

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 291/304/2020

Order reserved on 04.12.2020

DATE OF ORDER: 17.12.2020

CORAM

HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER
HON'BLE MRS. HINA P. SHAH, JUDICIAL MEMBER

1. Harimohan Awasthi son of Shri Shri Bal Ram Sharma age around 32 years R/o Vill. Gangroli Post – Hisamda Teh.- Weir, Bharatpur 321408. Working as GDSBPM, Muhari Bo, Under Weir So Dholpur (Presently working in IPPB Bharatpur on Deputation) Mob. No. 8696805758.
2. Mahendra Singh Rathod S/o Shri Tanwar Singh Rathod age around 29 years R/o 3-Ra-47 Gandhi Garh Vigyan Nagar Kota. Working as GDS on Deputation Kaithun So, Kota. Mobile 6376597701.
3. Dhara Singh Gurjar S/o Shri Roogan Singh R/o VPO Sumel, Bawanws, Swaimadhopur. Working as GDS, VPO Sumel Bawanwas Sawai Madhopur. Mobile: 9950295803.
4. Sitarma Paliwal S/O Shri Kaluram Paliwal, aged around 37 years, R/o VPO Jaitpura, Teh. Udaipurwati, Distt. Jhunjhunu. Working as BPM Dudsar, Govindgarh, Chomu, Jaipur. Mobile: 8696643950.
5. Deepak Kumar Saini S/o Shri Jagdish Prasad Saini, aged around 28 years, R/o Gudhachanra Ji, Teh-

Nadoti. Dis-Karauli. Working as GDS DA, BO-Pavta, SO – Dausa. Mob. 8104861747.

6. Rakesh Kumar S/o Shri Nemichand, aged around 28 years R/o Village Posani, Post- Koodan Tehsil-Laxmangarh Sikar. Working as GDSBPM, Posani, Post- Koodan Tehsil- Laxmangarh Sikar 332031. Mob. 099828 08673.
7. Sunil Kumar Meena S/o Shri Chimnram, aged around 27 years, R/o VPO Kesarpura, Sheoganj, Sirohi. Working at VPO Kesarpura Sheoganj Sirohi. Mobile No. 8058517094.
8. Govind Saini S/o Shri Ramchandra Saini, aged around 26 years, R/o Vpo Arnetha Kaden Bundi. Working at VPO Jaisthal Kaden Bundi. Mob. 8949634817.
9. Sanjay Kumar Sharma S/o Shri Ramcharan Sharma, aged around 27 years, R/o VPO Amawara, Teh Bawanwas, Sawai Madhopur. Working as BPM Meena Koleta Bawanwas Sawai Modhopur. Mob. 9636178363.
10. Babu Lal Koli S/o Shri Devi Lal Koli, aged around 35 years, R/o Roghai, Madrayal, Karauli. Working at Mandrayal Post Office, Karauli. Mob. No. 9166348949.
11. Subhash Meena S/o Shri Babu Lal Meena, aged around 25 years, R/o VPO Palada, Kuchaman City, Nagaour. Working as BPM Panchota, Nawa City Nagaur. Mob 7691073378.
12. Sangram Singh Chandel S/o Shri Ramdayal Chandel, aged around 27 years, R/o 109 K Bada Sogriya Kota. Working as BPM Sogriya Kota. Mobile No. 9509344243.
13. Devendra Sain S/o Shri Ramkalyan Sain, aged around 26 years R/o Anadpura Arnetha Kaden

Bundi. Working as BPM Lesarda Kesorai Patan Bundi. Mob. No. 9694316905.

14. Umesh Kumar Prajpat S/o Shri Hajari Lal Prajapat R/o 410 Vinobha Bhabhe Nagar, Kota. Working at VPO Breda Jhalawad. Mob No. 7976290067.
15. Virendra Kaviya S/o Shri Bhomdan, aged around 35 years, R/o VPO Birai Tinwari, Shergarh, Jodhpur. Working as BPM Birai Tinwari Shergarh Jodhpur. Mobile No. 9602944868.
16. Hari Shankar Suman S/o Shri Birdhi Lal Suman, aged around 28 years, R/o VPO Jhakhoda, Kota. Working as BPM, Jhakhoda Kota. Mobile No. 9784918202.

....Applicants

Shri Mukesh Agarwal, counsel for applicants (through Video Conferencing).

VERSUS

1. Union of India through the Secretary, Department of Posts, Government of India, Ministry of Communications and Information Technology, Dak Bhawan, Sansad Marg, New Delhi-110001.
2. Director General (Posts), Dak Bhawan, Sansad Marg, New Delhi-110001.
3. Chief Post Master General, Rajasthan Circle, Postal Department, Jaipur (Rajasthan)-302007.
4. Director (Postal Services) HQ, Postal Department, Jaipur (Rajasthan)-302007.
5. Assistant Director (P&R), O/o Chief Post Master General, Rajasthan Circle, Postal Department, Jaipur (Rajasthan)-302007.

....Respondents

Shri Anand Sharma, counsel for respondents (through Video Conferencing).

ORDER

Per: Hina P. Shah, Judicial Member

The present Original Application has been filed by the applicants under Section 19 of the Administrative Tribunals Act, 1985 for the following reliefs:-

“(i) By an appropriate order or direction, the impugned order dated 03.04.2020 (Annex. A/1) be quashed and set aside and the Respondents be directed to declare result of Paper I and Paper II held on 29.09.2019 and thereafter by conducting Paper III (DEST), make recruitment / selection on the post of Postman / Mail Guard in pursuance of Notification dated 19.08.2019 (Annex. A/2).

(ii) By an another appropriate order or direction, the respondents be further directed to promote / appoint the applicants on the post of Postman / Mail Guard, from the date, the appointment has been given by other postal Circles across the country to the similarly situated person in pursuance of notification dated 19.08.2019 with all consequential benefits.

(ii) Any other order, direction or relief may be passed in favour of the applicants which may be deemed fit, just and proper under the facts and circumstances of the case.”

2. The brief facts of the case, as stated by the applicants, are that as per the Notification dated 19.08.2019 issued by Ministry of Communications, Department of Posts for Limited Departmental

Competitive Examination (LDCE) for recruitment to the cadre of Postman / Mail Guard from eligible MTS/GDS for the vacancy year 2018 and 2019 and in pursuance of the said notification, exam took place for all 23 circles. The criteria for selection was as under:-

“II Criteria for selection:-

- (a) Examination for Paper I and Paper II will be conducted in continuing one sitting. Thereafter, Paper III i.e. Data Entry Skill Test (DEST) will be conducted separately on the same day.
- (b) Only such candidates who qualify in each paper, viz. Paper I, Paper II and Paper III, shall be considered for final selection and their merit shall be drawn in order of marks secured in Paper I. Since paper II and Paper III are only qualifying, marks secured in Paper II and Paper III shall not be added to mark secure in Paper I to decide merit.
- (c) After arranging the candidate in order of merit as at (b) above, number of candidates to be declared successful shall be equal to the number of vacancy in each category.”

It was further stated that the examination was divided into three papers. Paper- I was competitive in nature, while Paper-II and Paper-III were qualifying. Paper-I and Paper-II were conducted in continuity on the same day and both these papers took place on 29.09.2019. As all the applicants were fulfilling all the conditions in pursuance to the notification, they

appeared in the examination. It is stated that identical question paper was given to the said examination and only one answer key was published on 18.10.2019 and All over India results were declared on 16.03.2020 excluding Rajasthan Circle. As per the answer key published by the respondents, all the applicants are qualified in both the papers and are eligible to appear in Paper-III (DEST). But the respondents have neither published result of Paper-I and Paper-II, nor conducted DEST. However, all the postal circles all over India declared their result not only of Paper-I and Paper-II but also of Paper-III, which can be perused from UP Circle which declared its result on 16.03.2020. It is surprising that only in Rajasthan Circle, the respondents cancelled the examination held in pursuance to the Notification dated 19.08.2019 and passed the impugned order dated 03.04.2020 without assigning any reason. Such act of the respondents is against the principles of natural justice and in violation of Articles 14 and 16 of the Constitution of India. The applicant No. 1 has filed an RTI application dated 17.04.2020, but the respondents vide their letter dated 05.05.2020 (Annexure A/10) have only replied that the LDCE has

been cancelled on administrative grounds and the matter is still under investigation. Therefore, being aggrieved by the arbitrariness of the respondents, the applicants have filed the present Original Application for declaration of their result of Paper-I and Paper-II and thereafter by conducting Paper-III make their selection on the post of Postman/Mail Guard in pursuance of the Notification dated 19.08.2019 along with other reliefs.

3. The respondents vide their reply have stated that as per Schedule, written examination of Paper-I and Paper-II was conducted on 29.09.2019. Meanwhile during the declaration of the result, it came into light of the competent authority that the examination process was vitiated and, therefore, the competent authority has cancelled the examination. Being a model employer, while conducting the recruitment process with transparency and integrity, respondents state that equal opportunity is required to be provided to every eligible candidate for the purpose of selection on the published post. Therefore, competent authority seriously took into consideration the shortcomings of the recruitment process and on examination of the

same, found the examination process to be compromised and vitiated. Accordingly, the competent authority rightly took a decision to cancel the whole examination process in Rajasthan Circle vide letter dated 03.04.2020. Therefore, in these circumstances, the applicants cannot complain that any individual misconduct of the applicant on his part has not been examined as the same is not the foundation of the impugned order dated 03.04.2020. Therefore, as the whole exercise is merely a motive to ascertain as to whether candidates from such vitiated recruitment process should be selected and posted in service or not, the competent authority cancelled the entire recruitment process to maintain the constitutional mandate of equality. It is further stated that the primary investigations revealed that serious irregularities/malpractices at large scale have been established including leakage of question paper was found. Therefore, the action of the respondents about cancelling the entire recruitment process is just, proper and valid. Therefore, the present Original Application is without any substance and the same is not maintainable.

4. The applicants have filed a rejoinder denying the submissions of the respondents and further stated that the respondents have not uttered a single word or pointed out any shortcoming in conducting the present examination, on the basis of which the examination process was vitiated. To contradict their stand, the applicants rely on the following judgments:

“(a) East Coast Railway & Another vs. Mahadev Appa Rao & Others, reported in (2010) 7 SCC 678.

(b) Union of India & Others vs. Rajesh P.U., Puthuvalnikathu & Another, reported in (2003) SCC (L&S) 1048.

The applicants state that in the case of East Coast Railway & Another vs. Mahadev Appa Rao (supra), the Hon’ble Apex Court held that though a candidate, who has passed an examination or whose name appears in select list does not have an indefeasible right to be appointed, yet appointment cannot be denied arbitrarily, nor can selection test be cancelled without giving proper justification. Also in the case of Union of India & Others vs. Rajesh P.U., Puthuvalnikathu & Another (supra), the Hon’ble Apex Court held that in cases where it is possible to weed

out the beneficiaries of illegalities, the selection process to that extent only be set aside leaving out the persons, who had no concern with such malpractices. Thus, applicants stated that in the light of the aforesaid judgments, the present Original Application deserves to be allowed.

5. The respondents have not filed any reply to the rejoinder to rebut the claim of the applicants. They further stated that the investigation/inquiry is still pending with the CBI. It was further pointed out that question papers of the said examination were leaked before holding of the said examination and it was pointed out in the investigation that at large scale, serious irregularities / malpractices and use of unfair means in Rajasthan Circle were detected. Thus, the decision of the competent authority to cancel the entire selection process is just and proper.

6. We have heard the learned counsels for the parties at length through Video Conferencing and examined the pleadings minutely and also perused the material available on record as well as the judgments produced by the parties.

7. The applicant besides reiterating the facts has relied on the judgment of East Coast Railway & Another vs. Mahadev Appa Rao (supra), wherein the Hon'ble Supreme Court has held that *"In the absence of reason in support of the order it is difficult to assume that the authority had properly applied its mind before passing the order cancelling the test."* It is shocking that neither in the impugned order dated 03.04.2020 nor in the reply, the respondents have stated any reason for cancellation of departmental examination held on 29.09.2019. Therefore, in view of the law laid down by the Hon'ble Apex Court, cancelling the examination without any application of mind is illegal and arbitrary. It was further stated by the applicants that as per para 26 of the aforesaid judgment, the Hon'ble Apex Court has held that *"If a test is cancelled just because some complaints against the same have been made howsoever frivolous, it may lead to a situation where no selection process can be finalized as those who fail to qualify can always make a grievance against the test or its fairness. What is important is that once a complaint or representation is received the competent authority applies its mind to*

the same and records reasons why in its opinion it is necessary to cancel the examination in the interest of purity of the selection process or with a view to preventing injustice or prejudice to those who have appeared in the same." Thus cancellation of the examination is totally illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India. It was further stated that the only reason given by the respondents in cancelling the examination is "administrative grounds" and in reply only state that during declaration of result, it came to the knowledge of the competent authority that the examination process was severally compromised and vitiated. It is clear that the respondents have nowhere pointed out any shortcomings in the examination conducted on 29.09.2019 and, therefore, cancellation of examination without any proper application of mind shows the whimsical attitude and careless approach in presuming that the selection process was vitiated. As Paper-I and Paper-II was conducted all over India on 29.09.2019 at single sitting and as Paper-I was identical in all postal circles all over India, all the postal circles except Rajasthan have declared the result and also given appointment to the selected

candidates. Therefore, instead of cancelling the entire selection process, it is necessary to weed out the candidates who have used unfair means in the examination as held by the Hon'ble Apex Court in the case of Union of India & Others vs. Rajesh P.U., Puthuvalnikathu & Another (supra) that there was hardly any justification in law to deny the appointment to the other selected candidate whose selections were not found to be, in any manner, vitiated for any one or other reasons." Therefore, it is sham on part of respondents merely on allegations of leakage of question paper, use of unfair means to cancel the examination arbitrarily on the basis of frivolous complaint, which is nothing but non application of mind on part of respondents without any justified reasons. In view of the illegal and unjust action on part of respondents, the action of cancelling the examination by the impugned order dated 03.04.2020 be quashed and that their results of Paper-I and Paper-II be declared and they be allowed to appear in Paper-III (DEST) and further selection to be carried on the post of Postman/Mail Guard in pursuance of Notification dated 19.08.2019 as the same has been done in all other circles across the country.

8. The respondents also have reiterated their stand taken earlier and state that the applicants have no case and there requires no interference in the impugned order, which is just and proper. To justify their stand, respondents relied on the decision of the Hon'ble Apex Court in the case of Union of India and Others vs. Tarun K. Singh and Others, reported in (2003) 11 SCC 768. The respondents stated that the Hon'ble Apex Court in the said judgment has held that the process of selection, which stands vitiated by adoption of large scale malpractice to a public office, cannot be permitted to be sustained by a Court of Law. That apart, an individual applicant for any particular post does not get a right to be enforced by a Mandamus unless and until he is selected in the process of selection and gets the letter of appointment.

9. As seen from the facts, there was a Notification for LDCE for recruitment to the cadre of Postman / Mail Guard from eligible MTS/GDS for the vacancy year 2018 and 2019 and in pursuance of the same, examination took place for all 23 Postal Circles throughout India. The said examination was divided

into three papers. Paper- I was competitive in nature, while Paper-II and Paper- III were qualifying. Paper-I and Paper-II were conducted in continuity on the same day and both these papers took place on 29.09.2019. As all the applicants were fulfilling all the conditions in pursuance to the notification, they appeared in the examination. The postal circles all over India declared their result not only of Paper-I and Paper-II but also of Paper-III on 16.03.2020 except Rajasthan Circle. The respondents cancelled the examination held in pursuance to the notification dated 19.08.2019 and passed the impugned order dated 03.04.2020 without assigning any reason.

10. The impugned order dated 03.04.2020 (Annexure A/1) reads as under:

"Memo No.: Rectt/2-32/2019/Con
Dated at Jaipur, the 03/04/2020

Memorandum

The Competent Authority has hereby ordered cancellation of Departmental Examination for recruitment to the cadre of Postman/Mail Guard from eligible MTS and GDS held on 29.09.2019 conducted

in accordance with Notification Memo No. Rectt/2-32/2019 dated 19.08.2019 on administrative grounds.

-Sd-

Assistant Director (P&R)
Office of the Chief Postmaster General
Rajasthan Circle, Jaipur – 302007

A copy of this Memo is issued for information to:

1. The Assistant Director (DE), Department of Post, Dak Bhawan, Sansad Marg, New Delhi – 110001.
2. The Postmaster General, Rajasthan Western Region, Jodhpur.
3. The Postmaster General, Rajasthan Southern Region, Ajmer.
4. All the SSPOs/SPOs/SSRMs/SRMs in Rajasthan Circle.
5. The Officer Incharge P&T Adm. Cell, APS Centre Kamptee, C/o 56 APO."

From the above, it is clear that the reason mentioned by the respondents for cancellation of the examination was "administrative grounds".

11. It is noticed that the respondents have not enclosed a copy of the preliminary report of the Inquiry Committee although on the basis of such report a decision was taken. The Tribunal after hearing the matter had directed the respondents to

produce the original record pertaining to the decision being taken for cancellation of the examination.

12. Thus, in order to go into depth of the matter, original records were called for and on perusal of the said records, it was found that there was no material (not even prima facie) found in connection to the cancellation of the examination held on 29.09.2019. There was neither any complaint whatsoever to state that there was any malpractice or any leakage or the examination process was severely compromised or vitiated pertaining to the said examination.

13. It is, therefore, clear that merely saying that serious irregularities were committed in the examination and that the examination process was vitiated or compromised, in absence of any proof or any record cannot be accepted. General allegations could not be enough to take a decision to cancel the whole selection process. It is clear that there was total non-application of mind on the part of respondents to cancel the said Departmental Examination dated 29.09.2019.

14. As far as the judgments relied by the applicants is concerned, the Hon'ble Apex Court in the case of Union of India & Others vs. Rajesh P.U., Puthuvalnikathu & Another (supra), lays down the same principle that if in case of alleged irregularities in a selection process, the tainted cases can be segregated, in that case, the entire selection process should not be cancelled. In that case, the selection process can be cancelled only in respect of the candidates against whom irregularities are proved after identifying these candidates. For the candidates with no irregularities, cancellation of their selection process will not be justified. In the said case, the Committee appointed to enquire into the process, had found irregularities only in respect of 31 candidates. Hence, it was held that the cancellation of the entire process was not necessary. As far as the judgment of the Hon'ble Supreme Court in the case of East Coast Railway & Another vs. Mahadev Appa Rao (supra), relied by the applicants is concerned, wherein it is held that the competent authority should have applied its mind to whatever material was available to it before cancelling the examination and record reasons as to why in its opinion, it is necessary to cancel the

examination in the interest of purity of the selection process or with a view to prevent injustice or prejudice to those, who have appeared in the same. The minimum expectation is that the authority has passed the orders only after due and proper application of mind to the allegations made before it and has formulated and recorded reasons in support of the said view that the competent authority was taking.

15. On the other hand, if the case of Union of India and Others vs. Tarun K. Singh and Others (*supra*), relied by the respondents is considered, the Hon'ble Apex Court was of the view that since the selection process was vitiated by procedural and other infirmities cancellation thereof was perfectly justified. The facts of the said case cannot be applied to the present case as no infirmity is even recorded in the preliminary report in respect of the present examination in question.

16. The only question which requires consideration is as to whether in absence of any illegalities pointed out during the examination process nor recorded in

investigation report, entire selection process was required to be struck down.

17. In the present case, the order passed by the competent authority does not state any reasons for cancellation of the examination. It is also clear that no reasons for cancellation of examination were set out even in the preliminary inquiry report/ investigation report. In absence of reasons in support of the order, it is difficult to assume that the authority had properly applied its mind before passing the order of cancelling the examination. Therefore, merely assuming that on examination of the case, it was found that the examination process was vitiated and that the same to be treated as motive for passing of the impugned order cannot be accepted. Thus, even if an examination is cancelled just because some complaint has been made however frivolous, it may lead to a situation where no selection process can be finalised as those who fail to qualify always make a grievance against the examination or its fairness. It is difficult to sustain an order that is passed is neither based on an enquiry nor even a prima facie view

taken upon due and proper application of mind to the relevant facts.

18. Hence, as per the law laid down by the Hon'ble Apex Court in the case of Union of India & Others vs. Rajesh P.U., Puthuvalnikathu & Another (supra) and in East Coast Railway & Another vs. Mahadev Appa Rao (supra) with reference to the facts of the present case, we are of the considered opinion that the facts in the present Original Application before us are squarely covered by the said decisions. Thus, applying these principles to the case in hand, there is no gainsaying that while applicants who appeared in the examination had no indefeasible or absolute right to seek an appointment, also the same did not give any licence to the competent authority to cancel the examination and the result thereof in an arbitrary manner. Therefore, in absence of due and proper application of mind and in absence of any material available before the competent authority, cancellation of examination without recording any finding is highly unjust and arbitrary.

19. Accordingly, present Original Application succeeds and the impugned order dated 03.04.2020 (Annexure A/1) is hereby quashed and set aside in respect of the applicants. The respondents are directed to declare their result and also allow them to appear in Paper-III and further carry out the procedure of selection/appointment as has been carried out in other postal circles in pursuance of the Notification dated 19.08.2019 (Annexure A/2) with all consequential benefits. No costs.

(HINA P. SHAH)
JUDICIAL MEMBER

(DINESH SHARMA)
ADMINISTRATIVE MEMBER

Kumawat