01.1991)
Son of Shri Somaru Singh,
Presently serving as Pointsman “B” in O/o.S.S.Bharuch,
Vadodara Railway Division, Western Railway
& presently residing at No.T-101-B,
Narrow Gauge Railway Colony,
Bharuch – 392 001.
6. Santosh Kumar Bairwa,
Age:28 years (DoB being 06.04.1992),
Son of Shri Khyali Ram Bairwa,
Presently serving as Pointsman “B” in O/o.S.S.Kosamba Jn.,

Vadodara Railway Division, Western Railway
& presently residing at No.402/1,Royal Hegt Appt.,
Near Kosamba Junction,
Village:Kosamba (CT),
Taluka:Mangrol,
District:SURAT – 394 120.

7. Gaurav Kumar,
Age:27 years (DoB being 15.11.1992),
Son of Shri Dasrath Prasad Singh,
Presently serving as Pointsman “B” in O/o.S.S.Ankleshwar,
Vadodara Railway Division, Western Railway
& presently residing at No.25/C, Railway Colony,
Anand - 388 001.
8. Pradip Kumar Lodhee,
Age:27 years (DoB being 12.01.1993),
Son of Shri Budharam Lodhee,
Presently serving as Pointsman “B” in KIM Rly Stn.,
Vadodara Railway Division, Western Railway
& presently residing at Plot No.7K, Gujarat Nagar,
Near Kim Railway Station,
Taluka:Olpad, District :Surat – 394 110.
9. Deepak Kumar Rao,
Age:24 years (DoB being 21.11.1995)
Son of Late Shri Jagat Narayan Rao,
Presently serving as Pointsman “B” in O/o.S.S.Geratpur,
Vadodara Railway Division, Western Railway
& presently residing at No.D/308, Navjeevan Vihar,
Behind Railway Stn., Geratpur,
Ahmedabad – 382 435.
10. Amarjeet Mehta,
Age:24 years (DoB being 24.12.1995),
Son of Shri Shiwpujan Mehta,
Presently serving as Pointsman “B” in O/o.S.S.Nadiad,
Vadodara Railway Division, Western Railway
& presently residing at No.T/135-1, Railway Colony,
Nadiad – 387 001.
11. Manish Kumar
Age:26 years (DoB being 10.04.1994)
Son of Shri Ram Achal Vishwakarma,
Presently serving as Khalasi in O/o. U.W., DTI,
Pratapnagar,
Vadodara Railway Division, Western Railway
& presently residing at No.207/B, Railway Colony,
Pratapnagar, Vadodara – 390 004.
- 12.Laljilal Meena,
Age:26 years (DoB being 01.07.1994),
Son of Shri Ramji Lal Meena,
Presently serving as Safaiwala in O/o. S.S.Ankleshwar Jn.,
Vadodara Railway Division, Western Railway
& presently residing at No.T-124-H, Railway Colony,
East Side, Post:Ankleshwar 393 001,
Dist:Bharuch, Gujarat.
- 13.Vikas Gautam Wankhade,
Age:27 years (DoB being 06.05.1993),
Son of Shri Gautam Kisan Wankhade,
Presently serving as Pointsman (PP) in O/o. S.S. Mahemdabad Stn.,

Vadodara Railway Division, Western Railway
& presently residing at No.Q/T/6, Railway Colony,
Post:Mahemdabad 387 130,
Dist:Kheda, Gujarat.

14. Sonu Kumar,
Age:31 years (DoB being 07.01.1989),
Son of Shri Laxmi Narayan Prasad,
Presently serving as Pointsman "B" in O/o.S.S.Nadiad Stn.,
Vadodara Railway Division, Western Railway
& presently residing at Qtr.No.135-F, Railway Colony,
Nadiad – 387 001.
15. Manoj Kumar Badole,
Age:30 years (DoB being 30.08.1990)
Son of Shri Manohar Badole,
Presently serving as Pointsman "B" in O/o. S.S.Ankleshwar Jn.,
Vadodara Railway Division, Western Railway
& presently residing at No.116/B, Railway Colony,
Ankleshwar 393 001,
Dist:Bharuch, Gujarat.
16. Rakesh Kumar Meena,
Age:28 years (DoB being 04.06.1992)
Son of Shri Ramgopal Meena,
Presently serving as Pointsman "B" in O/o. S.S.Angadi Stn.,
Vadodara Railway Division, Western Railway
& presently residing at Railway Colony,
Angadi, P.O:Thasara,
Dist:Kheda, Gujarat – 388 250.
17. Ravish Kumar,
Age:26 years (DoB being 11.04.1994),
Son of Shri Triveni Prasad,
Presently serving as Pointsman "B" in O/o. S.S., Bajwa Stn.,
Vadodara Railway Division, Western Railway
& presently residing at No.T/25, Railway Colony,
Bajwa, Vadodara – 391 310.
18. Rajesh Kumar Meena,
Age:29 years (DoB being 03.02.1991),
Son of Shri Shankar Lal Meena,
Presently serving as Pointsman "B" in O/o. S.S.Angadi,
Vadodara Railway Division, Western Railway
& presently residing at Railway Colony at Angadi,
P.O:Thasara,
Dist:Bharuch, Gujarat – 388 250.

Applicants

(By Advocate Mr.M.S.Rao)

Vs.

1. Union of India,
(to be represented through the Special Secretary
to the Govt.of India & the Ex Officio Chairman,
Railway Board, Ministry of Railways,
Rail Bhavan,
New Delhi 110 001.
2. Western Railway,
(to be represented through its General Manager (E),
W.Rly Zone,
Office of the General Manager (E), W.Rly, Hqrs.Office,
Church Gate,
Mumbai 400 020.

3. The Divisional Railway Manager,
Vadodara Railway Division, Western Railway,
O/o DRM, BRC,
Pratapnagar,
Vadodara – 390 004.

4. The Divisional Railway Manager (E),
Vadodara Railway Division, Western Railway,
O/o DRM (E), BRC,
Pratapnagar,
Vadodara – 390 004.

Respondents

(By Advocate Mr.M.J.Patel)

O R D E R (Oral)

Per: Jayesh V. Bhairavia, Member (J)

1. Since the cause and the relief sought is common to all the applicants, therefore, they are allowed to join in one O.A. Accordingly, the M.A. No. 255/2020 for joint application is allowed.

2. In the instant O.A. applicants participated in the written test for promotion from erstwhile Group D to Group C post of TC/TNC/ACC against 33.33% Ranker Quota-Traffic Department and on being successful in the written test, they were sent for the training. After completing the training successfully, the applicants were stated to be eligible for posting to the promotional post. However, **vide impugned order dated 25.08.2020 (Annex. A/1)** the respondent No.4 cancelled the written test held on 26.5.2019 and 02.06.2019 on administrative ground. Aggrieved by the said decision dated 25.08.2020, the applicants have filed this O.A. under Section 19 of the Administrative Tribunals Act, 1985.

3. The facts of the instant O.A. in brief are that applicants who are working on different 'D' posts at various places in Vadodara Division, were, on the basis of Notification dated 21.01.2019 (Annex.A/3) for selection based promotion on 32 vacant posts earmarked under the 33-1/3% (33%) Rankers Quota, as also based on Memorandum dated 15.03.2019 (Annex. A/4) the applicants were found eligible to participate in the selection process. Accordingly, they were allowed to appear for written test held on 26.5.2019 and 02.06.2019 respectively. Out of 18 applicants of this O.A., Applicant

Nos. 3, 5, 7, 9, 10, 11, 12, 14, 18 appeared in written test held on 26th May and rest appeared on 2nd June, 2019 and qualified the same.

4. After conducting first phase examination on 26th May, 2019, certain discrepancies were found in the question paper set. The DCM/PM, Vadodara Division vide its inter-office note dated 30.05.2019 (Annex.A/7) informed the respondent No.4 that the options as per answer key was missing in three questions as the same were not in proper order. In response to it, the DPO/BRC clarified that the candidates were advised during exams (written examination) that option keys for those three questions were to be corrected as (a), (b), (c), (d) & (e) in the same order, as seen in other question. Thereafter, the respondents had conducted second phase of written test on 02.06.2019 for left out candidates. The respondents had declared the result of the said written test vide Memorandum dated 23.07.2019 (Annex.A/8) wherein names of applicants were declared as successful candidates. Thereafter, DPC was held and the applicants name were included in the statement/list of successful candidates declared by the said DPC. After conducting the entire selection, a list of 18 successful candidates under 33.33% quota was declared by respondent No.4 i.e., DRM(E) BRC i.e., vide Memorandum dated 4.9.2019 (Annex.A/10).

Thereafter, except applicant No.16, all applicants were sent to ZRTI, Udaipur to undergo requisite pre-service training. The applicant No.16 had also completed his training and all of them were subjected to undergo one month practical training for the post of Commercial Clerk Level-3 of one week each in Booking, Luggage & Goods and UTS/PRS & Ticket Checking. On 8th December, 2019 their training was over and they presented themselves before the respondent No.4 for their posting. However, no action was taken.

Applicants thereafter submitted joint representations on 24th and 26th December, 2019 to respondent No.3 for posting them on promotional post

as Commercial Clerk since they had completed all the formalities under the notification for 33.33% quota vacancies for post of Group C.

5. After waiting for some time, since respondents were not issued promotion order and were asked to continue to work at their original place, they had submitted various representations and requested the authorities to consider their case expeditiously.

6. At this stage, it is also contended by the applicants that on the basis of complaint from unsuccessful candidates, the Vadodara Division had taken up the issue of certain alleged discrepancies / irregularity in conducting written examination to the knowledge of General Manager, Western Railway Headquarters, Mumbai on 30th Dec., 2019.

In response to it, the Chief Personnel Manager (Admn.) at the Headquarters Office, wrote to the Railway Board on 23.01.2020 vide Annex.A/18 whereby advice were sought as to whether the Railway Administration as a corrective action should resort to 're-valuation' of the answer papers or alternatively as per the practice in vogue in the RRBs, whether the disputed question is omitted and allotment of marks is done by deleting that questions as per Railway Board's Circular dated 9th June, 2011 (Annex.A/19). It was also stated in the said letter that since the present case was not arising out of Vigilance investigation, but only a mistake in answer key, as per the existing instructions/guideline the next higher authority above the panel approving authority is authorized to rectify such mistakes and to take further corrective action. Therefore, necessary approval and instructions were sought from Railway Board by the Headquarter Office, Churchgate, Mumbai. The Senior DPO-BRC and ADRM-BRC were informed accordingly, vide letter dated 29.01.2020 that on receipt of clarification from Railway Board further necessary course of action would be advised (Annex.A/20).

7. In the meantime, the applicants through the WRMS Union, agitated their claim on 24.01.2020 before the respondents and requested for issuance of their posting orders but to no heed.

8. It has been averred that due to nation-wide lockdown w.e.f. March in the wake of COVID-19, they could not leave their place of work to pursue their claim.

Thereafter, they were utterly shocked to know that vide communication dated 25.08.2020 the respondents had cancelled the written tests for promotion under 33-1/3% Ranker Quota.

9. It is contended that no prior notice whatsoever was given to the applicants as to why the panel should not be cancelled as it was mandatory requirement as per the Advance Correction Slip (ACS) No.269 incorporated as a Note below Para 228 II of IREM Vol. I in pursuance of the Railway Board's letter dated 11.11.2019 RBE No.192/2019 (Annex.A/25).

10. In addition, Mr. Rao has stated that the role model for governance and decision taken thereof should manifest equity, fair play and justice. The respondents failed to follow the principle of audi alteram partem and unilaterally decided to cancel the tests. In this regard, learned counsel has placed reliance on the judgment passed by Hon'ble Apex Court in the case of ***Mahipal Singh Tomar Vs. State of UP*** reported in **[2013 (0) GLHEL-SC-55314]**.

11. Per contra, respondents have filed their reply. It is contended therein that as against 32 vacancies, 236 candidates were initially found eligible for selection and were allowed to participate in selection process. The respondents have admitted certain facts as stated by the applicant in their O.M., however, it is pointed out that with respect to some discrepancy in the written test, the matter was referred by the respondent No.4 to the HQ level vide letter dated 30.12.2019 seeking clarification but the matter was forwarded to the Railway Board on 23.01.2020 and since the issue is pending with the Railway Board, question of issuing promotion order in favour of the applicant does not arise until final outcome.

It is also contended that the Dy. CPO (NG), Headquarters Office, Mumbai vide its letter dated 07.05.2020 (Annex.R/2) informed the Sr. DPO, BRC that

since this is not arising out of vigilance investigation but only a mistake in answer key, the next higher authority above panel approving authority should be authorized to rectify such mistake and take further corrective action. In this regard, it is further submitted that the selection panel was approved by the ADRM hence next higher authority i.e. DRM is competent to modify/amend/cancel the selection in terms of GM(E) CCG's letter dated 09.11.2004 (Annex.R/3). Accordingly, the DRM (Respondent No.4) by taking into consideration the discrepancies about missing of correct options of question Nos. 29, 30 and 51 (Set A) vis-à-vis the answer key prepared by the Question paper setter, decided to cancel the written test and the panel that was already issued. Therefore, vide order dated 25.08.2020 (Annex.R/1), the respondent No.4 had cancelled the written test on the administrative ground. It is stated by the respondents that since the written examinations were cancelled, the panel for promotion to the post of TC/TNC/ACC issued vide Memorandum dated 04.09.2019 also stood cancelled. It is also contended that they had received a joint representation dated 04.09.2020 (Annex.R/4) submitted by 17 candidates requesting for conducting a fresh examination. It has been pleaded that justice to all the candidates would have been done if a fresh selection was undertaken by calling all eligible candidates for fresh written test. Therefore, the decision for cancellation of written test cannot be faulted on any count. Hence, it is prayed that the applicants are not entitled for any relief as prayed in this O.A.

12. Applicants have filed their rejoinder, reiterating their stand and additionally, submitting that it was not the case of applicant that there were mass copying or impersonation or questionable conduct on the part of some of the candidates. It is submitted that the options given with regard to Question Nos. 29, 30 and 51 in Set A were not in proper order, as the same were not shown in seriatim like (a), (b), (d), (c) and like that same mistakes/misprints were there in Set-B and Set-C for the same questions. It has been averred that except aforesaid error, there was no other discrepancy or irregularity. In this regard, it is also contended that in fact

during the examination, the candidates were advised that option keys were to be corrected to a, b, c, d in the same order as seen in the other questions. Accordingly, applicants as well as other candidates had also given their answers to all such questions. It is stated that as such, there was no irregularity or discrepancy and no complaint whatsoever was raised by candidates.

13. It is further contended by the applicants that it is not the case of Railway Administration that during the course of written tests, there were mass copying or impersonation or questionable conduct on the part of candidates. Infact the Western Railway Headquarters in its communication dated 23.01.2020 addressed to the Railway Board admitted that the present case is not one falling under vigilance investigation.

14. It is further contended that it is not correct on the part of respondents to state that the mistake has been found in answer key prepared by the question paper setter. Infact, in the present case the options given to some of the questions in Set A, Set B and Set C, the order which ought to have been (a), (b), (c) & (d) was not followed and instead, the options were in wrong or repeat **prints** i.e., [(a), **(b)**, **(b)**, (c)]. That being so, there is no question of answer key be wrong. It was typographical mistake and same was attempted to be corrected by the examiner during the examination by giving proper advice to all the candidates to give their answers by considering the option in order as (a), (b), (c) and (d). In this regard, the applicants have reiterated their submission that the inter-office note dated 30.05.2019 issued by DCM/PM, BRC, clearly explained that immediately during the exam itself the corrective steps were taken with regard to typographical mistake in the question paper. Therefore, there was no procedural irregularity said to be continued. Further, this happened only in the first day of written test. On subsequent day's test, this printing mistake was corrected and hence in order. Hence, the decision for cancellation of entire selection more particularly, the written test is erroneous, arbitrary and unreasonable on the part of Railway Administration.

15. The applicant denied the stand of Railway Administration that it was the Additional Railway Divisional Manager, who had approved the recommendation of DPC. It is stated by the applicants that the respondents had not produced any evidence to support the said contention. Additionally, it is also stated that how and why the respondent Nos. 3 and 4 i.e., Office of Vadodara Railway Division had taken up the case before the Western Railway, Headquarters, Mumbai, since the Local Railway Administration, DRM was already authorized to take appropriate, corrective step in accordance with terms of W.Rly. HQRs letter dated 09.11.2004 (Annex.R/3).

16. The learned counsel for applicants also contended that after the issuance of notice in this O.A., the Railway Administration in Vadodara Railway Division, in some other selection to some other post in BRC have issued show cause notice to all the empanelled candidates calling upon them as to show cause as to why the Railway Administration should not cancel the written test held on 30.12.2019 for selection to the post of Junior Engineer (MEMU) under 25% LDC quota vide show cause notice dated 03.09.2020 (Annex.RJ/1). These conducts on the part of the respondents clearly disclose the arbitrariness and whimsicality as also willful violation of the principles of natural justice and the mandatory provision of Para 220 of IREM VOL 1. Therefore, the impugned order required to be quashed and set aside.

It is also submitted that after filing this O.A., applicants came to know that vide Memorandum dated 01.09.2020 (Annex.RJ/2), the Office of respondent Nos.3 and 4 once again issued notification and decided to hold a fresh written test in two phase starting from 26.09.2020 in Vadodara. The respondents had not disclosed the said fact in their reply and only stated that since the written test has been cancelled, they may initiate fresh selection process. The names of applicants have also been included in the eligible candidate to part in fresh selection process. In this regard, it is submitted the action of the respondents is arbitrary and depriving the

successful candidates such as applicants herein from fair consideration for their appointment to the promotional post.

17. Heard the learned counsel for the parties and perused the material on record.

18. It is noticed that the respondents had conducted written examination on 26.05.2019 and 02.06.2019 for the selection for group D to group C posts TC/TNC/ACC in Pay Level 2 and 3 against 33.33% Ranker Quota – Traffic Department, BRC Division. The result of it was declared vide Memo dated 23.7.2019 wherein, the applicants herein were declared successful. Thereafter, the DPC was held and after considering the service record of successful candidates in the written test and recommendations were sent to the competent authority and based on it, vide Memorandum dated 04.09.2019, the office of DRM (E), BRC i.e., respondent No.4 herein, declared a panel of the successful candidates for promotion from erstwhile group D to group C. In the said panel the names of applicant were included as they were found successful in the selection.

It is also not in dispute that the applicants were sent for the training and on successful completion of the said training, they were directed for one month practical training of Commercial Clerk Level 3 of one week each at booking, luggage, goods and UTS/PRS and ticket checking at the respective station as shown in the letter dated 09.11.2019 issued by respondent No.4.

It is also admitted by the respondents that all the applicants have completed their practical training successfully. However, vide impugned order dated 25.08.2020, the respondent cancelled the written test on administrative ground. The only explanation offered by the respondents is that the respondent No.2 in its letter dated 07.05.2020 directed that since this is not arising out of Vigilance investigation but only a mistake in answer key, the next higher authority above panel approving authority should be authorized to rectify such mistakes and take further corrective action. The learned counsel for the respondents placed reliance on the letter dated

09.11.2004 (Annex. R/3) issued by General Manager (E), Head Quarters, Churchgate Mumbai which speaks as under:

"Vide this office circular of even no. dt. 25/8.1995 (PS No. 92/95) it was advised that the panel which has been approved by ADRM cannot be modified by DRM as the former has exercised power of approving panel on behalf of the latter. In such cases, wherever, it is observed that the panel is required to be modified / amended / cancelled proposals duly approved by DRM should be sent to the HQs for examination and doing needful. The entire issue has been examined/reviewed and it is clarified that the panel approved by ADRM can be modified/amended/cancelled by DRM, being next higher authority."

He, thus pointed out that after examination of the entire issue, the respondent No.4 had cancelled the written test accordingly, the panel also stands cancelled.

19. As against, the learned counsel Mr. M.S.Rao for the applicants vehemently argued that the applicants were not given any opportunity before cancellation of the written test and the said action on the part of the respondents was totally contrary as per the ACS No.269 incorporated as a Note below Para 228 II of the IREM Vol. I. Therefore the impugned order is in violation of the principle of "***audi alteram partem***". In this regard, he had placed reliance in the judgment passed by Hon'ble Apex Court in the case of ***Mahipal Singh Tomar vs. State of Uttar Pradesh*** reported in [(2013) 16 SCC 771: 2013 (0) GLHEL- SC 55314]. We take note of the fact that the Railway Board vide its order dated 11th November, 2019 i.e. RBE No.192/2019 wherein, it categorically stated that "***it has been decided by the Board that whenever selection proceedings are required to be cancelled after declaration of result due to procedural irregularities/malpractices, due notice should be given to the candidates declared selected***". Further, below Para 228 (ii) of IREM Vol- I / 269 it has been stipulated that "***where any selection is cancelled after declaration of result owing to procedural irregularities / malpractices, due notices should be given to the candidates who have been declared selected***" (Annex.A/25).

20. In the present case, as noted herein above, undisputedly, there was no malpractice or mass copying had ever occurred during the written test. It is also not in dispute that the applicants herein were declared successful after

due selection process including written test, DPC and trainings for the promotional post of Group C.

At this stage, we also take note of the fact that the respondents had admitted that they have not issued any due notice to the candidates declared selected in terms of provision of Para 228 (II) of the IREM Vol. Thus, in our considered view the impugned decision appears to have been issued as contrary to the mandatory provision of Para 228 (II) of the IREM Vol.1.

21. It is also seen that as per the Railway Board's instructions dated 9th June, 2011 (Annex.A/19) where one (or more) set of question papers involves an error in question(s) at the printing stage or a question having wrong answer or otherwise, the questions be omitted from the scope of evaluation instead of giving grace marks and in the case in hand, while wrong sequence of options of three questions were given, marking of 97 questions be considered. Therefore, it has been rightly contended by the counsel for the applicants that the respondents ought to have taken such course of action as is provided under the above instructions. Having failed to do so, respondents have committed grave error in cancelling the entire written examination.

At this stage, it is appropriate to mention that the Hon'ble Apex Court in the case of ***East Cost Railway vs. Mahadeva Appa Rao*** reported in **[(2010) 7 SCC 678]** held that *"that while no candidate acquires an indivisible right to a post merely because he has appeared in the examination or even found a place in the select list, yet the State does not enjoy an unqualified prerogative to refuse an appointment in an arbitrary fashion or to disregard the merit of the candidates as reflected by the merit list prepared at the end of selection process".*

It was further held in para 15 that *".....there is no gainsaying that while the candidates who appeared in the type writing test had no indivisible or absolute right to seek an appointment, yet the same did not give a license to competent authority to cancel the examination and the result thereof in an arbitrary manner. The least which the candidates who were otherwise eligible for appointment and who had appeared in the examination that constituted a step in aid of a possible appointment in their favour, were entitle to is to ensure that the selection process was not allowed to be scuttled for malafide reasons or in an arbitrary manner. It is trite that Article 14 of the Constitution strikes at arbitrariness which is an anti thesis of the guarantee contained in Articles 14 and 16 of the Constitution".*

Further, in para 20 of the said judgment it is held that *"arbitrariness in the making of an order by an authority can manifest itself in different forms. Non-application of mind by the authority making the order is only one of them. Every order passed by a public authority must disclose due and proper application of mind by the person making the*

order. This may be evident from the order itself or the record contemporaneously maintained. Application of mind is best demonstrated by disclosure of mind by the authority to pass the order in question. Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained is clearly suggestive of the order being arbitrary hence, legally unsustainable”.

22. In the instant case, it is noticed that the respondents while cancelling the written test or even in their reply in this O.A. had not stated any reason whatsoever for not complying the mandatory provision stipulated in Para 228 (II) IREM Vol.1. The respondents failed to place any record to justify their decision. The office of the respondent Nos.3 and 4 themselves had taken the corrective steps with regard to typographical error in the options to the answers during the exam. Not only that, the respondents had conducted the second phase of examination on 02.06.2019 and subsequently, declared the result of written test. It is noticed that only 18 candidates i.e., applicants herein were declared successful in the selection process against the 32 vacancies of Group 'C'. In absence of any material on record with respect to mass copying, malpractice or any irregularities attributed to the applicants as also any irregularities said to be continued in conducting the written test, the impugned decision for cancelling the written test cannot be said to be a just and rational decision. After completion of selection process and on declaration of final panel as also on completion of two phase training of the selected candidates it becomes mandatory for the respondents to follow the statutory provision i.e., Para 228 of IREM Vol.1 before taking such harsh decision of cancellation of written test. It is seen that the respondents have totally given go by the aforesaid mandatory provision and arbitrarily passed the impugned order, Thus, said decision suffers from infirmities being arbitrary, same has been passed in contravention of statutory provision of IREM as also contrary to the law laid down by the Hon'ble Apex Court in the case of Mahipal Singh Tomar (supra).

23. In view of aforesaid discussion, the applicants have made out the case for interference of this Tribunal since the decision making process of the respondents is suffer from infirmities, the same is deserves to be set aside, accordingly, we quash and set aside the impugned order dated 25.08.2020.

We further direct the respondent Nos.3 and 4 to take appropriate decision for filling up the vacant post of TC/TNC/ACC in Traffic Department of Vadodara Railway Division on the basis of select panel notified by respondent No.4 on 04.09.2019 within 45 days from the date of receipt of copy of this Order. O.A. stands allowed. No cost.

(Dr. A.K.Dubey)
Member (A)

(Jayesh V.Bhairavia)
Member (J)

SKV