

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD**

Original Application No.1422 of 2001.

Tuesday, this the 14th day of September, 2004.

Hon'ble Mrs. Meera Chhibber, J.M.

Hon'ble Mr. S.C. Chaube, A.M.

1. Surendra Pal Singh S/• Late Laxman Singh
aged 41 years R/• Village Banna, Post Tundla,
District Firezabad.
2. Virendra Kumar S/• Late Durjan Singh
aged 42 years, R/• Kachha Tundla, Post Tundla
District Firezabad.
3. Bhanwar Singh S/• Late Manik Chand
aged 42 years, R/• Village Garhi Thani,
Post Nagla Singhi, District Firezabad.
4. Om Prakash S/• Late Aji Ram
aged 36 years, R/• Village Shahpur,
Post Varautha, District Aligarh.
5. Makhan Lal S/• Shanker Lal aged 39 years,
R/• Ram Bihar Colony, Pala Road, Aligarh.

.....Applicants.

(By Advocate : Shri O.P. Gupta)

With

Original Application No. 1446 of 2001.

1. Pankaj Kulshrestha Son of Sri Chhail Prakash
Kulshrestha, resident of house No.434/1
Meerpur Cantt. Kanpur Nagar.
2. Ramesh Lal Son of Budhai Ram,
resident of Head Post Office Compound, Mail Motor
Kanpur Nagar.

.....Applicants.

(By Advocate : Shri R.R. Shivhare)

With

Original Application No.1475 of 2001.

Kishan S/• Late Ram Pal
aged 33 years R/• Lok Nagar
Unnaw and working as Group 'D'
Mailman in R.M.S. Kanpur.

.....Applicant.

(By Advocate : Shri O.P.Gupta)

.....2.

With

Original Application No.1463 of 2001.

Vijay Shanker Srivastava,
aged about 34 years,
Son of Shri Jagdish Prasad
Srivastava, r/o 17,
Civil Lines, near Mahila
Degree College,
Fatehpur, District Fatehpur.Applicant.

(By Advocate : Shri R.S. Prasad).

Versus

1. Senior Superintendent Railway Mail Service,
'KP' DN Kanpur.
2. Post Master General, Kanpur Region,
Kanpur.
3. Union of India through Secretary,
Ministry of Communication,
Government of India, New Delhi.Respondents.

(By Advocate : Shri S. Singh in all these OAs.)

ORDER

By Hon'ble Mrs. Meera Chhibber, J.M. :

Since in all these O.As the facts and relief(s) claimed are common and identical, therefore, they have been heard together and are being disposed of by a common and consolidated order.

2. Applicants are aggrieved by the order dated 20.11.2001 whereby the result dated 14.12.1997 has been cancelled by the respondents. Earlier also, respondents had cancelled the result dated 14.12.1997 by issuing order dated 16.3.98, which was challenged by the applicants by filing O.A. no. 346 of 1998 and ultimately the said order was quashed by this Tribunal vide judgment and order dated 5.9.2000 (page 20). Applicants were directed to be reinstated on their promoted posts with all benefits. However, liberty was given to the respondents to pass fresh order in accordance with law after giving opportunity of hearing to the applicants. In the said O.A., 11 applicants were there, but Shri Awadh has since retired Ram/and Sri Ghanshyam has since expired, who were at sl. nos.

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6 & 7 respectively in the earlier O.A.

3. It is submitted by the applicants that after the judgment was passed by this Tribunal, though the applicants were reinstated on their promoted posts, but once again respondents issued vague show-cause notice dated 26.6.2001 on the ground that answersheets were exchanged in a suspicious manner and the results were prepared on the basis of seniority even though the same ought to have been prepared on the basis of merit, therefore, applicants were required to give reply as to why the result should not be cancelled (page 24). Applicants gave a reply stating therein that show-cause notice is absolutely vague as it is not stated who had changed ^{what} the answersheets and ^{was} the irregularity committed by the candidates, if any, and who had committed it. They have further submitted that since applicants had already qualified in the written test and have already been working on the promoted post, therefore, there is no justification to cancel the result at this stage, therefore, show-cause notice dated 26.6.2001 may be withdrawn.

4. In spite of it, respondents once again cancelled the result in the same stereo type manner by issuing order dated 20.11.2001.

5. Counsel for the applicants have submitted that issuance of show-cause notice is not a mere formality and incase it was found that some irregularities have been committed by the applicants, atleast that should have been pointed out in the show-cause so that ^{if} any individual was responsible for the said irregularity, atleast he could have answered the said allegation made against him, whereas, in the present case stereo type show-cause notices were issued to all the applicants who had ^{been} declared pass in the written test held by the respondents. They have, therefore, submitted that there is no justification at all to cancel the results already declared by the respondents.

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6. Respondents, on the other hand, have submitted that a literary test for promotion/recruitment from non-test category of Group 'D' staff and casual labourers to the post of test category of Group 'D' was held on 14.12.1997 and result of the same was declared by the office memo dated 14.12.1997, but thereafter some complaints were received alleging the use of illegal and corrupt practice in the aforesaid test, therefore, the said examination was cancelled vide ^{office} memo dated 16.3.1998. The candidates who were selected and promoted to the cadre of test category of 'D', were directed to be restored on their earlier posts of non-test category or casual labour as before. This order was challenged by the applicants and the Tribunal had directed to the respondents to reinstate all the applicants on their posts with all benefits with further direction to give show cause notice. Accordingly, respondents issued show-cause notice to all the applicants on 26.6.2001, but since there were irregularity in the selection, the result has been cancelled. They have, thus, submitted that now they have complied with the principle of natural justice as well, therefore, there is no illegality in the orders passed by the respondents, therefore, these cases may be dismissed.

7. We have heard counsel for the parties and perused the pleadings as well.

8. When this Tribunal observed that fresh order may be passed after following the principle of natural justice, it was clear that respondents were expected to give an effective show cause notice to the applicants, who were found to be involved in exchange of the answer books so that he could have replied the allegation made against him, whereas in the case, in hand, it is neither mentioned in the show-cause notice as to who had exchanged the answer-sheets, nor any details have been given in the Counter. On the other hand, respondents have merely stated that

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answersheets were exchanged without giving any details as to who was the candidates whose answer book were exchanged, therefore, unless these points were spelt out in the show-cause notice itself, the show-cause notice issued by the respondents cannot be sustained in law, because issuance of show-cause notice is not a mere formality. After all, atleast in the Counter, the respondents ought to have clarified as to what were the irregularities and who had committed the said irregularity, so that atleast Court ^{could B} ~~has~~ come to the positive conclusion as to whether it is a fit case where the result should have been cancelled or there was some other way-out.

9. Respondents have taken only two grounds to quash the result. First is that the answerbooks were exchanged in suspicious manner and second ground taken is that the results were declared on the basis of seniority, whereas the same ought to have been declared on the basis of merit. As far as the second ground is concerned, if criteria for declaring the result was merit, it could always been amended by the respondents by issuing corrigendum and at best the position of qualified candidates would have been changed because this is not disputed by the respondents that ^{all the} ~~all~~ applicants before us had indeed qualified in the test. Therefore, this irregularity could always been rectified by the respondents by issuing corrigendum after giving show-cause notice to the applicants.

10. Respondents have also not clarified in the Counter as to who were ^{the} complainants because if complaints were made by the candidates who had failed in the examination, no ^{show cause} ~~complaints~~ could have been taken by the respondents because law is well settled that a person who appears in the test and fails cannot make any grievance with regard to holding of the test. Even otherwise, before cancelling the result it was incumbent on the part of the respondents

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to have given the justification, if any, in the impugned order, ~~then~~^{or} atleast in the Counter to satisfy the Court the need for the action taken to cancel the result. As we have already stated above, there is absolutely nothing on record to show ~~that~~ the actual reason as to why the result was cancelled. The reason given is absolutely vague and does not inspire confidence. We had asked the counsel for the respondents to explain what ~~were~~ the irregularities and who had committed the same, but he was also not in a position to throw any light on this aspect, therefore, we are not at all satisfied by the action taken by the respondents. Accordingly, the order dated 20.11.2001 is quashed and set-aside. Respondents are directed to permit the applicants to continue on the promoted posts as per the result dated 14.12.1997. However, it would be open to the respondents to correct the select list by preparing it on the basis of merit and circulated amongst the applicant, if that was ^{the} requirement under rules. ~~To~~ that extent, applicants cannot have any grievance. This ~~exercise~~^{exercise} may be carried out within a period of six weeks from the date of communication of this order.

11. With the above directions, all the O.As are disposed off with no order as to costs.

12. Copy of this order be kept available in all the connected files.

28/9/04

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sd/-
JM